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## ACTS AND RESOLUTIONS

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### Regular Session, 1993

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**Volume II**

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CHAPTER 128
(Com. Sub. for H. B. 2285—By Delegates Pettit and Houvouras)

| Passed April 10, 1983; in effect ninety days from passage. Approved by the Governor. |

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to economic and industrial development; creating the steel advisory commission and a steel futures program in the department of commerce, labor and environmental resources; setting forth legislative intent and purposes; appointment of the commission; terms of the commission; reimbursement of expenses; meeting space and staff services for the commission; responsibilities of the commission; and providing for the termination of the advisory commission and program in seven years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-1. Legislative intent; purpose and administration.
§31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection officers.
§31-16-3. Responsibilities of commission.
§31-16-4. Steel futures program.
§31-16-5. Continuation of program.

§31-16-1. Legislative intent; purpose and administration.

1 The Legislature recognizes that the steel industry plays a significant role in West Virginia's economy, and the industry's survival and success is of significant importance to the residents and the tax base of the state.
2 Because of this significant economic role, there is hereby created in the West Virginia department of commerce, labor and environmental resources a steel advisory commission and a new program entitled “The Steel
The purpose of the commission and the program is to preserve and improve the economy of the state by promoting employment and increased productivity, thereby ensuring continued economic development consistent with these goals, and to maintain a high standard of living for the residents of the state. The commission, through the steel futures program, may supplement any other enterprise assistance program administered by the West Virginia department of commerce, labor and environmental resources. The steel futures program shall be administered so as to provide financial and technical assistance as provided in this article to increase the competitiveness of existing steel and steel-related industries within the state and to encourage the establishment and development of new steel and steel-related industries within the state.

§31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection of officers.

(a) There is hereby created the West Virginia steel advisory commission within the department of commerce, labor and environmental resources, which shall consist of thirteen members. The secretary of the department of commerce, labor and environmental resources or his or her designee shall be a member of the commission and shall serve as its chairperson. Eight members shall be appointed by the governor with the advice and consent of the Senate. At least four of the members appointed by the governor shall be senior management representatives of steel manufacturing companies that employ over fifty people. At least two of the members appointed by the governor shall be representatives of organized labor. One of the members appointed by the governor shall be a member of the United Steelworkers of America. One of the members appointed by the governor shall be a member of the Independent Steelworkers Union. One member shall be appointed by the university of West Virginia board of trustees and one member shall be appointed by the board of directors of the state college system: Provided,
That of the members appointed by these educational bodies, one shall be appointed to represent a school of engineering and one shall be appointed to represent a school of business administration. Of the remaining members, the president of the Senate and the speaker of the House of Delegates shall each appoint one member from their respective houses who shall serve as ex officio nonvoting members. No more than seven of the governor’s appointees shall be of the same political party. Prior to making the appointments, the governor shall solicit recommendations from individuals representing the steel industry and labor organizations representing steelworkers. The governor shall make appointments based upon the knowledge and experience of the individual in the steel industry.

(b) Within ninety days after the effective date of this section, the governor, the university of West Virginia board of trustees and the board of directors of the state college system, the president of the Senate and the speaker of the House of Delegates shall make their respective initial appointments to the commission. The terms of office for nonlegislative appointed members are seven years. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed. Members may be reappointed. Vacancies shall be filled in the manner provided for original appointments. A member shall continue in office until his or her successor takes office or until a period of sixty days has elapsed, whichever occurs first. The terms of legislative members shall be for the term for which they were elected.

(c) Notwithstanding the terms of office stated for members in subsection (b) of this section, each member serves at the pleasure of his or her appointing authority and the appointing authority may remove his or her appointee at any time and for any reason.

(d) Seven members constitute a quorum and an affirmative vote of seven members is necessary to transact business of the commission. In the event of the absence of a member appointed by the president of the Senate or by the speaker of the House of Delegates, the
§31-16-3. Responsibilities of commission.

1 The West Virginia steel industry advisory commission shall conduct an examination of existing federal and state laws which currently affect the production and consumption of West Virginia steel and shall study problems which the West Virginia steel industry currently faces including unfair competition from foreign industries, the economic factors affecting the West Virginia steel industry, and other matters relevant to the future of the steel industry in this state.

§31-16-4. Steel futures program.
1 The commission shall develop and recommend a strategy for financial and technical assistance to steel and steel-related industries in the state. The strategy shall include investment policies with regard to these industries. In administering the program, the commission shall consult with appropriate representatives of steel, and steel-related industries, appropriate representatives of any union that represents workers in these industries, and any other persons with expert knowledge of these industries. The commission shall consult with the chairman of the public service commission to foster the development of public and private cooperative efforts that would result in energy savings and reduced energy costs for steel and steel-related industries. The commission shall consult with the air pollution control commission, the division of solid waste management, the water resources board, groundwater conservation agencies and other agencies with which the steel industry must interact to assist the steel industry in adhering to regulations in a manner conducive to economic viability. Assistance may be made available to steel and steel-related industries undertaking projects the commission determines to have long-term implications for and broad applicability to the economy of this state when the secretary of the department of commerce, labor and environmental resources finds that:

(a) The undertaking of projects by the steel industries will benefit the people of the state by creating or preserving jobs and employment opportunities; and

(b) The undertaking of projects by the steel industries will allow them to compete more effectively in the marketplace.

Projects eligible to receive assistance under the steel futures program may include, but are not limited to, the following:

(a) Research and development specifically related to steel and steel-related industries and feasibility studies for business development within these industries;

(b) Employee training;
(c) Labor and management relations; and
(d) Technology-driven capital investment.

Financial and technical assistance may be in the form and conditioned upon terms as stipulated by each enterprise assistance program administered by the department of commerce, labor and environmental resources as the secretary considers appropriate. No later than the thirtieth day of June of the first year after the effective date of this section, and no later than the thirtieth day of June of each year thereafter, the commission shall submit a report to the governor and Legislature describing projects of the steel futures program, results obtained from completed projects of the program and program projects for the next fiscal year.

§31-16-5. Continuation of program.

The steel advisory commission and the steel futures program shall continue to exist until the first day of July, two thousand: Provided, That prior to the termination date the joint committee on government organization shall conduct a performance review of the commission and program.

CHAPTER 129

(H. B. 2063—By Delegates Martin, Love, Wallace and L. White)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the capitol building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CAPITOL BUILDING COMMISSION.
§4-8-1. Creation; composition; qualifications; continuation.

There is continued a capitol building commission, hereinafter referred to as the commission, which shall be composed of five members, who shall be appointed by the governor with the advice and consent of the Senate, plus the secretary of the department of administration who shall be a nonvoting member. No more than three members shall be of the same political party. One member shall be an architect selected from three persons recommended by the board of architects, one member shall be a registered professional engineer selected from three persons recommended by the board of engineers, one member shall be the commissioner of the division of culture and history, who is chairman of the commission, and two members shall be selected from the public at large.

Pursuant to the provisions of section four, article ten of this chapter, and following a preliminary performance audit review conducted through the joint committee on government operations, the capitol building commission shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 130
(H. B. 2740—By Delegates Martin, Love, Michael, Fragale, Heck, Higgins and Willison)

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

AN ACT to amend and reenact article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia sunset law; outlining need for legislative oversight of state government; establishing termination schedule for departments, agencies or boards following performance audits, financial audits, and preliminary performance reviews; outlining powers of departments, agencies or boards following termination; requiring acts which create new departments, agencies or boards to include
termination provisions; outlining membership, compensation, powers and duties of joint committee on govern­ment operations; permitting joint committee on govern­ment operations to collect auditing or reviewing costs from departments, agencies or boards; establishing criteria for performance audits, financial audits and preliminary performance reviews; permitting joint committee on government operations to alter termination schedule; requiring reports by the committee; and establishing criteria for bills continuing or reestablishing departments, agencies or boards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-1. Short title.
§4-10-2. Legislative findings.
§4-10-3. Definitions.
§4-10-4. Termination of departments, agencies or boards following performance audits.
§4-10-5. Termination of agencies or boards following preliminary performance reviews.
§4-10-6. Continuance of department, agency or board after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.
§4-10-7. Continuation or reestablishment of departments, agencies or boards scheduled for termination.
§4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.
§4-10-9. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with audits or reviews.
§4-10-10. Performance and financial audits of governmental departments and agencies by the committee.
§4-10-11. Preliminary performance reviews of governmental boards and agencies by the committee.
§4-10-12. Reports by the committee.
§4-10-13. Bill for continuation and reestablishment of affected department, agency or board.
§4-10-14. Preservation of rights and claims.
§4-10-15. Article not to be construed as limiting new legislation.
§4-10-1. Short title.

This article shall be known as and may be cited as the "West Virginia Sunset Law."

§4-10-2. Legislative findings.

The Legislature finds that state governmental actions have produced substantial increases in the number of governmental entities, growth in the number of governmental programs, proliferation of rules and regulations, and that the process developed without sufficient legislative oversight, regulatory accountability or an effective system of checks and balances; that governmental entities have been created without demonstrable evidence that their benefits to the public clearly justify their creation; that once established, governmental entities tend to acquire permanent status, often without regard for the condition which gave rise to their establishment; that the personnel of such entities are often beyond the effective control of elected officials, and efforts to encourage modernization or even to review performance have typically proven difficult at best; that too often, governmental entities acquire a combination of autonomy and authority inconsistent with democratic principles and acquire a capacity for self-perpetuation incompatible with principles of accountability; and that by establishing a system for the termination, continuation or reestablishment of such governmental entities, the position of the Legislature to evaluate the need for the continued existence of existing and future governmental entities will be enhanced.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(1) "Committee" means the joint committee on government operations, hereinafter created, to perform duties under this article.

(2) "Department" means any office or division, headed by a gubernatorial appointee, within the state of West Virginia.
(3) “Agency” means any department, division, fund, office, position, system, survey or other entity of state government, however designated, in the state of West Virginia.

(4) “Board” means any board, commission, authority, council, advisory body, or other body, however designated, consisting of two or more members, in the state of West Virginia.

(5) “Performance audit” means to determine for a department, agency, or board whether the department, agency or board is acquiring, protecting and using its resources economically and efficiently; the causes of inefficiencies or fiscally unsound practices; and whether the department, agency or board has complied with laws and regulations concerning matters of economy and efficiency. Also, a performance audit may include determining the extent to which the desired results or benefits established by the legislature are being achieved by the department, agency or board; the effectiveness of organizations, programs, activities or functions; and whether the department, agency or board has complied with laws and regulations applicable to the program.

(6) “Financial audit” means to determine for a department, agency, board or person whether the financial statements of the audited department, agency or board present fairly the financial position, results of operations and cash flows or changes in financial position in accordance with generally accepted accounting principles; and whether the department, agency or board has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements.

(7) “Preliminary performance review” means to determine the goals and objectives of a department, agency, or board; and to determine the extent to which plan of a department, agency, board has met or is meeting those goals and objectives.

§4-10-4. Termination of departments, agencies or boards following performance audits.
The following departments, agencies or boards shall be terminated on the date indicated, but no department, agency or board shall be terminated under this section unless a performance audit has been conducted upon such department, agency or board:

1. On the first day of July, one thousand nine hundred ninety-four: Division of labor; division of tourism and parks; division of corrections; division of natural resources; and division of highways.

2. On the first day of July, one thousand nine hundred ninety-five: Division of environmental protection.

3. On the first day of July, one thousand nine hundred ninety-six: Division of culture and history; division of personnel.

4. On the first day of July, one thousand nine hundred ninety-seven: Department of health and human resources.

§4-10-5. Termination of agencies or boards following preliminary performance reviews.

The following agencies or boards shall be terminated on the date indicated, but no agency or board shall be terminated under this section unless a preliminary performance review has been conducted upon such agency or board:

1. On the first day of July, one thousand nine hundred ninety-four: State water resources board; office of water resources of the division of environmental protection; farm management commission; West Virginia ethics commission; family law masters system; child advocate office of the department of health and human resources; family protection services board; state structural barriers compliance board; board of architects; state building commission; oil and gas inspectors' examining board; public employees insurance agency; public employees insurance agency finance board; Ohio River valley water sanitation commission; veteran's council; share in your future commission; southern
(2) On the first day of July, one thousand nine hundred ninety-five: Emergency medical services advisory council; commission on charitable organizations; information system advisory commission; West Virginia labor-management council; board of social work examiners; the rural health initiative advisory panel; and the marketing and development divisions of the department of agriculture.

(3) On the first day of July, one thousand nine hundred ninety-six: U.S. geological survey program and whitewater commission within the division of natural resources; state geological and economic survey; and the board of investments.

(4) On the first day of July, one thousand nine hundred ninety-seven: The driver's licensing advisory board; West Virginia health care cost review authority; governor's cabinet on children and families; oil and gas conservation commission; and the West Virginia contractors' licensing board.

(5) On the first day of July, one thousand nine hundred ninety-eight: State lottery commission; the following divisions or programs of the department of agriculture: Meat inspection program and soil conservation committee; women's commission; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws: council of finance and administration; forest management review commission; West Virginia's membership in the interstate commission on the Potomac River basin; legislative oversight commission on education accountability; and the board of examiners in counseling; board of examiners in speech pathology and audiology.

(6) On the first day of July, one thousand nine hundred ninety-nine: Board of banking and financial institutions; capitol building commission; tree fruit industry self-improvement assessment program; and the public service commission.
§4-10-6. Continuance of department, agency or board after termination and purpose therefor; continuance of powers and authority after termination; cessation of all activities; reestablishment of terminated department, agency or board.

Upon termination, each department, agency or board shall continue in existence until the first day of July of the next succeeding year for the purpose of winding up its affairs. During that year, the impending termination shall not reduce or otherwise limit the powers or authority of that terminated department, agency or board. Any funds for such department, agency or board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund. Upon the expiration of one year after termination, the department, agency or board shall cease all activities: Provided, That a department, agency or board which has been terminated pursuant to the provisions of this article, may be reestablished by the Legislature, and if reestablished by the legislature during the winding-up period with substantially the same powers, duties, or functions, the department, agency or board shall be deemed to have been continued.

§4-10-7. Continuation or reestablishment of departments, agencies or boards scheduled for termination.

The life of any department, agency, or board scheduled for termination under this section may be continued or reestablished by the Legislature for a period of time not to exceed six years.

Any act which creates a new department, agency, or board and which is enacted after the effective date of this article shall provide for termination and review of the newly-created department, agency or board pursuant to this article within six years after the effective date of the act which creates the department, agency or board.

§4-10-8. Joint committee on government operations continued; membership; compensation and expenses; meetings.
The joint committee on government operations, heretofore created, is hereby continued. The committee shall be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be appointed from the same political party; five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: 

Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, that the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house; and five citizens of this state who are not legislators, public officials or public employees, to be appointed by the governor to serve at his will and pleasure, not more than three of whom shall be appointed from the same political party, and at least one of whom shall reside in each congressional district of this state. The committee shall be headed by two cochairmen, one to be selected by the president of the Senate from the members appointed from the Senate, and one to be selected by the speaker of the House of Delegates from the members appointed from the House of Delegates. All members of the committee shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and reimbursement for expenses in connection with performance of interim duties between regular sessions of the Legislature as may be authorized by the citizens legislative compensation commission established by section thirty-three, article six of the constitution of West Virginia. Each citizen member of the committee shall receive such compensation as the legislative interim members receive, in addition to reimbursement for necessary expenses incurred in the performance of duties under this article, such reimbursement to be subject to the same limitations as govern the expenses of the legislative members of the committee. Compensation and expenses shall be paid from an appropriation to be made expressly for the committee, but if no such appropriation be made or the total amount appropriated
has been expended, such expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The committee shall meet upon call of the cochairmen or either of them and may meet at any time, both during sessions of the Legislature and in the interim.

§4-10-9. Powers of the committee; failure of witnesses to appear, testify or produce records; public hearings; allowance of per diem and mileage for witnesses; hiring of necessary employees; permitting committee to collect costs associated with audits or reviews.

In order to carry out the duties set forth in this article, the committee, or any duly authorized employee of the committee, shall have access to any and all records of every department, agency or board scheduled for termination under the provisions of section four of this article.

In addition to its regular and special meetings, the committee, or any employee duly authorized by the committee, is empowered to hold public hearings in furtherance of the purposes of this article, at such times and places within the state as may be deemed desirable, and any member of the committee shall have the power to administer oaths to persons testifying at such hearings or meetings.

By subpoena, issued over the signature of either cochairman of the committee and served in the manner provided by law, the committee may summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties. If any witness subpoenaed to appear at any hearing or meeting shall refuse or fail to appear or to answer questions put to him, or shall refuse or fail
to produce books, papers, documents, or records within
his control when the same are demanded, the committee,
in its discretion, may enforce obedience to its subpoena
by attachment, fine or imprisonment, as provided in
section five, article one of this chapter; or it may report
the facts to the circuit court of Kanawha County or any
other court of competent jurisdiction and such court
shall compel obedience to the subpoena as though such
subpoena had been issued by such court in the first
instance.

Witnesses subpoenaed to attend such hearings or
meetings, except officers or employees of the state, shall
be allowed the same mileage and per diem as is allowed
witnesses before any petit jury.

The joint committee on government operations,
subject to the approval of the joint committee on
government and finance, may employ such persons,
skilled in the field of performance audit, financial audit
or preliminary performance review as it may deem
necessary to carry out its duties and responsibilities
under this article, and may contract for outside
expertise in conducting technical or specialized perfor-
performance audits.

The joint committee on government operations may
collect, and the department, agency or board shall pay,
any or all of the costs associated with conducting the
performance audits, financial audits or preliminary
performance reviews from the department, agency or
board being audited or reviewed, when necessary and
desirable. The joint committee on government opera-
tions shall render to the department, agency or board
liable for such costs a statement thereof as soon after
the same were incurred as practicable, and it shall be
the duty of such department, agency or board to pay
promptly in the manner that other claims and accounts
are paid. All money received by the joint committee on
government operations from this source shall be
expended only for the purpose of covering the costs
associated with such services, unless otherwise directed
by the Legislature.
§4-10-10. Performance and financial audits of governmental departments and agencies by the committee.

It shall be the duty of the committee to conduct a performance audit and a financial audit in accordance with generally accepted government auditing standards as promulgated by the federal general accounting office of every department or agency scheduled for termination under section four of this article to ascertain whether there is a demonstrable need for the continuation of the department or agency and whether the department or agency should be continued.

In conducting performance audits, the committee may determine the following:

(1) If the department or agency was created to resolve a problem or provide a service.

(2) If the problem has been solved or the service has been provided.

(3) The extent to which past department or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.

(4) If the department or agency is operating efficiently and effectively in performing its task.

(5) The extent to which there would be significant and discernible adverse effects on the public health, safety, or welfare if the department or agency were abolished.

(6) If the conditions which led to the creation of the agency have changed.

(7) The extent to which the department or agency operates in the public interest.

(8) Whether or not the operation of the department or agency is impeded or enhanced by existing statutes, rules, procedures, practices or any other circumstances bearing upon the department or agency's capacity or authority to operate in the public interest, including
budgetary, resource and personnel matters.

(9) The extent to which administrative and/or statutory changes are necessary to improve agency operations or to enhance the public interest.

(10) Whether or not the benefits derived from the activities of the department or agency outweigh the costs.

(11) If the activities of this department or agency duplicate or overlap with those of other departments or agencies, and if so, how these activities could be consolidated.

(12) Whether or not the department or agency causes an unnecessary burden on any citizen or other department or agency by its decisions and activities.

(13) What the impact will be in terms of federal intervention or loss of federal funds if the agency is abolished.

The committee may direct that the performance audit focus on a specific area of operation within the department or agency, and may direct further inquiry, when necessary and desirable, into other areas of concern, including, but not limited to:

(1) The economic impact which results from the functions of the department or agency.

(2) The extent to which complaint, investigation, and/or disciplinary procedures of the department or agency adequately protect the public, and whether or not final dispositions of complaints serve the public interest.

(3) The extent to which the department or agency issues and enforces rules relating to the potential conflicts of interest of its employees.

(4) Whether or not the department or agency is in compliance with federal and state affirmative action requirements.

(5) Whether or not the department or agency encourages participation by the public in the decision making
Financial audits may include audits of the following items:

1. Segments of financial statements.
2. Financial information.
3. Reports and schedules on financial matters, such as expenditures for specific programs or services, budget requests, and variances between estimated and actual financial performance.
5. Grants.
6. Internal control systems and structure over accounting, financial reporting, and transaction processing.
7. Computer-based systems.
8. Financial systems.

§4-10-11. Preliminary performance reviews of governmental boards and agencies by the committee.

It shall be the duty of the committee to conduct a preliminary performance review of every board or agency scheduled under section five of this article. In conducting such preliminary performance reviews, the committee shall determine the following:

1. If the board or agency was created to solve a problem or provide a service.
2. If the problem has been solved or the service has been provided.
3. The extent to which past board or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective.
4. The extent to which there would be significant
and discernible adverse effects on the public health, safety, or welfare if the board or agency were abolished.

(5) Whether or not the board or agency operates in a sound fiscal manner.

The joint committee may direct that the focus of the preliminary performance review be on a specific area of operation and may direct further inquiry, when necessary and desirable.

§4-10-12. Reports by the committee.

The committee shall complete its deliberations with respect to any department, agency or board scheduled for termination and make a report thereon to the Legislature not later than ten days after the Legislature convenes in regular session in the year of the scheduled termination for the department, agency or board: Provided, That any such report required in the year one thousand nine hundred eighty-one, and every fourth year thereafter shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. Such report shall consist of an analysis of the department, agency or board including such matters as are expressly mandated to be considered by the committee as set forth in this article, together with the recommendations of the committee. The committee shall make one of five recommendations: (1) The department, agency or board be terminated as scheduled; (2) the department, agency or board be continued and reestablished; (3) the department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact or any other deficiencies; (4) a performance audit be performed on a department, agency or board on which a preliminary review has been completed; or (5) the department, agency or board be continued for a period of time not to exceed one year for the purpose of completing a full performance audit.
Copies of such reports shall be made immediately available to all members of the Legislature, to the department, agency or board which is the subject of the report and the public generally. A copy of each report shall be formally filed by the committee with the clerk of each house.

§4-10-13. Bill for continuation and reestablishment of affected department, agency or board.

In the event the committee recommends the continuation and reestablishment of a department, agency or board pursuant to this article, its report shall be accompanied by a bill to effectuate its recommendation.

Pursuant to the processes of this article, no more than one such department, agency or board shall be continued or reestablished in a bill, and such department, agency or board shall be mentioned in the bill's title.

§4-10-14. Preservation of rights and claims.

Nothing in this article shall be construed as adversely affecting any right or claim by any person against a governmental department, agency or board or by any governmental department, agency or board against any person. Responsibility for prosecuting or defending any such rights or claims should the Legislature fail to continue and reestablish a department, agency or board within one year after its termination shall be assumed by the attorney general of the state.

§4-10-15. Article not to be construed as limiting new legislation.

Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department, agency or board or amend the law with respect to an existing one.
CHAPTER 131
(H. B. 2141—By Delegates Martin, Love and Wallace)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state building commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

"The state office building commission of West Virginia," heretofore created, shall continue in existence but on and after the ninth day of February, one thousand nine hundred sixty-six, shall be known and designated as "The state building commission of West Virginia" and shall continue as a body corporate and as an agency of the state of West Virginia. On and after the date aforesaid, the commission shall consist of the governor, attorney general, state treasurer and four additional members to be appointed by the governor by and with the advice and consent of the Senate. The terms of office for said members to be appointed by the governor shall be four years, except that the terms of office of the first four members so appointed by the governor shall be for one, two, three and four years, respectively. No more than three of such members so appointed by the governor shall be members of the same political party, nor shall any of said members be members or employees
of the executive, legislative or judicial branches of
government of West Virginia or any political subdivi-
sion thereof. The governor shall be chairman of the
commission. The secretary of state shall be a member
of the commission and serve as its secretary, but shall
not have the right to vote upon matters before the
commission. All members of the commission shall be
citizens and residents of this state. The members of the
commission shall be paid or reimbursed for their
necessary expenses incurred under this article, but shall
receive no compensation for their services as members
or officers of the commission: Provided, That each
member of the commission appointed by the governor
shall, in addition to such reimbursement for necessary
expenses, receive a per diem of thirty-five dollars for
each day or substantial portion thereof that he is
engaged in the work of the commission. Such expenses
and per diem shall be paid solely from funds provided
under the authority of this article, and the commission
shall not proceed to exercise or carry out any authority
or power herein given it to bind said commission beyond
the extent to which money has been provided under the
authority of this article. On or before the fifteenth day
of each month, the commission shall prepare and
transmit to the president and minority leader of the
Senate and the speaker and the minority leader of the
House of Delegates a report covering the activities of the
said commission for the preceding calendar month.

After having conducted a performance audit through
its joint committee on government operations, pursuant
to section nine, article ten, chapter four of this code, the
Legislature hereby finds and declares that the state
building commission should be continued and reestab-
lished. Accordingly, notwithstanding the provisions of
section four, article ten, chapter four of this code, the
state building commission shall continue to exist until
the first day of July, one thousand nine hundred ninety-
four.
CHAPTER 132
(H. B. 2654—By Delegates Love, Fragale, Heck, Higgins, Oliverio, Walters and Willison)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

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

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

(a) The public employees insurance agency, heretofore created, is continued, and shall consist of the director, the finance board, the advisory board and such employees as may be authorized by law. The director shall be appointed by the governor, with the advice and consent of the Senate. He or she shall serve at the will and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive an annual salary established by the governor not to exceed fifty-five thousand dollars and actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees as shall be required for the proper administration of the insurance programs herein provided. The director shall perform such duties as are required of him or her under the provisions of this article and shall be the chief administrative officer of the public
employees insurance agency.

(b) All positions in the agency, except for the director and his or her personal secretary, shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein on or after the effective date of this article shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added to the classified service: Provided, That no person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

(c) The director shall be responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection therewith shall have the power and authority to make all rules and regulations necessary to effectuate the provisions of this article. Nothing in sections four or five of this article shall limit the director's ability to manage on a day-to-day basis the group insurance plans required or authorized by this article, including, but not limited to, administrative contracting, studies, analyses and audits, eligibility determinations, utilization management provisions and incentives, provider negotiations, provider contracting and payment, designation of covered and noncovered services, offering of additional coverage options or cost containment incentives, pursuit of coordination of benefits and subrogation, or any other actions which would serve to implement the plan or plans designed by the finance board.

(d) The public employees insurance agency shall terminate in the manner provided in section four, article ten, chapter four of this code, on the first day of July, one thousand nine hundred ninety-four, unless extended by legislation enacted before the termination date.
CHAPTER 133
(H. B. 2139—By Delegates Martin and Love)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

That section four, article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

(a) There is hereby created the public employees insurance agency finance board, which shall consist of the director and four members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That the members initially appointed by the governor shall be appointed not later than the tenth day of September, one thousand nine hundred ninety, and may serve and may perform the duties required by this article until such time as the Senate may convene to give its advice and consent. Of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, and one for four years. Members may be reappointed for successive terms. No more than three members (including the director) may be of the same political party.

(b) Of the four members appointed by the governor,
one member shall represent the interests of education
employees, one shall represent the interests of public
employees and two shall be selected from the public at
large. The two members appointed from the public shall
each have experience in the financing, development or
management of employee benefit programs. No member
may be removed from office by the governor except for
official misconduct, incompetence, neglect of duty,
neglect of fiduciary duty or other specific responsibility
imposed by this article, or gross immorality.

(c) The director shall serve as chairperson of the
finance board, which shall meet at such time and place
as shall be specified by the call of the director or upon
the written request to the director of at least two
members. Notice of each meeting shall be given in
writing to each member by the director at least three
days in advance of the meeting. Three members shall
constitute a quorum. Members may be compensated
fifty dollars for each day or portion of a day actually
spent in the performance of their duties and may be
reimbursed for reasonable and necessary expenses
actually incurred in the performance of their duties.

(d) The finance board shall terminate on the first day
of July, one thousand nine hundred ninety-four, unless
extended by legislation enacted before the termination
date.

(e) Upon termination of the board and notwithstanding
any provisions in this article to the contrary, the
director is authorized to assess monthly employee
premium contributions and to change the types and
levels of costs to employees only in accordance with this
subsection. Any assessments or changes in costs imposed
pursuant to this subsection shall be implemented by
rules and regulations of the director promulgated
pursuant to the provisions of chapter twenty-nine-a of
this code. Any employee assessments or costs authorized
by the finance board shall remain in effect until
amended by rule or regulation of the director promul-
gated pursuant to this subsection.
CHAPTER 134
(H. B. 2653—By Delegates Love, Fragale, Heck, Higgins, Nesbit, Varner and Willison)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the forest management review commission.

Be it enacted by the Legislature of West Virginia:

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

1 The commission shall be terminated on the first day
2 of July, one thousand nine hundred ninety-eight, or until
3 review of its functions shall be undertaken pursuant to
4 the provisions of sections nine, ten and eleven, article
5 ten, chapter four of this code.

CHAPTER 135
(H. B. 2140—By Delegates Martin, Love and Wallace)

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

AN ACT to amend and reenact section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the governor’s cabinet on children and families.

Be it enacted by the Legislature of West Virginia:

That section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-8. Effective date and termination date.

1. After having conducted a preliminary performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the governor's cabinet on children and families should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the governor's cabinet on children and families shall continue to exist until the first day of July, one thousand nine hundred ninety-seven: Provided, That the cabinet shall prepare an annual progress report and shall present the report to the joint committee on government operations. The report shall detail the cabinet's compliance with its purposes, duties and responsibilities as set forth in sections one, three and four of this article, together with proposed plans for future compliance and proposed programs for the following year.

CHAPTER 136
(Com. Sub. for H. B. 2008—By Delegates Martin and Love)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact sections one and eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia ethics commission and compensation of commission members.

Be it enacted by the Legislature of West Virginia:

That sections one and eleven, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

§6B-2-11. Continuation of commission.

§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

(a) There is hereby created the West Virginia ethics commission, consisting of twelve members, no more than seven of whom shall be members of the same political party. The members of the commission shall be appointed by the governor with the advice and consent of the Senate. Within thirty days of the effective date of this section, the governor shall make the initial appointments to the commission. No person may be appointed to the commission or continue to serve as a member of the commission, who holds elected or appointed office under the government of the United States, the state of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in a campaign relating to a referendum or other ballot issue.

(b) At least two members of the commission shall have served as a member of the West Virginia Legislature; at least two members of the commission shall have been employed in a full-time elected or appointed office in state government; at least one member shall have served as an elected official in a county or municipal government or on a county school board; at least one member shall have been employed full time as a county or municipal officer or employee; and at least two members shall have served part time as a member
or director of a state, county or municipal board, commission or public service district and at least four members shall be selected from the public at large. No more than four members of the commission shall reside in the same congressional district.

(c) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section, and three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation, or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms, and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

(d) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to Section 5, Article IV of the Constitution of West Virginia. A member may be removed by the governor for substantial neglect of duty, gross misconduct in office or violation of this chapter, after written notice and opportunity for reply.

(e) The commission shall meet within thirty days of the initial appointments to the commission at a time and place to be determined by the governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the commission shall elect a chairman and such other officers as are
necessary. The commission shall within ninety days after its first meeting adopt rules for its procedures.

(f) Seven members of the commission shall constitute a quorum, except that when the commission is sitting as a hearing board pursuant to section four of this article, then five members shall constitute a quorum. Except as may be otherwise provided in this article, a majority of the total membership shall be necessary to act at all times.

(g) Members of the commission shall receive fifty dollars for each day actually devoted to the business of the commission and, in addition thereto, shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties as such members.

(h) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and regulations and with applicable law. Said executive director shall be paid such salary as may be fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence such civil actions as may be appropriate: Provided, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(i) The commission may delegate authority to the chairman or executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairman or executive director.

(j) The chairman shall have the authority to designate subcommittees of three persons, no more than two of whom may be members of the same political party. Said subcommittees shall be investigative panels which shall have the powers and duties set forth hereinafter in this article.
(k) The principal office of the commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless such meetings or hearings are required to be private in conformity with the provisions of this chapter relating to confidentiality, except that the commission shall exclude the public from attendance at discussions of commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(l) Meetings of the commission shall be upon the call of the chairman and shall be conducted by the personal attendance of the commission members and no meeting shall be conducted by telephonic or other electronic conferencing, nor shall any member be allowed to vote by proxy: Provided, That telephone conferencing and voting may be held for the purpose of approving or rejecting any proposed advisory opinions prepared by the commission, or for voting on issues involving the administrative functions of the commission. Meetings held by telephone conferencing shall require notice to members in the same manner as meetings to be personally attended, shall be electronically recorded, and the recordings shall be made a permanent part of the commission records. Members shall not be compensated for meetings other than those personally attended.

§6B-2-11. Continuation of commission.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia ethics commission shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 137

(H. B. 2612—By Delegates P. White and Gallagher)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the termination date of the task force on uncompensated health care and medicaid expenditures and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

Not later than the first day of June, one thousand nine hundred eighty-five, the president of the Senate and speaker of the House of Delegates of the West Virginia Legislature shall appoint a legislative task force on uncompensated health care and medicaid expenditures, which shall meet, study and make recommendations as herein provided.

The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and human resources, and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administra-
tion of health care and health care related programs and
the citizens of this state. Of the members of the Senate
appointed by the president, not more than two shall be
from the same political party. Of the members of the
House of Delegates appointed by the speaker, not more
than two shall be from the same political party.

Members originally appointed to the task force shall
serve for terms beginning on the date of appointment
and ending on the thirtieth day of June, one thousand
nine hundred ninety-six, unless sooner replaced by the
president or the speaker as applicable, or in the
discretion of the president and the speaker, unless the
work of the task force is completed or the need for the
task force no longer exists prior to that date. The task
force shall cease to exist on the thirtieth day of June,
one thousand nine hundred ninety-six.

The task force shall meet on such dates as may be
approved by the joint committee on government and
finance for the regular meetings of its subcommittees
unless approval is first obtained from the joint commit-
tee on government and finance for additional meetings.
The task force shall conduct studies on the amount of
funds expended by hospitals and other health care
providers of this state for services to persons who are
unable to pay for those services and for which they
receive no other form of reimbursement, the extent to
which persons in this state forego needed medical
services because of insufficient income and assets to pay
for those services, the extent to which the state is
maximizing available federal programs and moneys in
providing health care services to the citizens of this
state, the operation of the programs and funds created
by this article and the roles of the public, private and
private nonprofit sectors in providing health care
services to the citizens of this state. The task force shall
also study the state medicaid program in order to
determine if the state medicaid agency, as the payor of
last resort, is expending maximum effort to identify
alternate private insurance resources for medicaid
beneficiaries and shall study the feasibility and financial impact upon the state of assuring increased access to medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment in a primary care clinic program, if available, and of the establishment of different and lesser schedules of payment for primary health services delivered by a hospital emergency room as compared to the schedule of payments for emergency room services of a true medical emergency nature.

The task force shall file an interim report with the joint committee on government and finance and the Legislature on the date of the last meeting of the joint committee on government and finance prior to commencement of the regular session of the Legislature in each year before the final report of the task force is filed with the joint committee on government and finance and the Legislature on or before the thirtieth day of June, one thousand nine hundred ninety-six.

The members of the task force shall be entitled to compensation at the rate authorized for members of the Legislature participating in legislative interim meetings and to reimbursement for reasonable and necessary expenses actually incurred in attending meetings of the task force, except that any employee of the state appointed to the task force is not entitled to such compensation. Funds necessary for the work of the task force shall be paid from joint appropriations to the Senate and House of Delegates but no such funds shall be spent or obligations incurred in the conduct of such work without prior approval of the joint committee on government and finance.

§16-29C-5. Effective date and termination date.

This article shall be effective from passage, and, notwithstanding the provisions of section four of this article, shall terminate on the thirtieth day of June, one thousand nine hundred ninety-six.
AN ACT to amend and reenact section one, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of highways.

Be it enacted by the Legislature of West Virginia:

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

§17-2A-1. Duties of state road commissioner transferred to division of highways; department to act through commissioner of highways; office of commissioner of highways created; appointment, etc.

The office of state road commissioner heretofore existing is hereby continued in all respects as heretofore constituted, but is hereby designated as the West Virginia division of highways. All duties and responsibilities heretofore imposed upon the state road commissioner and the powers exercised by him are hereby transferred to the West Virginia division of highways and such duties and responsibilities shall be performed by the said division and the powers may be exercised thereby through the West Virginia commissioner of highways, who shall be the chief executive officer of the division.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia division of highways shall continue to exist until the first day of July, one thousand nine hundred ninety-four.

There is hereby continued the office of West Virginia commissioner of highways, who shall be appointed by the governor, by and with the advice and consent of the Senate, subject to the provisions of section two-a, article seven, chapter six of this code.
CHAPTER 139
(S. B. 460—By Senator Burdette, Mr. President,
By Request of the Executive)

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

AN ACT to amend and reenact section five, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the forestry commission; appointing the director of the division of forestry; setting forth the director’s duties and qualifications; and setting the director’s salary."

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of division of forestry; appointment; qualifications.

1 The director of the division of forestry shall be appointed by the governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor. The director shall be a graduate of a school of forestry accredited by the society of American foresters and have a minimum of ten years experience in forest management. The director’s salary shall be sixty-five thousand dollars per year: Provided,

2 That the director’s salary shall be paid solely from budget appropriations to the division.
CHAPTER 140
(S. B. 7—By Senator Brackenrich)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the farm management commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-3. Farm management commission continued; composition; chairman; quorum; meetings; vacancies.

1 The farm management commission heretofore created is hereby continued and shall be composed of three members who are the commissioner of agriculture, who shall be chairman, the secretary of the department of administration and the dean of the West Virginia university college of agriculture and forestry. No business may be transacted by the commission in the absence of a quorum which consists of two members including the chairman. The farm management commission shall hold meetings at least once every two months and on call of the chairman.

12 If a vacancy occurs on the commission, the farm management director, as provided in this article, shall act as a member of the commission until the vacancy is filled.

16 If a vacancy occurs in the office of the commissioner of agriculture, the members of the commission and the farm management director shall select, from among them, a chairman to serve until a commissioner of agriculture is appointed or elected and qualified.
Pursuant to the provisions of section four, article ten, chapter four of this code, the farm management commission shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 141
(S. B. 2—By Senator Brackenrich)

[Passed April 7, 1993: in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

(a) There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the state soil conservation committee. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the department of natural resources; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of
members thus appointed shall be four years, except that
of the first members so appointed, one shall be ap-
pointed for a term of two years, one for a term of three
years, and one for a term of four years. In the event of
a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture
of the United States of America to appoint one person
to serve with the committee as an advisory member.

The committee shall keep a record of its official
actions, shall adopt a seal, which seal shall be judicially
noticed, and may perform such acts, hold such public
hearings and promulgate such rules and regulations as
may be necessary for the execution of its functions under
this article.

(b) The state soil conservation committee may employ
an administrative officer and such technical experts and
such other agents and employees, permanent and
temporary, as it may require, and shall determine their
qualifications, duties and compensation. The committee
may call upon the attorney general of the state for such
legal services as it may require. It shall have authority
to delegate to its chairman, to one or more of its
members, or to one or more agents or employees, such
powers and duties as it may deem proper. The commit-
tee is empowered to secure necessary and suitable office
accommodations, and the necessary supplies and equip-
ment. Upon request of the committee, for the purpose
of carrying out any of its functions, the supervising
officer of any state agency, or of any state institution of
learning shall, insofar as may be possible, under
available appropriations, and having due regard to the
needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff
or personnel of such agency or institution of learning,
and make such special reports, surveys or studies as the
committee may request.

(c) A member of the committee shall hold office so
long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

(d) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil
conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia, or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations; and

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of natural resources and providing for the termination of the division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date.

A division of natural resources, the office of director of the division of natural resources, and a natural resources commission are hereby created and established in the state government with jurisdiction, powers, functions, services and enforcement processes as provided in this chapter and elsewhere by law.

Pursuant to the provisions of article ten, chapter four of this code, the division of natural resources shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.
CHAPTER 143
(H. B. 2015—By Delegates Martin and Wallace)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state water resources board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. WATER RESOURCES.

§20-5-3. Water resources board created; continuation; composition and organization; appointment, qualifications, terms, oaths, removal, compensation and expenses of members; others to assist board and division; vacancies; quorum; meetings; records.

(a) The state water resources board heretofore created and established as successor to the state water commission and the state water resources commission is hereby abolished. A new state water resources board is hereby created and established as a public corporation. As such, the board may sue and be sued, plead and be impleaded, contract and be contracted with, and shall have and use a common seal.

(b) Pursuant to the provisions of section four, article ten, chapter four of this code, the state water resources board shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.

(c) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of
the board shall be of the same political party. Individuals appointed to the board shall be persons who by reasons of previous training and experience are knowledgeable in the husbandry of the state's water resources and with at least one member with experience in industrial pollution control. No member of the board shall receive or, during the two years next preceding the member of the board's appointment, shall have received a "significant portion of the member of the board's income" directly or indirectly from a permit holder or an applicant for a permit issued under any of the provisions of this chapter. For the purposes of this subsection: (1) The term "significant portion of the member of the board's income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, a pension or similar arrangement; (2) the term "income" includes retirement benefits, consultant fees and stock dividends; (3) income is not received "directly or indirectly" from "permit holders" or "applicants for a permit" where it is derived from mutual-fund payments or from other diversified investments with respect to which the recipient does not know the identity of the primary sources of income; and (4) the terms "permit holders" and "applicants for a permit" shall not include any university or college operated by this state or political subdivision of this state.

(d) The members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. At its organizational meeting, one member of the board shall be selected chairman to serve as chairman at the will and pleasure of the members of the board. Members of the board shall, before performing any duty, take and subscribe to the oath required by section five, article four of the constitution of West Virginia. Members of the board may be removed only for the same causes and in like manner as elective state officers. Any vacancy in
the office of a member of the board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs. Each member of the board shall be paid as compensation for his work as such member from funds appropriated for such purposes, seventy-five dollars per day when actually engaged in the performance of work as a board member. In addition to such compensation, each member of the board shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the board member's duties. The director of the public health sanitation division within the state department of health and human resources, formerly known as the division of sanitary engineering of the state department of health, shall perform such services as the board and the chief of the division of water resources may request in connection with the discharge of their duties, and the director shall be reimbursed, out of moneys appropriated for such purposes, all sums which the director necessarily shall expend in the performance of such service. Nothing contained in this article or in article five-a of this chapter, however, shall be construed to limit or interfere with the power of the state department of health and human resources to select, employ and direct the director of the public health sanitation division of said department, or any employee thereof who in any way may perform any services for the board or the division of water resources. The college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, under the direction of the dean or other head thereof, shall, insofar as they can, without interfering with their usual and regular activities, aid and assist the board and the division of water resources in the study and research of questions connected with water pollution and the control and reduction thereof in accordance with the provisions of article five-a of this chapter. Such dean or other head shall be reimbursed, out of moneys appropriated for
such purposes, all sums which such dean necessarily shall expend in the performance of any services such dean may render to the board and the division under the provisions hereof.

A majority of the board shall constitute a quorum for the transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of three members thereof. The board shall keep an accurate record of all of its proceedings and maintain such board records and make certificates thereof or therefrom as may be required by law. The board may employ a secretary and necessary scientific and clerical assistance.

CHAPTER 144
(S. B. 72—By Senators Brackenrich and Wiedebusch)

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

AN ACT to amend and reenact section four, article eight, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the oil and gas conservation commission; changing compensation of members; and removing authority of commission to fix salary of oil and gas conservation commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.
(a) There is hereby continued as provided for in subsection (h) of this section, the "West Virginia Oil and Gas Conservation Commission" which shall be composed of five members. The director of the division of environmental protection and the director for the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chairman.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section five, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The
chairman may call a meeting of the commission at any
time, and he shall call a meeting of the commission upon
the written request of two members or upon the written
request of the oil and gas conservation commissioner.
Notification of each meeting shall be given in writing
to each member by the chairman at least five days in
advance of the meeting. Any three members, one of
which may be the chairman, shall constitute a quorum
for the transaction of any business as herein provided
for. A majority of the commission shall be required to
determine any issue brought before it.

(d) 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.

(e) The commission shall appoint the oil and gas
conservation commissioner and advise him regarding
his duties and authority under this article and consult
with him prior to his reaching any final decisions and
entering orders hereunder. However, the commissioner
has full and final authority under this article with the
commission serving in an advisory capacity to him. The
commissioner shall possess a degree from an accredited
college or university in petroleum engineering or
geology and must be a registered professional engineer
with particular knowledge and experience in the oil and
gas industry.

(f) The oil and gas commissioner is hereby empowered
and it shall be his duty to execute and carry out,
administer and enforce the provisions of this article in
the manner provided herein. Subject to the provisions
of section three of this article, the commissioner shall
have jurisdiction and authority over all persons and
property necessary therefor. The commissioner is
authorized to make such investigation of records and
facilities as he deems proper. In the event of a conflict
between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and regulations and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner, it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the director for the office of oil and gas, to the division of environmental protection and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a preliminary performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas conservation commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the oil and gas conservation commission shall continue to exist until the first day of July, one thousand nine hundred ninety-seven.
**CHAPTER 145**
*(S. B. 110—By Senators Brackenrich and Wiedebusch)*

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the oil and gas inspectors' examining board; and compensation of members.

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

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

**ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.**

§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public shall be a professor in the petroleum engineering department of the school of mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The director for the office of oil and gas shall be an
ex officio member of the board and shall serve as
secretary of the board without additional compensation,
but he shall have no right to vote with respect to any
matter before the board.

The members of the board, except the public repre-
sentative, shall be appointed for overlapping terms of
eight years, except that the original appointments shall
be for terms of two, four, six and eight years, respec-
tively. Any member whose term expires may be
reappointed by the governor.

The board shall pay each member the same compen-
sation as is paid to members of the Legislature for their
interim duties as recommended by the citizens legisla-
tive 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.

The public member shall serve as chairman of the
board.

Members of the board, before performing any duty,
shall take and subscribe to the oath required by section
five, article four of the constitution of West Virginia.

The board shall meet at such times and places as shall
be designated by the chairman. It shall be the duty of
the chairman to call a meeting of the board on the
written request of two members, or on the written
request of said director or the director of the division
of environmental protection. Notice of each meeting
shall be given in writing to each member by the
secretary at least five days in advance of the meeting.
Three voting members shall constitute a quorum for the
transaction of business.

(b) In addition to other powers and duties expressly
set forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector
and supervising inspector and forms for written
examinations to test the qualifications of candidates,
with such distinctions, if any, in the forms for oil and
gas inspector and supervising inspector as the board
may from time to time deem necessary or advisable;

(2) Adopt and promulgate reasonable rules and
regulations relating to the examination, qualification
and certification of candidates for appointment, and
relating to hearings for removal of inspectors or the
supervising inspector, required to be held by this article.
All of such rules and regulations shall be printed and
a copy thereof furnished by the secretary of the board
to any person upon request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one
or more members of the board or an employee of the
division of environmental protection may be designated
to give to a candidate the written portion of the
examination;

(4) Prepare and certify to said director and the
director of the division of environmental protection a
register of qualified eligible candidates for appointment
as oil and gas inspectors or as supervising inspectors,
with such differentiation, if any, between the certifica-
tion of candidates for oil and gas inspectors and for
supervising inspectors as the board may from time to
time deem necessary or advisable. The register shall list
all qualified eligible candidates in the order of their
grades, the candidate with the highest grade appearing
at the top of the list. After each meeting of the board
held to examine such candidates and at least annually,
the board shall prepare and submit to said director and
the director of the division of environmental protection
a revised and corrected register of qualified eligible
candidates for appointment, deleting from such revised
register all persons: (a) Who are no longer residents of
West Virginia; (b) who have allowed a calendar year to
expire without, in writing, indicating their continued
availability for such appointment; (c) who have been
passed over for appointment for three years; (d) who
have become ineligible for appointment since the board
originally certified that such persons were qualified and
eligible for appointment; or (e) who, in the judgment of
at least three members of the board, should be removed
from the register for good cause;

(5) Cause the secretary of the board to keep and
preserve the written examination papers, manuscripts,
grading sheets and other papers of all applicants for
appointment for such period of time as may be estab-
lished by the board. Specimens of the examinations
given, together with the correct solution of each
question, shall be preserved permanently by the
secretary of the board;

(6) Issue a letter or written notice of qualification to
each successful eligible candidate;

(7) Hear and determine proceedings for the removal
of inspectors or the supervising inspector in accordance
with the provisions of this article;

(8) Hear and determine appeals of inspectors or the
supervising inspector from suspension orders made by
said director pursuant to the provisions of section two,
article one, chapter twenty-two-b of this code: Provided,
That in order to appeal from any order of suspension,
an aggrieved inspector or supervising inspector shall
file such appeal in writing with the oil and gas
inspectors' examining board not later than ten days
after receipt of the notice of suspension. On such appeal
the board shall affirm the action of said director unless
it be satisfied from a clear preponderance of the
evidence that said director has acted arbitrarily;

(9) Make an annual report to the governor concerning
the administration of oil and gas inspection personnel in
the state service; making such recommendations as the
board considers to be in the public interest; and

(10) Render such advice and assistance to the director
of the office of oil and gas as he shall from time to time
determine necessary or desirable in the performance of
his duties.

(c) After having conducted a preliminary perfor-
mance 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 oil and gas inspectors' examining board within the division of environmental protection should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the oil and gas inspectors' examining board within the division of environmental protection shall continue to exist until the first day of July, one thousand nine hundred ninety-four.

CHAPTER 146
(S. B. 4—By Senator Brackenrich)
[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b of this code. After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the public service commission shall continue to exist until the first day of July,
one thousand nine hundred ninety-nine. The public
service commission may sue and be sued by that name.
Such public service commission shall consist of three
members who shall be appointed by the governor with
the advice and consent of the Senate. The commissioners
shall be citizens and residents of this state and at least
one of them shall be duly licensed to practice law in
West Virginia, of not less than ten years' actual
experience at the bar. No more than two of said
commissioners shall be members of the same political
party. Each commissioner shall, before entering upon
the duties of his office, take and subscribe to the oath
provided by section five, article IV of the constitution
of this state, which oath shall be filed in the office of
the secretary of state. The governor shall designate one
of the commissioners to serve as chairman at the
governor's will and pleasure. The chairman shall be the
chief administrative officer of the commission. The
governor may remove any commissioner only for
incompetency, neglect of duty, gross immorality,
malfeasance in office or violation of subsection (c) of this
section.

(b) The unexpired term of members of the public
service commission at the time this subsection becomes
effective are continued through the thirtieth day of
June, one thousand nine hundred seventy-nine. In
accordance with the provisions of subsection (a) of this
section, the governor shall appoint three commissioners,
one for a term of two years, one for a term of four years
and one for a term of six years, all the terms beginning
on the first day of July, one thousand nine hundred
seventy-nine. All future appointments are for terms of
six years, except that an appointment to fill a vacancy
is for the unexpired term only. The commissioners
whose terms are terminated by the provisions of this
subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any
official relation to, any public utility subject to the
provisions of this chapter, or holding any stocks or bonds
thereof, or who is pecuniarily interested therein, may
serve as a member of the commission or as an employee thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of November, one thousand nine hundred ninety-one, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive an annual salary of sixty thousand dollars to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, forty-eight thousand dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, ten thousand dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, two thousand dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive five thousand dollars per annum to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter on and after the first day of January, one thousand nine hundred ninety-two.
AN ACT to amend and reenact section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of West Virginia's membership in the interstate commission on the Potomac River Basin.

Be it enacted by the Legislature of West Virginia:

That section four, article one-c, 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 1C. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§29-1C-4. Effective date; findings; termination date.

This article shall become effective upon the adoption of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the amendments to the compact by the Congress of the United States.

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 West Virginia should remain a member of the interstate compact. Accordingly, notwithstanding the provisions of sections four and six, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section eleven, article three-a, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability; continuation.

(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on education accountability to review all legislative rules of the board and such other rules as the commission deems appropriate. The commission shall be composed of six members of the Senate appointed by the president of the Senate and six members of the House of Delegates appointed by the speaker of the House of Delegates. No more than five of the six members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the commission and shall designate the cochairs. At least one of the Senate members and one of the House members shall be members of the committee on education of the Senate.
and House, respectively, and at least one of the Senate members and at least one of the House members shall be a member of the committee on finance of the Senate and House, respectively. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under “Account No. 103 for Joint Expenses”, but no expense of any kind whatever payable under said account for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The commission shall meet at any time both during sessions of the Legislature and in the interim.

(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

(c) After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the legislative oversight commission on education accountability should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the legislative oversight commission on education accountability shall continue to exist until the first day of July, one thousand nine hundred ninety-eight. If such commission is terminated pursuant to this subsection, any report required to be submitted to it shall instead be submitted to the joint committee on education of the Legislature.
AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia board of architects; and compensation of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.

*§30-12-1. Board of architects; continuation.

The West Virginia board of architects, heretofore created, shall continue in existence and shall consist of seven members, five of whom shall be architects, appointed by the governor by and with the advice and consent of the Senate and two of whom shall be lay members, not of the same political party affiliation, appointed by the governor by and with the advice and consent of the Senate. Each member who is an architect shall have been engaged in the active practice of his profession in the state of West Virginia for not fewer than ten years previous to his appointment. The members of the board in office on the date this article takes effect, in the year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.

The board shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens

*Clerk’s Note: This section was also amended by S. B. 127 (Chapter 150), which passed subsequent to this act.
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.

The board, in addition to the authority, powers and duties granted to it by this article, has the authority to promulgate rules, pursuant to the provisions of chapter twenty-nine-a of this code. Any disciplinary proceedings held by the board shall be held in accordance with the provisions of the administrative procedures act for contested cases pursuant to the provisions of article five, chapter twenty-nine-a of this code.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia board of architects shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 150
(Com. Sub. for S. B. 127—By Senator Craigo)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of architects; granting the board general regulatory authority; continuing the board; and relating to compensation of members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. ARCHITECTS.
§30-12-1. Board of architects.

In order to safeguard the life, health, property and public welfare of the people of this state and to protect the people against the unauthorized, unqualified and improper practice of architecture, the West Virginia board of architects, heretofore created, shall continue in existence and shall consist of seven members, five of whom shall be architects, appointed by the governor by and with the advice and consent of the Senate and two of whom shall be lay members, not of the same political party affiliation, appointed by the governor by and with the advice and consent of the Senate. Each member who is an architect shall have been engaged in the active practice of his profession in the state of West Virginia for not fewer than ten years previous to his appointment. The members of the board in office on the date this article takes effect, in the year one thousand nine hundred ninety, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. Each member shall be appointed for a term of five years.

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.

Pursuant to the provisions of chapter twenty-nine-a of this code, the board, in addition to the authority, powers and duties granted to it by this article, has the authority to promulgate rules relating to the regulation of the practice of architecture and may include rules pertaining to the registration of architects. Any disciplinary proceedings held by the board shall be held in accordance with the provisions of the administrative proce-

*Clerk's Note: This section was also amended by S. B. 3 (Chapter 149), which passed prior to this act.
dures act for contested cases pursuant to the provisions of article five of said chapter.

Pursuant to the provisions of section four, article ten, chapter four of this code, the West Virginia board of architects shall continue to exist until the first day of July, one thousand nine hundred ninety-four, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 151
(S. B. 9—By Senator Brackenrich)

[Passed April 7, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the board of examiners of land surveyors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-3. Board of examiners of land surveyors created; appointment, terms, removal, etc., of members; officers; meetings; quorum; compensation and expenses.

(a) There is hereby created the state board of examiners of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article.

(b) The members of the board shall be appointed for overlapping terms of three years each ending on the
thirtieth day of June, and until their respective successors have been appointed and qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The board shall elect from its membership a chairman and secretary-treasurer. A majority of the members of the board shall constitute a quorum and meetings shall be held at the call of the chairman or upon the written request of two members at such time and place as designated in such call or request, and, in any event, the board shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it.

(d) Members shall be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section four of this article.

(e) After having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the board of examiners of land surveyors should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the board of examiners of land surveyors shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

(a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than seventy-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than seventy-five million dollars but not greater than two hundred million dollars, and one shall be truly representative of such banking institutions having total assets greater than two hundred million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the
public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity, any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article IV of the constitution of this state. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of which he is, or was at any time in the preceding twelve months, a director, officer, owner, partner, employee, member or stockholder. A member may
disqualify himself from participation in a proceeding for any other cause deemed by him to be sufficient. Each member shall receive fifty dollars for each day or portion thereof spent in attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its proceedings and make certificates thereupon as may be required by law. The commissioner shall make available necessary office space and secretarial and other assistance as the board may reasonably require.

Pursuant to the provisions of section four, article ten, chapter four of this code, and following a preliminary performance audit review conducted through the joint committee on government operations, the West Virginia board of banking and financial institutions shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 153
(S. B. 13—By Senator Brackenrich)

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

AN ACT to amend and reenact section fourteen, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family protection services board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-14. Continuation of board.

1 After having conducted a performance audit through its joint committee on government operations, pursuant
to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the family protection services board should be continued and reestablished. Accordingly, notwithstanding the provisions of section four of said article, the family protection services board shall continue to exist until the first day of July, one thousand nine hundred ninety-four, so that the joint committee on government operations may monitor compliance by the family protection services board with the recommendations of the performance audit.

CHAPTER 154
(H. B. 2036—By Delegates Martin and Wallace)

[Passed March 29, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia child advocate office.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. Reestablishment of the West Virginia child advocate office.

(a) There is hereby established within the department of health and human resources the child advocate office.

(b) After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares the child advocate office should be continued and reestablished. Accordingly, notwithstanding the
provisions of section four, article ten, chapter four of this
code, the child advocate office shall continue to exist
until the first day of July, one thousand nine hundred
ninety-four, so that the joint committee on government
operations may monitor compliance by the child
advocate office with the recommendations of the
performance audit.

CHAPTER 155
(S. B. 20—By Senators Brackenrich and Wiedebusch)

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

AN ACT to amend and reenact section twelve, article four,
chapter forty-eight-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuation of the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

*§48A-4-12. Continuation of family law masters system.

1 After having conducted a performance and fiscal
audit through its joint committee on government
operations, pursuant to section nine, article ten, chapter
four of this code, the Legislature hereby finds and
declares the family law masters system should be
continued and reestablished. Accordingly, notwithstanding
the provisions of section four of said article, the
family law masters system shall continue to exist until
the first day of July, one thousand nine hundred ninety-
four, so that the joint committee on government
operations may monitor compliance by the family law
masters system with the recommendations of the
performance audit.

*Clerk's Note: This section was also amended by S. B. 358 (Chapter 56),
which passed subsequent to this act.
CHAPTER 156
(S. B. 463—By Senator Craigo)

[Passed April 10, 1983; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section three, article twelve-b of said chapter; to amend and reenact section two, article thirteen-a of said chapter; to amend and reenact section five, article thirteen-c of said chapter; to further amend said article by adding thereto a new section, designated section fifteen; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-e; to amend and reenact sections two and nine, article fifteen of said chapter; to amend and reenact section twelve, article twenty-one of said chapter; to further amend said article by adding thereto a new section, designated section seventy-seven; to amend and reenact section nine, article twenty-three of said chapter; to amend and reenact sections six and thirteen, article twenty-four of said chapter; to amend article nine-a, chapter sixteen of said code by adding thereto a new section, designated section six; to amend and reenact sections four, five, six, six-a, twelve, fifteen, sixteen and twenty-four, article twenty, chapter forty-seven of said code; to further amend said article by adding thereto two new sections, designated sections twelve-a and twenty-eight-a; to amend and reenact sections seven, fifteen and twenty-two, article twenty-one of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-three, all relating to revenue enhancements; providing expanded application of the crimes and penalties provisions relating to taxation; creating a criminal investigation section within the department of tax and revenue; providing for a reduction in the amount of authorized
credits under the West Virginia capital company act; by increasing the alternative minimum severance tax on coal by twenty-five cents; reduction in gross value for amount of federal energy tax; reducing the amount of super credit that may be taken in remaining years by adding three years to the remaining period; prohibiting the use of credits against sales and use tax liability; providing a one-year suspension of the business investment and jobs expansion tax credit, also known as the super credit; requiring the commission to prepare a report recommending a replacement credit to the Legislature; eliminating the sales tax exemption for contractor engaging in repaving, repair or maintenance of bridges or highways; eliminating the indirect use sales tax exemption; and providing definitions of directly used and consumed; subjecting lottery winnings to personal income tax; subjecting lottery winnings of a certain amount to withholding; extending the due date of business franchise and corporate net income tax returns filed by certain tax exempt organizations; prohibiting any net operating loss from being carried back to any previous taxable year; requiring the amount of depreciation, amortization or cost depletion to be added back into the amount of taxable income for persons asserting specified credits; providing an age limitation on persons permitted to play bingo; changing the fee of super bingo license; limiting the payment of compensation to persons conducting bingo occasions; increasing the percentage of proceeds used for expenses; requiring specified records and reports; requiring bingo operators to designate nonsmoking sections; changing the license fee for charitable raffles; allowing payment of certain expenses; requiring the filing of reports for charitable raffles; imposing a license fee on charitable raffle boards and games; requiring stamp to be affixed to charitable raffle boards and games; requiring wholesaler to pay fee; providing criminal penalties for failure to file a return; allowing forfeitures of vehicles and vessels upon illegal transportation of charitable raffle boards and games; authorizing promulgation of legislative rules; providing a severability clause; and providing for general procedure and administration.
Be it enacted by the Legislature of West Virginia:

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

Chapter

5E. Venture Capital Company.
11. Taxation.
47. Regulation of Trade.

CHAPTER 5E. VENTURE CAPITAL COMPANY.

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.
(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to rule of the authority.

(b) The total credits authorized by the authority for all companies may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning the first day of July, one thousand nine hundred ninety-two, the total credits authorized by the authority for all companies under this section or this article may not exceed a total of eight million dollars each fiscal year: Provided, however, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three, and the fiscal year one thousand nine hundred ninety-four, the total credits authorized for all companies under this article may not exceed a total of five million dollars: Provided further, That for the fiscal year beginning the first day of July, one thousand nine hundred ninety-three, and for each fiscal year thereafter, the authority shall, for the first one hundred eighty days of the fiscal year, accept applications only from companies who certify in their application that the investment of its entire capital base will be in one or more small business investment corporations organized under the small business investment act: And provided further, That the capital base of any such qualified company shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies in the order that said companies are qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five, article thirteen-c of said chapter. The credit
for investments by a partnership or by a corporation
electing to be treated as a Subchapter S corporation
may be divided pursuant to election of partners or
shareholders.

(d) The tax credit allowed under this section is to be
credited against the taxpayer's tax liability for the
taxable year in which the investment in a qualified West
Virginia capital company is made. If the amount of the
tax credit exceeds the taxpayer's tax liability for the
taxable year, the amount of the credit which exceeds the
tax liability for the taxable year may be carried to
succeeding taxable years until used in full, or until
forfeited: Provided, That: (i) Tax credits may not be
carried forward beyond fifteen years; and (ii) tax credits
may not be carried back to prior taxable years. Any tax
credit remaining after the fifteenth taxable year is
forfeited.

(e) The tax credit provided for in this section is
available only to those taxpayers whose investment in a
qualified West Virginia capital company occurs after
the first day of July, one thousand nine hundred eighty-
six.

(f) The tax credit allowed under this section may not
be used against any liability the taxpayer may have for
interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the
contrary, the tax commissioner shall publish in the state
register the name and address of every taxpayer, and
the amount, by category, of any credit asserted under
this article for any tax year beginning on or after the
first day of January, one thousand nine hundred ninety-
one. The categories by dollar amount of credit received
shall be as follows:

(1) More than $1.00, but not more than $50,000;
(2) More than $50,000, but not more than $100,000;
(3) More than $100,000, but not more than $250,000;
(4) More than $250,000, but not more than $500,000;
(5) More than $500,000, but not more than $1,000,000;
(6) More than $1,000,000.
CHAPTER 11. TAXATION.

12B. Minimum Severance Tax on Coal.
13A. Severance Taxes.
13C. Business Investment and Jobs Expansion Credit.
13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization, for Research and Development Projects, Certain Housing Development and Management Information Services Facilities.
13E. Business and Occupation Tax Credit for Coal Loading Facilities.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-1. Application of this article.
§11-9-2a. Criminal investigation section established; funding of same.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by this chapter: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter; (2) the business franchise registration tax imposed by article twelve of this chapter; (3) the annual tax on incomes of certain carriers imposed by article twelve-a of this chapter; (4) the business and occupation tax imposed by article thirteen of this chapter; (5) the gasoline and special fuels excise tax imposed by article fourteen of this chapter; (6) the motor carrier road tax imposed by article fourteen-a of this chapter; (7) the consumers sales and service tax imposed by article fifteen of this chapter; (8) the use tax imposed by article fifteen-a of this chapter; (9) the cigarette tax imposed by article seventeen of this chapter; (10) the soft drinks tax imposed by article nineteen of this chapter; (11) the personal income tax imposed by article twenty-one of this chapter; and (12) the corporation net income tax imposed by article twenty-four of this chapter.

(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of this chapter, and to any other articles of this chapter when such application is expressly provided for by the Legislature.
(c) The provisions of this article shall also apply to the charitable bingo fee imposed by sections six and six-a, article twenty, chapter forty-seven of this code; the charitable raffle fee imposed by section seven, article twenty-one of said chapter; and the charitable raffle boards and games fees imposed by section three, article twenty-three of said chapter.

(d) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a), (b) and (c) of this section, with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

§11-9-2a. Criminal investigation section established; funding of same.

A criminal investigation section consisting of no more than ten investigators plus necessary support staff is hereby established within the state tax division for the purpose of assuring compliance with laws, rules and regulations pertaining to the taxes or credits established by articles eleven, eleven-a, eleven-b, twelve, twelve-a, twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four and twenty-six of this chapter, and articles twenty, twenty-one and twenty-three, chapter forty-seven of this code. Charitable bingo fees imposed under sections six and six-a, article twenty of said chapter; charitable raffle fees imposed under section seven, article twenty-one of said chapter; and charitable raffle boards and games fees imposed under section three, article twenty-three of said chapter shall be deposited in a special revenue account established in the office of the treasurer and shall be used to support compliance expenditures relating to the establishment, maintenance and support of such criminal investigation section. At the close of the fiscal year, any moneys in the special revenue account in excess of twenty thousand dollars shall be transferred to the general revenue fund.
Any employee of the criminal investigation section so designated by the tax commissioner who shall have a background in accounting and who shall be certified as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of this article in any county or municipality of this state. The commissioner shall establish such additional standards as he or she deems applicable or necessary. Any such employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his or her office. The department of public safety, any county sheriff, or deputy sheriff, or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of this article and the criminal penalty provisions of this article or any article of this chapter administered under this article.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-3. Imposition of tax, credit.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use there is hereby imposed an annual minimum severance tax equal to fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: Provided, That for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit or commercial use for such taxable year shall be seventy-five cents, with such rate increase to apply only to tons of coal produced after the
thirty-first day of May, one thousand nine hundred ninety-three.

(b) Credit against article thirteen-a tax. — A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of said article, equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: Provided, That the amount of credit allowed by this section shall not exceed the severance tax liability of the taxpayer for the taxable year determined under paragraph (1), subsection (b), section three of said article exclusive of the additional tax on coal imposed by section six of said article after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to chapter five-e of this code any credit for installment payments of estimated tax paid pursuant to section six of this article during the tax year and any credit for overpayment of article thirteen-a tax. Notwithstanding anything herein to the contrary, in no event shall the credit allowed under chapter five-e of this code be allowed as a credit against the minimum severance tax imposed by this article.

ARTICLE 13A. SEVERANCE TAXES.


(a) General. — When used in this article, or in the administration of this article, the terms defined in subsection (b) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) Terms defined. —

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Delegate" in the phrase "or his or her delegate", when used in reference to the tax commissioner, means
any officer or employee of the state tax department duly
authorized by the tax commissioner directly, or indi-
directly by one or more redelegations of authority, to
perform the function mentioned or described in this
article or regulations promulgated thereunder.

(3) "Economic interest" for the purpose of this article
is synonymous with the economic interest ownership
required by Section 611 of the Internal Revenue Code
in effect on the thirty-first day of December, one
thousand nine hundred eighty-five, entitling the tax-
payer to a depletion deduction for income tax purposes:
Provided, That a person who only receives an arm's
length royalty shall not be considered as having an
economic interest.

(4) "Extraction of ores or minerals from the ground"
includes extraction by mine owners or operators of ores
or minerals from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian,
trustee, executor, administrator, receiver, conservator
or any person acting in any fiduciary capacity for any
person.

(6) "Gross value" in the case of natural resources
means the market value of the natural resource product,
in the immediate vicinity, where severed, determined
after application of post production processing generally
applied by the industry to obtain commercially market-
able or usable natural resource products. For all natural
resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or
both severed and processed) and sold during a reporting
period, gross value is the amount received or receivable
by the taxpayer.

(B) In a transaction involving related parties, gross
value shall not be less than the fair market value for
natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the
fair market value for natural resources of similar grade
and quality.
(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after the first day of June, one thousand nine hundred ninety-three, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined, gross value is the value of such stone immediately upon severance from the earth.

(7) "Mining" includes not merely the extraction of ores
or minerals from the ground but also those treatment processes considered as mining under this article and those treatment processes necessary or incidental thereto.

(8) “Natural resource” means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(9) “Partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which natural resources are severed, extracted, reduced to possession and produced or prepared in this state for sale, profit or commercial use. “Partner” includes a member of such a syndicate, group, pool, joint venture or organization.

(10) “Person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(11) “Processed” or “processing” as applied to:

(A) Oil and natural gas shall not include any conversion or refining process; and

(B) Limestone or sandstone quarried or mined shall not include any treatment process or transportation after the limestone or sandstone is severed from the earth.

(12) “Related parties” means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm’s length passive royalty interest. In the case of
related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) “Sale” includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) “Severing” or “severed” means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That “severing” or “severed” shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth: Provided, however, That “severing” or “severed” oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) “Stock” includes shares in an association, joint-stock company or corporation.

(16) “Tax commissioner” means the tax commissioner of the state of West Virginia, or his delegate.

(17) “Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) “Taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or
processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) "This state" means the state of West Virginia.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-5. Application of annual credit allowance.

(a) In general. — The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following as modified under subsections (o) and (p) of this section:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section four-a of this article for locating corporate headquarters in this state; or the amount allowed under section seven-a of this article of the taxable year.

(b) Application of current year annual credit allowance. — The amount determined under subsection (a) of this section shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied as provided in subsections (c) through (k), both inclusive, of this section, and in that order.

(c) Business and occupation taxes. —
(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of allowable credits against tax and the annual exemption).

(2) If the taxes due under article thirteen of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article, for the taxable year (determined before application of any allowable credits against tax and the annual exemption), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) The annual exemption allowed by section three, article thirteen of this chapter, plus any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article thirteen taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Carrier income taxes.
(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article twelve-a of this chapter shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year.

(2) If the taxes due under article twelve-a of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(e) Severance taxes. —

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article thirteen-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under article thirteen-a of this chapter are not solely attributable to and the direct
result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter shall be applied against and reduce only the portion of article thirteen-a taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Telecommunications taxes. —

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen-b of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of allowable credits against tax) and qualified investment in a business or activity that was subject to the taxes imposed by article twelve-a of this chapter prior to said first day of July, but on and after said first day of July is subject to the tax imposed by article thirteen-b of this
(2) If the taxes due under article thirteen-b of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(g) Business franchise tax. —

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or activity subject to the taxes imposed by article twenty-three of this chapter, and qualified investment in a business or activity that was subject to the taxes imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article twenty-three of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article for
the taxable year (determined after application of the
credits against tax provided in section seventeen of said
article, but before application of any other allowable
credits), by a fraction, the numerator of which is all
wages, salaries and other compensation paid during the
taxable year to all employees of the taxpayer employed
in this state, whose positions are directly attributable to
the qualified investment in a business or other activity
taxable under said article. The denominator of the
fraction shall be wages, salaries and other compensation
paid during the taxable year to all employees of the
taxpayer employed in this state, whose positions are
directly attributable to the business or other activity of
the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d
and thirteen-e of this chapter shall be applied against
and reduce only the portion of article twenty-three taxes
not apportioned to the qualified investment under this
article: Provided, That any excess exemption or credits
may be applied against the amount of article twenty-
three taxes apportioned to the qualified investment
under this article that is not offset by the amount of
annual credit against such taxes allowed under this
article for the taxable year, unless their application is
otherwise prohibited by this chapter.

(h) Corporation net income taxes. —

(1) After application of subsections (c) through (g),
both inclusive of this section, any unused credit shall
next be applied to reduce up to eighty percent of the
taxes imposed by article twenty-four of this chapter for
the taxable year (determined before application of
allowable credits against tax).

(2) If the taxes due under article twenty-four of this
chapter (determined before application of allowable
credits against tax) are not solely attributable to and the
direct result of the taxpayer's qualified investment, the
amount of such taxes which are so attributable, shall be
determined by multiplying the amount of taxes due
under said article for the taxable year (determined
before application of allowable credits against tax), by
a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) Personal income taxes. —

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g)) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twelve-a, thirteen, thirteen-a, thirteen-b or twenty-three of this chapter.

(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small
business corporation, partnership, other unincorporated
organization or sole proprietorship, the amount of such
taxes which are so attributable shall be determined by
multiplying the amount of taxes due under said article
determined before application of allowable credits
against tax), that is attributable to business by a
fraction, the numerator of which is all wages, salaries
and other compensation paid during the taxable year to
all employees of the electing small business corporation,
partnership, other unincorporated organization or sole
proprietorship employed in this state, whose positions
are directly attributable to the qualified investment.
The denominator of the fraction shall be the wages,
salaries and other compensation paid during the taxable
year to all employees of the taxpayer.

(4) No credit shall be allowed under this section
against any employer withholding taxes imposed by
article twenty-one of this chapter.

(j) For tax years beginning after the thirty-first day
of December, one thousand nine hundred ninety-two,
and thereafter, if the formula provisions of subsections
(c) through (i) of this section, inclusive, do not fairly
represent the taxes solely attributable to and the direct
result of the taxpayer’s qualified investment of the
taxpayer and all other project participants in the
business or other activity subject to tax, the commis-
sioner may require, in respect to all or any part of the
taxpayer’s businesses or activities, if reasonable:

(1) Separate accounting or identification; or

(2) Adjustment to the wages formula to reflect all
components of the tax liability; or

(3) The inclusion of one or more additional factors
which will fairly represent the taxes solely attributable
to and the direct result of the qualified investment of
the taxpayer and all other project participants in the
businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate
an equitable attribution of the taxes.

In order to effectuate the purposes of this subsection,
the commissioner shall propose for promulgation legislative rules in accordance with article three, chapter twenty-nine-a of this code: Provided, That the initial promulgation may be by emergency rule. The rule shall set forth the standards by which this subsection will be implemented and enforced: Provided, however, That with regard to investment placed in service prior to the passage of this provision, taxpayers having a specific written determination from the tax commissioner that the taxpayer is authorized or required to take credit against tax not attributable to qualified investment shall not be subject to the alternative allocation of credit provided for under this subsection.

(k) Sales and use taxes. —

On and after the first day of July, one thousand nine hundred eighty-seven, for purchases of tangible personal property and taxable services made on or after that date, that portion of the allowable credit, which is attributable to qualified investment in a business or activity subject to the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases for use or consumption in the conduct of such business or activity, shall be applied to reduce up to eighty percent of the taxes imposed by said articles on purchases that are directly used or consumed in the qualified investment activity. When property and services purchased for use or consumption are not solely used or consumed in the qualified investment activity, the cost thereof shall be apportioned between such activities. Only that amount apportioned to purchases directly used or consumed in the qualified investment activity shall be included when applying the credit allowable under this subsection. On and after the first day of July, one thousand ninety-three, for purchases of tangible personal property and taxable services made on or after that date for use or consumption in the conduct of business, no portion of the allowable credit may be applied against the taxes imposed by said articles.

(l) Ad valorem property taxes; unemployment taxes and workers' compensation premiums. —
(1) After application of subsections (a) through (i), both inclusive, of this section, any unused credit shall be applied as a rebate for payment of the sum of the following amounts:

(A) Eighty percent of the ad valorem property taxes imposed by levying bodies pursuant to article eight of this chapter, for the taxable year (including payments in lieu of such taxes), on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four years) of the taxpayer, in the new or expanded business facility of the taxpayer resulting in new jobs; plus

(B) Eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code for the taxable year attributable to the compensation of new employees filling the new jobs that are directly attributable to the qualified investment; plus

(C) Twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year attributable to the compensation paid new employees filling the new jobs, that are directly attributable to the qualified investment.

(2) A taxpayer eligible to claim this rebate shall apply either the amount of the unused credit or the sum determined under subdivision (1) of this subsection, whichever is less, against the remaining twenty percent of the taxes imposed by articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article. If any amount of rebate remains after its application against the remaining twenty percent of taxes as aforesaid, the amount remaining shall be carried forward to each ensuing tax year until used or the expiration of the twelfth subsequent tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

(m) Unused credit forfeited. — If any credit remains after application of subsection (b) of this section, the amount thereof shall be forfeited. No carryover to a
subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance, except as specifically provided in subsection (l), (o) or (p) of this section.

(n) Notwithstanding any provision of this section to the contrary and notwithstanding the reenactment of this section later in time than the enactment or reenactment of section fourteen of this article, the restrictions, limitations, constraints and provisions of said section shall apply to and supersede the provisions of this section.

(o) Deferral of twenty percent of annual credit, eighty percent current limitation. —

(1) Eighty percent of the amount of annual credit calculated under subsections (a) through (n) of this section before application of the minimum severance tax against coal and before the adjustment set forth in subsection (p) of this section, shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax year.

(2) The remaining twenty percent of such annual credit so calculated in subsections (c) through (n) of this section shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section beginning in the tenth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer, and the amount thereof remaining shall be carried forward each ensuing tax year until used or until the expiration of the twelfth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer. No deferral of credit under this subsection shall apply to this credit when applied in such tenth through twelfth years.

(p) Additional allowance. —

(1) After application of up to eighty percent of annual credit against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax
year under subsection (o) of this section, there shall be allowed an additional amount of credit, as determined under subdivision (2) of this subsection, which may offset up to one hundred percent of the remaining taxes enumerated in subsections (g), (h) and (i), in that order, of this section for the current tax year. Any credit calculated and determined under this subsection which remains after application against the taxes enumerated in subsections (g), (h) and (i) under this section shall be forfeited and shall not carryover to any other taxable year.

(2) The amount of credit allowable under this subsection shall be the lesser of one third of the taxpayer's minimum severance tax on coal payable, or the taxpayer's net minimum severance tax on coal payable. For purposes of this subsection, the term "net minimum severance tax on coal payable" means the amount of the excess of the minimum severance tax on coal over the amount of the state severance tax on coal severed and extracted by the taxpayer in this state not including the additional severance tax on coal imposed by section six, article thirteen-a of this chapter, calculated after application of the credit allowed under this article, and before application of all other credits, and after application of the five hundred dollar exemption to the said severance tax on coal.

(q) **Effective date.** —

(1) This section, as amended in the year one thousand nine hundred eighty-six, shall be effective upon passage. It shall be retroactive, and shall be in lieu of the method provided by this section for application of this credit prior to this amendment, for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five.

(2) This section, as amended in the year one thousand nine hundred eighty-seven, shall be effective for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven.

(3) This section, as amended in the year one thousand nine hundred ninety-three, shall be effective for taxable
§11-13C-15. One-year suspension of new credit entitlements, exceptions, effective date.

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to the business investment and jobs expansion tax credit under this article shall result from, and no credit shall be available to any taxpayer for, investment placed in service or use during the period beginning on the date of passage of this section by the Legislature, and ending on the three hundred and sixty-sixth day thereafter.

(b) The suspension of new entitlements to credits set forth in subsection (a) of this section shall not apply to companies, entities or taxpayers engaged in the following industries or business activities:

1. Manufacturing, including, but not limited to, chemical processing and chemical manufacturing, manufacture of wood products and forestry products, manufacture of aluminum, manufacture of paper, paper processing, recyclable paper processing, food processing, manufacture of aircraft or aircraft parts, manufacture of automobiles or automobile parts, and all other manufacturing activities, but not timbering or timber severance or timber hauling, or mineral severance, hauling, processing or preparation, or coal severance, hauling, processing or preparation;

2. Information processing, including, but not limited to, telemarketing, information processing, systems engineering, backoffice operations and software development;

3. The activity of warehousing, including, but not limited to, commercial warehousing and the operation of regional distribution centers by manufacturers, wholesalers or retailers;

4. The activity of goods distribution;

5. Destination oriented recreation and tourism.

(c) Notwithstanding the fact that a company, entity
or taxpayer is engaged in an industry or business activity enumerated in subsection (b) of this section, such company, entity or taxpayer must qualify for the business investment and jobs expansion tax credit by fulfilling the qualified investment, jobs creation and other credit entitlement requirements of the business investment and jobs expansion tax credit act in order to obtain entitlement to any credit under this article. Failure to fulfill the statutory requirements of the business investment and jobs expansion tax credit act will result in a partial or complete loss of the tax credit.

(d) Transition rule. — Notwithstanding any provision herein contained to the contrary, this section shall not apply to investments for which applications for credit or applications for projected certification were filed prior to the effective date of this section.

(e) Effective date. — This section shall be effective upon passage by the Legislature.

(f) Reports to the Legislature. — On or before the fifteenth day of January, one thousand nine hundred ninety-four, the secretary of the department of tax and revenue shall submit a report to the governor, the president of the Senate and the speaker of the House of Delegates. The report shall include recommendations regarding a tax credit to promote economic development to replace the business investment and jobs expansion credit provided pursuant to this article. The recommended replacement credit should provide for a maximum amount of total credit which may be taken by all taxpayers in any one year so that the total fiscal impact of the credit to the state can be readily determined. The secretary shall consult with all other state agencies that are responsible for economic development in this state and include any recommendations forthcoming from those agencies in the report.

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, AND INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS.

1 Notwithstanding any other provision of this code to the contrary, for taxable years ending on and after the first day of July, one thousand nine hundred ninety-three, the credits allowed under section three may not be applied to reduce the taxes imposed by articles fifteen and fifteen-a of this chapter: Provided, That this section shall not apply to credits allowed under subsection (g), section three of this article for qualified housing development projects existing in this state on or before the first day of July, one thousand nine hundred ninety-two.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.


1 Notwithstanding any other provision of this code to the contrary, for taxable years ending on and after the first day of July, one thousand nine hundred ninety-three, the credits allowed under section three may not be applied to reduce the taxes imposed by articles fifteen and fifteen-a of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.


1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

3 (b) "Tax commissioner" means the state tax commissioner.

4 (c) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund made for goods returned may be deducted.

15 (d) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose.

18 (e) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

18 (f) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

20 (g) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

22 (h) "Tax" includes all taxes, interest and penalties levied hereunder.

26 (i) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

29 (j) "Purchaser" means a person who purchases tangible personal property or a service taxed by this article.

31 (k) "Personal service" includes those:

33 (1) Compensated by the payment of wages in the ordinary course of employment; and
(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(l) "Taxpayer" means any person liable for the tax imposed by this article.

(m) "Drugs" includes all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

(n) (1) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical
movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(K) Maintenance or repair of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or
security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of such activities.

(o) “Contracting”:

(1) In general. — “Contracting” means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property.

(2) Form of contract not controlling. — An activity that falls within the scope of the definition of contracting
shall constitute contracting regardless of whether such contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(3) Special rules. — For purposes of this definition:

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(B) The term "alteration" means, and is limited to, alterations which are capital improvements to a building or structure or to real property.

(C) The term "repair" means, and is limited to, repairs which are capital improvements to a building or structure or to real property.

(D) The term "decoration" means, and is limited to, decorations which are capital improvements to a building or structure or to real property.

(E) The term "improvement" means, and is limited to, improvements which are capital improvements to a building or structure or to real property.

(F) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. "Regular recurring service" means regularly scheduled service intervals of less than one year.

(G) Contracting does not include the furnishing of
work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider's inventory:

Provided, That such hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if such repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or is intended to allow such real property or thing permanently attached thereto to remain in service for a year or longer.

(p) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(r) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other
medium for commercial purposes.

(s) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" means the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession, processing and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

(u) "Management information services facility" means a building, or any part thereof, or a complex of buildings, or any part thereof, including the machinery and equipment located therein, that is exclusively dedicated to providing management information services to the owner or operator thereof or to another person.

(v) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when such activity, or activities, is not subject to regulation by the West Virginia public service commission and such activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether such industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether such industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial business is
owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

(w) (1) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business, means used or consumed in those activities or operations which constitute an integral and essential part of such activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production of sale of electric power, the provision of a public utility service, or the operation of a utility business include only:

(A) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools, and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(B) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and such vehicles and their equipment as are specifically designed and equipped for such purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production
at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(C) Tangible personal property or services, including equipment, machinery, apparatus, supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(D) Tangible personal property or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service, or the operation of a utility business;

(E) Tangible personal property or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(3) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(A) Heating and illumination of office buildings;
(B) Janitorial or general cleaning activities;
(C) Personal comfort of personnel;
(D) Production planning, scheduling of work or inventory control;
(E) Marketing, general management, supervision, finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to
the activities of gas storage, generation or production or
sale of electric power, the provision of public utility
service or the operation of a utility business.

(x) “Gas storage” means the injection of gas into a
storage reservoir, or the storage of gas for any period
of time in a storage reservoir, or the withdrawal of gas
from a storage reservoir, engaged in by businesses
subject to the business and occupation tax imposed by
sections two and two-e, article thirteen, chapter eleven
of this code.

(y) “Generating or producing or selling of electric
power” means the generation, production or sale of
electric power engaged in by businesses subject to the
business and occupation tax imposed by section two,
two-d, two-m or two-n, article thirteen of this chapter.

(z) “Providing a public service or the operating of a
utility business” means the providing of a public service
or the operating of a utility by businesses subject to the
business and occupation tax imposed by sections two and
two-d, article thirteen of this chapter.


The following sales and services are exempt:

(a) Sales of gas, steam and water delivered to
consumers through mains or pipes and sales of
electricity;

(b) Sales of textbooks required to be used in any of
the schools of this state or in any institution in this state
which qualifies as a nonprofit or educational institution
subject to the West Virginia department of education
and the arts, board of trustees of the university system
of West Virginia or the board of directors for colleges
located in this state;

(c) Sales of property or services to the state, its
institutions or subdivisions, governmental units, institu-
tions or subdivisions of other states: Provided, That the
law of such other state provides the same exemption to
governmental units or subdivisions of this state and to
the United States, including agencies of federal, state or
local governments for distribution in public welfare or relief work;

(d) Sales of vehicles which are titled by the division of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code, or like tax;

(e) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(f) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and is:

(1) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(3) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(4) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchased with such net income), is donated to an organization which is exempt from income taxes under Section
56 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

58 (5) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

65 (6) For purposes of this subsection:

66 (A) The term “support” includes, but is not limited to:

67 (i) Gifts, grants, contributions or membership fees;

68 (ii) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

69 (iii) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;

70 (iv) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

71 (v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of such organization; and

72 (vi) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;
(B) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended;

(C) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization; or

(7) The exemption allowed by subsection (f) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subsection as amended by this article shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these organizations and shall not apply to purchases of gasoline or special fuel;

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of May, one thousand nine hundred ninety-three, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of
(h) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative: Provided, That nothing contained herein may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided herein, regardless where such isolated sale takes place. The tax commissioner may adopt such legislative rule pursuant to chapter twenty-nine-a of this code as he deems necessary for the efficient administration of this exemption;

(i) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel shall not be exempt: Provided, however, That nails and fencing shall not be considered as improvements to real property;

(j) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or
building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by such person or his agent into any real property, building or structure shall not be exempt under this subsection, except that sales of tangible personal property to a person engaging in the activity of contracting pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, who incorporates such property in such building, structure or improvement shall, with respect to such tangible personal property, nevertheless be deemed to be the vendor of such property to the governmental entity and any person seeking to qualify for and assert this exception must do so pursuant to such legislative rules and regulations as the tax commissioner may promulgate and upon such forms as the tax commissioner may prescribe. A subcontractor who, pursuant to a written subcontract with a prime contractor who qualifies for this exception, provides equipment, or materials, and labor to such a prime contractor shall be treated in the same manner as the prime contractor is treated with respect to the prime contract under this exception and the legislative rules and regulations promul gated by the tax commissioner: Provided further, That the exemption for government contractors in the preceding proviso shall expire on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section eight-c of this article;

(k) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel shall be taxable;
(l) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel shall be taxable;

(m) Sales of newspapers when delivered to consumers by route carriers;

(n) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(p) Sales and services performed by day-care centers;

(q) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subsection (f) of this section on its purchases of tangible personal property or services:

(1) For purposes of this subsection, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subsection (f) of this section, from payment of the tax imposed by this article on its purchases, when such fund raisers are of limited duration and are held no more than six times during any twelve-month period and limited duration means no more than eighty-four consecutive hours;

(2) The provisions of this subsection, as amended by this article, shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(r) Sales of property or services to a school which has approval from the board of trustees of the university
system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

(s) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three percent rate;

(t) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption shall apply to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before such date, for months thereof beginning on or after such date;

(v) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;

(w) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 United States Code, §2011, et seq., as amended, or with drafts issued through the West Virginia special supplemental food program for women,
(x) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(y) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection "electronic data processing services" means: (1) The processing of another's data, including all processes incident to processing of data such as key-punching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment;

(z) Tuition charged for attending educational summer camps;

(aa) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by such organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if such shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(bb) Dispensing of services performed by one corporation for another corporation when both corporations are members of the same controlled group. Control means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation entitled to vote or ownership, directly or indirectly, of
stock possessing fifty percent or more of the value of the corporation;

(cc) Food for the following shall be exempt:

1. Food purchased or sold by public or private schools, school sponsored student organizations or school sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours; but not those sales of food made to the general public;

2. Food purchased or sold by a public or private college or university or by a student organization officially recognized by such college or university to students enrolled at such college or university when such sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

3. Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

4. Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose;

5. Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities:

Provided, That purchases made by such organizations shall not be exempt as a purchase for resale;

(dd) Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar
372 types of organizations, including scouting groups and
373 church youth groups, if the purpose in selling the food
374 is to obtain revenue for the functions and activities of
375 the organization and the revenues obtained from selling
376 the food is actually used in supporting or carrying on
377 functions and activities of the groups: Provided, That
378 such purchases made by such organizations shall not be
379 exempt as a purchase for resale;
380
381 (ee) Charges for room and meals by fraternities and
382 sororities to their members: Provided, That such
383 purchases made by a fraternity or sorority shall not be
384 exempt as a purchase for resale;
385
386 (ff) Sales of or charges for the transportation of
387 passengers in interstate commerce;
388
389 (gg) Sales of tangible personal property or services to
390 any person which this state is prohibited from taxing
391 under the laws of the United States or under the
392 constitution of this state;
393
394 (hh) Sales of tangible personal property or services to
395 any person who claims exemption from the tax imposed
396 by this article or article fifteen-a of this chapter
397 pursuant to the provisions of any other chapter of this
398 code;
399
400 (ii) Charges for the services of opening and closing a
401 burial lot;
402
403 (jj) Sales of livestock, poultry or other farm products
404 in their original state by the producer thereof or a
405 member of the producer's immediate family who is not
406 otherwise engaged in making retail sales of tangible
407 personal property; and sales of livestock sold at public
408 sales sponsored by breeders or registry associations or
409 livestock auction markets: Provided, That the exemp-
410 tions allowed by this subsection shall apply to sales
411 made on or after the first day of July, one thousand nine
412 hundred ninety, and may be claimed without presenting
413 or obtaining exemption certificates: Provided, however,
414 That the farmer shall maintain adequate records;
415
416 (kk) Sales of motion picture films to motion picture
417 exhibitors for exhibition if the sale of tickets or the
charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing such machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subsection shall apply to sales made on or after the first day of July, one thousand nine hundred ninety, and may be claimed by presenting to the seller a properly executed exemption certificate;

(II) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools, or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;

(mm) Sales of tangible personal property and services to a person entitled to claim the tax credit for investment in certain management information services facilities allowed under section three-c, article thirteen-d of this chapter, pursuant to the issuance of a management information services tax credit certification by the tax commissioner in accordance with subsection (e) of said section, when such property or services are directly used or consumed by the purchaser in the operation of the management information services facility, as defined in section two of this article for which credit is allowed under section three-c, article thirteen-d of this chapter. Tangible personal property, or services,
directly used or consumed in the operation of a management information services facility includes only: (1) computer processing and telecommunications equipment; (2) data storage and input/output devices; (3) disaster recovery services; (4) supplies; (5) application, telecommunication and operating system software; (6) repair and maintenance of any of the aforesaid items; and (7) other tangible personal property or services directly used or consumed in the operation of a management information services facility: Provided, That the property is purchased or leased after the thirty-first day of March, one thousand nine hundred ninety-one. This exemption shall not apply to tangible personal property, or services, that are not directly used or consumed in the operation of a management information services facility, or to gasoline or special fuel: Provided, however, That nothing in this paragraph shall be construed to limit, exclude or preclude the application or availability of any other exemption set forth in this section, or elsewhere in this code, which might otherwise apply to any sale of tangible personal property or services;

(nn) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(oo) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year; and

(pp) A corporation or organization which is a not-for-profit entity which charges membership dues utilized for and contributing significantly to traffic and pedestrian safety and education programs whether or not the corporation or organization is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.
§11-21-77. Extension of withholding to certain lottery winnings.
§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:

1. Interest income on obligations of any state other than this state or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

2. Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand eight hundred eighty-six;

4. Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

5. Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

6. The amount allowed as a deduction from federal
gross income under Section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under Section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property — no modification; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-year real property — thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(8) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumental-
income tax purposes but exempt from state income
taxes under the laws of the United States or of the state
of West Virginia, including federal interest or dividends
paid to shareholders of a regulated investment company,
under Section 852 of the Internal Revenue Code for
taxable years ending after the thirtieth day of June, one
thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of
property having a higher fair market value on the first
day of January, one thousand nine hundred sixty-one,
than the adjusted basis at said date for federal income
tax purposes: Provided, That the amount of this
adjustment is limited to that portion of any such gain
which does not exceed the difference between such fair
market value and such adjusted basis: Provided,
however, That if such gain is considered a long-term
capital gain for federal income tax purposes, the
modification shall be limited to forty percent of such
portion of the gain: Provided further, That this modifi-
cation shall not be made for taxable years beginning
after the thirty-first day of December, one thousand nine
hundred eighty-six;

(4) The amount of any refund or credit for overpay-
ment of income taxes imposed by this state, or any other
taxing jurisdiction, to the extent properly included in
gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of
contributions and any other benefit received under the
West Virginia public employees retirement system, the
West Virginia state teachers retirement system and all
forms of military retirement, including regular armed
forces, reserves and national guard, including any
survivorship annuities derived therefrom, to the extent
includible in gross income for federal income tax
purposes: Provided, That notwithstanding any provi-
sions in this code to the contrary this modification shall
be limited to the first two thousand dollars of benefits
received under the West Virginia public employees
retirement system, the West Virginia state teachers
retirement system and all forms of military retirement
including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per person receiving such retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West Virginia firemen's retirement system or the West Virginia department of public safety death, disability and retirement fund, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be
allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal
adjusted gross income under Section 86 of the Internal Revenue Code for federal income tax purposes: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes: Provided, That for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-two, this modification shall not be made for lottery prizes awarded by the West Virginia state lottery commission.

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

§11-21-77. Extension of withholding to certain lottery winnings.

(a) Lottery winnings subject to withholding. — Proceeds of more than five thousand dollars from any lottery prize awarded by the West Virginia state lottery
commission shall be subject to withholding. The West Virginia state lottery commission in making any payment of a lottery prize subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six and one-half percent of such payment.

(b) *Statement by recipient.* — Every person who is to receive payment of winning which are subject to withholding shall furnish the person making such payment a statement made under the penalties of perjury, containing the name, address and taxpayer identification number of the person receiving the payment and each person entitled to any portion of such payment.

(c) *Coordination with other sections.* — For the purposes of determining liability for payment of taxes and filing of returns, payments of winnings which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

ARTICLE 23. BUSINESS FRANCHISE TAX.


(a) *In general.* — Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year with the tax commissioner on or before:

(1) The fifteenth day of the third month of the next succeeding taxable year if the person is a corporation; or

(2) The fifteenth day of the fourth month of the next succeeding taxable year if the person is a partnership.

The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) *Special rule for tax exempt organizations with unrelated business taxable income.* — Notwithstanding
the provisions of subsection (a) of this section, when a
business franchise tax return is required from an
organization generally exempt from tax under subsec-
tion (b), section seven of this article, which has unrelated
business taxable income, the annual return shall be filed
on or before the fifteenth day of the fifth month
following the close of the taxable year.

(c) **Consolidated returns.** — Any corporation that files
as part of an affiliated group for purposes of the tax
imposed by article twenty-four of this chapter shall file
a consolidated return under this article.

(d) The tax commissioner may, at his or her discre-
tion, require an affiliated group of corporations to file
a consolidated tax return under this article in order to
accurately determine the taxes due under this article.

(e) **Effective date.** — The amendments to this section
made in the year one thousand nine hundred ninety-
three shall apply to tax returns that become due after
the first day of that year.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

§11-24-6. **Adjustments in determining West Virginia taxable income.**

(a) **General.** — In determining West Virginia taxable
income of a corporation, its taxable income as defined
for federal income tax purposes shall be adjusted and
determined before the apportionment provided by
section seven of this article, by the items specified in this
section.

(b) **Adjustments increasing federal taxable income.** —
There shall be added to federal taxable income, unless
already included in the computation of federal taxable
income, the following items:

(1) Interest or dividends on obligations or securities
of any state or of a political subdivision or authority
thereof;
(2) Interest or dividends (less related expenses to the extent not deducted in determining federal taxable income) on obligations or securities of any authority, commission or instrumentality of the United States which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

(4) The amount of unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of a corporation which by reason of its purposes is generally exempt from federal income taxes; and

(5) The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended.

(c) Adjustments decreasing federal taxable income. — There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis;

(2) The amount of any refund or credit for overpayment of income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(3) The amount added to federal taxable income due
to the elimination of the reserve method for computation of the bad debt deduction;

(4) The full amount of interest expense actually disallowed in determining federal taxable income which was incurred or continued to purchase or carry obligations or securities of any state or of any political subdivision thereof;

(5) The amount required to be added to federal taxable income as a dividend received from a foreign (non-United States) corporation under Section 78 of the Internal Revenue Code of 1986, as amended, by a corporation electing to take the foreign tax credit for federal income tax purposes;

(6) The amount of salary expenses disallowed as a deduction for federal income tax purposes due to claiming the federal jobs credit under Section 51 of the Internal Revenue Code of 1986, as amended;

(7) The amount included in federal adjusted gross income by the operation of Section 951 of the Internal Revenue Code of 1986, as amended; and

(8) Any amount included in federal adjusted gross income which is foreign source income. Foreign source income includes:

(A) Interest and dividends, other than those derived from sources within the United States;

(B) Rents, royalties, license and technical fees from property located or services performed without the United States or from any interest in such property, including rents, royalties or fees for the use of or the privilege of using without the United States any patents, copyrights, secret process and formulas, good will, trademarks, trade brands, franchises and other like properties; and

(C) Gains, profits or other income from the sale of intangible or real property located without the United States.
In determining the source of "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

(d) Net operating loss deduction. — Except as otherwise provided in this subsection, there shall be allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to such year; plus (2) the net operating loss carrybacks to such year: Provided, That no more than three hundred thousand dollars of net operating loss from any taxable year beginning after the thirty-first day of December, one thousand nine hundred ninety-two, may be carried back to any previous taxable year. For purposes of this subsection, the term "West Virginia net operating loss deduction" means the deduction allowed by this subsection, determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

(1) Special rules. —

(A) When the corporation further adjusts its adjusted federal taxable income under section seven of this article, the West Virginia net operating loss deduction allowed by this subsection shall be deducted after the section seven adjustments are made;

(B) The tax commissioner shall prescribe such transition regulations as he deems necessary for fair and equitable administration of this subsection as amended by this act.

(2) Effective date. — The provisions of this subsection, as amended by chapter one hundred nineteen, acts of the Legislature, one thousand nine hundred eighty-eight, shall apply to all taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-eight; and to all loss carryovers from taxable years ending on or before said thirtieth day of June.

(e) Special adjustments for expenditures for water and air pollution control facilities. —
(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code; and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with section seven.

(f) Allowance for certain government obligations and obligations secured by residential property. — The West Virginia taxable income of a taxpayer subject to this
article as adjusted in accordance with subsections (b),
(c), (d) and (e) of this section shall be further adjusted
by multiplying such taxable income after such adjust-
ment by said subsections by a fraction equal to one
minus a fraction:

(1) The numerator of which is the sum of the average
of the monthly beginning and ending account balances
during the taxable year (account balances to be deter-
mined at cost in the same manner that such obligations,
investments and loans are reported on Schedule L of the
Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or
of any agency, authority, commission or instrumentality
of the United States and any other corporation or entity
created under the authority of the United States
Congress for the purpose of implementing or furthering
an objective of national policy;

(B) Obligations or securities of this state and any
political subdivision or authority thereof;

(C) Investments or loans primarily secured by
mortgages, or deeds of trust, on residential property
located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security
agreement on residential property in the form of a
mobile home, modular home or double-wide, located in
this state and occupied by nontransients;

(2) The denominator of which is the average of the
monthly beginning and ending account balances of the
total assets of the taxpayer which are shown on Schedule
L of Federal Form 1120, which are filed by the taxpayer
with the Internal Revenue Service.

§11-24-13. Returns; time for filing.

(a) On or before the fifteenth day of the third month
following the close of a taxable year, an income tax
return under this article shall be made and filed by or
for every corporation subject to the tax imposed by this
article.
(b) Special rule for tax exempt corporations with unrelated business taxable income. — Notwithstanding the provisions of subsection (a) of this section, when an income tax return is required from a corporation generally exempt from tax under subsection (a), section five of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fifth month following the close of the taxable year.

(c) The tax commissioner may combine into one form the annual return due under this article and the annual return due under article twenty-three of this chapter. When a combined business franchise tax and corporation net income tax annual return is filed by a taxpayer, the amount of tax remitted shall be applied first against any business franchise tax that may be due for the taxable year under said article and then against any corporation net income tax that may be due for the taxable year. The tax commissioner may also combine the forms for filing declarations of estimated tax and the forms for making installment payments of estimated tax.

(d) Effective date. — The amendments to this section made in the year one thousand nine hundred ninety-three shall apply to tax returns that become due after the first day of that year.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.


Except as otherwise provided in this article, no state agency, county, municipality or political subdivision or agency of this state may impose any law, regulation, rule or requirement of any sort relating to the use, sale or distribution of tobacco products which is more restrictive than the provisions of this article: Provided, That any law, regulation, rule or requirement duly enacted and in effect on the first day of January, one thousand nine hundred ninety-three, shall remain in
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CHAPTER 47. REGULATION OF TRADE.

Article

ARTICLE 20. CHARITABLE BINGO.

§47-20-4. Annual license; conditions on holding of games.
§47-20-5. Limited occasion license; conditions on holding of games.
§47-20-6. License fee and exemption from taxes.
§47-20-6a. Super bingo license.
§47-20-12a. Compensation of bingo operator.
§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
§47-20-16. Records; commissioner audit.
§47-20-24. Filing of reports.
§47-20-28a. Certain operators of bingo games to provide for smoking and nonsmoking sections.

§47-20-4. Annual license; conditions on holding of games.

A charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it may apply for an annual license. Only one license per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it: Provided, That for purposes of this section the various branches, chapters or lodges of any national association or organization or local churches of a nationally organized church are not considered affiliates or auxiliaries of each other. The commissioner shall by regulation provide for the manner for determining to which organization, whether the parent organization, an affiliate or an auxiliary, the one license allowed under this section is granted. An annual license is valid for one year from the date of issuance and entitles only the licensee to hold no more than two bingo occasions per week. No two or more organizations may hold a joint bingo occasion under
any annual licenses. No bingo occasion held pursuant to an annual license may exceed six hours duration.

A licensee shall display its annual bingo license conspicuously at the location where the bingo occasion is held.

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual.

§47-20-5. Limited occasion license; conditions on holding of games.

A limited occasion license is valid only for the time period specified in the application and entitles only the licensee to hold a bingo occasion once every twenty-four hours for a time period not to exceed two weeks. Two or more organizations may hold a joint bingo occasion provided each participating organization has been granted a limited occasion bingo license for such jointly held occasion. No bingo occasion held pursuant to a limited occasion license may exceed twelve hours in duration. Each charitable or public service organization which desires to hold bingo occasions pursuant to this section, or any of its auxiliaries or other organizations otherwise affiliated with it, shall obtain a limited occasion license notwithstanding the fact that it holds a valid annual license: Provided, That no licensee which holds an annual license may obtain more than one limited occasion license.

Only three limited occasion licenses per year in the aggregate may be granted to a charitable or public service organization and all of its auxiliaries or other associations or organizations otherwise affiliated with it, none of which hold an annual license. For purposes of this section, the various branches, chapters or lodges of
any national association or organization or local
churches of a nationally organized church are not
considered affiliates or auxiliaries of each other. The
commissioner shall by regulation provide the manner
for determining to which organization, whether the
parent organization, an affiliate or an auxiliary, the
three licenses allowed under this section are granted.

A licensee shall display its limited occasion license
conspicuously at the location where the bingo occasion
is held.

All bingo occasions shall be open to the general
public: Provided, That no licensee shall permit or allow
any individual under the age of eighteen to participate
in the playing of any bingo game with knowledge or
reason to believe that the individual is under the age of
eighteen: Provided, however, That an individual under
the age of eighteen may attend the playing of a bingo
game when accompanied by and under the supervision
of an adult relative or a legal guardian of said individ-
ual.

§47-20-6. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner
for annual licenses in the amount of five hundred
dollars, except that for volunteer or nonprofit groups
who gross less than twenty thousand dollars the fee shall
be two hundred dollars and for bona fide senior citizen
organizations the fee is fifty dollars. A license fee shall
be paid to the tax commissioner for a limited occasion
license in the amount of one hundred dollars. A license
fee of five hundred dollars shall be paid to the tax
commissioner for a state fair license as provided in
section twenty-two of this article. All revenue from said
license fee shall be deposited in the special revenue
account established under the authority of section two-
a, article nine, chapter eleven of this code and used to
support the investigatory activities provided for in said
section. The license fee imposed by this section is in lieu
of all other license or franchise taxes or fees of this state,
and no county or municipality or other political
subdivision of this state is empowered to impose a
(b) The gross proceeds derived from the conduct of a bingo occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. The licensee is exempt from payment of consumers sales and service taxes and use taxes on all purchases for use or consumption in the conduct of a bingo occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of bingo cards: Provided, That the exemption provided in this subsection does not apply to state fair bingo proceeds.

§47-20-6a. Super bingo license.

Any charitable or public service organization may, upon payment of a five thousand dollar license fee, apply to the tax commissioner for issuance of an annual super bingo license. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The tax commissioner shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code specifying those organizations which qualify as charitable or public service organizations.

A holder of a super bingo license may conduct one super bingo occasion each month during the period of the license at which up to thirty thousand dollars in prizes may be awarded, notwithstanding the seven thousand five hundred dollar limitation on prizes specified in section ten of this article.

A charitable or public service organization that has a regular or limited occasion bingo license may apply for a super bingo license.


Except as provided otherwise in sections twelve-a, thirteen and twenty-two of this article, no individual who participates in any manner in the conduct of a bingo occasion or the operation of a concession in conjunction with a bingo occasion may receive or accept
§ 47-20-12a. Compensation of bingo operator.

(a) Within the guidelines set forth in subsections (b), (c) and (d) of this section, a licensee may pay a salary, not to exceed the federal minimum wage, to operators of bingo games who are active members of the licensee organization.

(b) If the licensee's gross receipts from bingo occasions equal or exceed one hundred thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than three operators.

(c) If the licensee's gross receipts from bingo occasions are less than one hundred thousand dollars, but equal or exceed fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to not more than two operators.

(d) If the licensee's gross receipts from bingo occasions are less than fifty thousand dollars for the licensee's most recently filed annual financial report, a salary may be paid to no more than one operator.

§ 47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed fifteen percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

(1) Rent paid for the use of the premises: Provided, that a copy of the rental agreement was filed with the bingo license application and any changes thereto were filed within ten days of being made;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment
and supplies used to conduct the bingo occasion;

(4) The cost to the licensee organization for advertising the bingo occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the bingo patrons: Provided, That any proceeds received from the provision of child care services shall be handled the same as bingo proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section ten of this article, may be paid out of the gross proceeds of the conduct of bingo.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the bingo occasion. The licensee shall expend all net bingo proceeds and any interest earned thereon for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the bingo occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a bingo license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.

(d) No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, improvement, maintenance or repair of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) Any licensee which, in good faith, finds itself unable to comply with the requirements of this provision
shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are so expended.

§47-20-16. Records; commissioner audit.

Any licensee which holds a bingo occasion as provided by this article shall maintain a separate checking account and separate bookkeeping procedure for its bingo operations. Money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person, firm or corporation and at no time shall a check be made payable to cash. A licensee shall maintain all records required by this article for at least three years and the records shall be open to the commissioner for reasonable inspection. Whenever the tax commissioner has reasonable cause to believe a licensee has violated any of the provisions of this article, he or she may perform or cause to be performed an audit of the licensee's books and records: Provided, That the tax commissioner shall perform or cause to be performed an audit of the books and records of any licensee that has awarded total prizes in excess of one hundred seventy-five thousand dollars. The tax commissioner shall file a copy of the completed audit with the county commission of the county wherein the licensee holds bingo occasions.

§47-20-24. Filing of reports.

Each licensee holding an annual license shall file with
2 the tax commissioner quarterly and an annual financial
3 report summarizing its bingo operations for the time
4 period covered by the report. Each quarterly report
5 shall be filed within twenty days after the end of the
6 quarter which it covers. The annual report shall be filed
7 within thirty days after the expiration of the license
8 under which the operations covered by the report were
9 held.

Each licensee holding a limited occasion license or
state fair license shall file with the tax commissioner a
financial report summarizing its bingo operations for
the license period within thirty days after the expiration
of the license under which the operations covered by the
report are held. The report shall contain the name,
address and social security number of any individual
who receives during the course of a bingo occasion
prizes the aggregate value of which exceeds one
hundred dollars, and other information required by the
commissioner: Provided, That any licensee failing to file
such report when due shall be liable for a penalty of
twenty-five dollars for each month or fraction thereof
during which the failure continues, such penalty not to
exceed one hundred dollars: Provided, however, That
annual financial reports for license years ending after
the first day of July, one thousand nine hundred ninety-
three, must be audited financial reports as defined by
the American institute of certified public accountants if
a licensee's gross receipts exceed one hundred thousand
dollars: Provided further, That annual financial reports
for license years ending after the first day of July, one
thousand nine hundred ninety-three, must contain a
compilation and review of such financial report, as
defined by the American institute of certified public
accountants, if a licensee's gross receipts exceed fifty
thousand dollars but are less than one hundred thousand
dollars.

§47-20-28a. Certain operators of bingo games to provide
for smoking and nonsmoking sections.

Any bingo operator who distributes more than one
hundred bingo cards or bingo sheets at any bingo occasion shall provide a smoking and nonsmoking section, if smoking is permitted.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-7. License fee and exemption from taxes.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

§47-21-22. Filing of reports.

§47-21-7. License fee and exemption from taxes.

(a) A license fee shall be paid to the tax commissioner for annual licenses in the amount of five hundred dollars. A license fee shall be paid to the tax commissioner for a limited occasion license in the amount of fifty dollars. All revenue from said license fee shall be deposited in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code and used to support the investigatory activities provided for in said section. The license fee imposed by this section is in lieu of all other license or franchise taxes or fees of this state and no county or municipality or other political subdivision of this state is empowered to impose a license or franchise tax or fee on any raffle or raffle occasion.

(b) The gross proceeds derived from the conduct of a raffle occasion are exempt from state and local business and occupation taxes, income taxes, excise taxes and all special taxes. Any charitable or public service organization conducting a raffle occasion pursuant to the provisions of this article is exempt from payment of consumers sales and service taxes, use taxes and all other taxes on all purchases for use or consumption in the conduct of a raffle occasion and is exempt from collecting consumers sales taxes on any admission fees and sales of raffle tickets.

§47-21-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.

(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of raffle occasions, not to exceed fifteen percent of the gross
proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of raffle, including, but not limited to:

(1) Rent paid for the use of the premises: Provided, That a copy of the rental agreement was filed with the raffle license application with any modifications thereto to be filed within ten days of being made;

(2) The cost of custodial services;

(3) The cost to the licensee organization for equipment and supplies used to conduct the raffle occasion;

(4) The cost to the licensee organization for advertising the raffle occasion;

(5) The cost of hiring security personnel, licensed pursuant to the provisions of article eighteen, chapter thirty of this code; and

(6) The cost of providing child care services to the raffle patrons: Provided, That any proceeds received from the provision of child care services shall be handled the same as raffle proceeds.

(b) The actual cost to the licensee for prizes, not to exceed the amounts as specified in section eleven of this article, may be paid out of the gross proceeds of the conduct of raffle.

(c) The cost of any refreshments, souvenirs or any other item sold or otherwise provided through any concession to the patrons may not be paid for out of the gross proceeds from the raffle occasion. The licensee shall expend all net raffle proceeds and any interest earned thereon for the charitable or public service purposes stated in the application within one year after the expiration of the license under which the raffle occasions were conducted. A licensee which does not qualify as a qualified recipient organization may apply to the commissioner at the time it applies for a raffle license or as provided in subsection (e) of this section for permission to apply any or all of its net proceeds to directly support a charitable or public service activity or endeavor which it sponsors.
(d) No gross proceeds from any raffle operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction, acquisition, improvement, maintenance or repair of real or personal property except that which is used exclusively for one or more charitable or public service purposes or as provided in subdivision (3), subsection (a) of this section.

(e) Any licensee which, in good faith, finds itself unable to comply with the requirements of the foregoing provisions of this section shall apply to the commissioner for permission to expend its net proceeds for one or more charitable or public service purposes other than that stated in its license application or for permission to expend its net proceeds later than the one-year time period specified in this section. The application shall be on a form furnished by the commissioner and shall include the particulars of the requested changes and the reasons for the changes. The application shall be filed no later than sixty days before the end of the one-year period specified in this section. In the case of an application to extend the time in which the net proceeds are to be expended for a charitable or public service purpose, the licensee shall file such periodic reports with the commissioner as the commissioner directs until the proceeds are so expended.

§47-21-22. Filing of reports.

Each licensee holding an annual, limited or state fair license shall file with the commissioner a financial report summarizing its raffle operations within thirty days after the expiration date of such license.

The reports required by this section shall contain the name, address and social security number of any individual who received during the course of a raffle occasion prizes the aggregate value of which exceeded one hundred dollars, and other information required by the commissioner: Provided, That any licensee failing to file such report when due shall be liable for a penalty of twenty-five dollars for each month or fraction thereof during which the failure continues, such penalty not to
14 exceed one hundred dollars: Provided, however, That
15 annual financial reports for license years ending after
16 the first day of July, one thousand nine hundred ninety-
17 three, must be audited financial reports as defined by
18 the American institute of certified public accountants if
19 a licensee's gross receipts exceed one hundred thousand
20 dollars: Provided further, That annual financial reports
21 for license years ending after the first day of July, one
22 thousand nine hundred ninety-three, must contain a
23 compilation and review of such financial report, as
24 defined by the American institute of certified public
25 accountants, if a licensee's gross receipts exceed fifty
26 thousand dollars but are less than one hundred thousand
27 dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-1. Short title.
§47-23-3. License fee.
§47-23-4. No fee on charitable raffle boards and games by municipalities
or other governmental subdivisions.
§47-23-5. Indicia; how affixed; violations.
§47-23-6. Form of indicia; custody; security for payments.
§47-23-7. Surety bonds required; release of surety; new bond.
§47-23-8. How fee paid; reports required; due date; records to be kept;
inspection of records and stocks; examination of witnesses,
summons, etc.
§47-23-9. Penalty for failure to file return when no fee due; crimes.
§47-23-10. Transportation of unstamped charitable raffle boards and games;
forfeitures and sales of charitable raffle boards; charitable
raffle games and equipment; criminal sanctions.
§47-23-11. Administration; rules.

§47-23-1. Short title.

1 This article shall be known as and may be cited as
2 the "Charitable Raffle Boards and Games Act".


1 For purposes of this article, unless specified
2 otherwise:
3 (a) "Commissioner" means tax commissioner of the
4 state of West Virginia, or his delegate.
(b) "Retail face value" means the projected gross income to be received by the retailer from the sale of all raffle chances on or in the charitable raffle boards or games.

(c) "Indicia" means the impression authorized by the commissioner to serve as such indicia, and shall be of the design and color prescribed by the commissioner.

(d) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(e) "Retailer" means every person engaged in the business of making retail sales of raffle chances.

(f) "Charitable raffle board" or "charitable raffle game" means a board or other device that has many folded printed slips to be pulled from the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize: Provided, That a "charitable raffle board" or "charitable raffle game" shall not include the sale, by an elementary or secondary school, parent-teacher organization of an elementary or secondary school, youth organization, such as the girl scouts of America or the boy scouts of America, or any political party executive committee, of chances in an effort, by the person purchasing the chance, to obtain a designated prize: Provided, however, That the aggregate value of all such prizes in any given calendar year shall not exceed three thousand five hundred dollars.

(g) "Sale" means the transfer of the ownership of tangible personal property for a consideration.

(h) "Wholesaler" or "distributor" means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the commissioner, and licensed under the provisions of this article, to distribute said devices to charitable raffle boards or games retailers as defined in this article. It also includes anyone who is engaged in the manufacturing, packaging, preparing or repackag-
§47-23-3. License fee.

Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of five hundred dollars shall be paid to the commissioner by each wholesaler or distributor for an annual license. Wholesalers shall also pay a fee of six cents on each dollar of retail value of each charitable raffle board or game sold to a retailer. There is hereby imposed an excise tax of six percent of the winnings on any charitable raffle boards and games. The tax shall be collected and remitted to the tax commissioner on a monthly basis by the holder of the raffle game. All revenue from said fee shall be placed in the special revenue account established under the authority of section two-a, article nine, chapter eleven of this code.

§47-23-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.

No municipality or governmental subdivision shall levy any excise or other tax or fee requiring charitable raffle boards or games to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in article twelve, chapter eleven of this code.

§47-23-5. Indicia; how affixed; violations.

The indicia required by this article, as described in the charitable raffle boards and games fee rules and regulations, shall be impressed upon each charitable raffle board or game, of an aggregate value of not less than the amount of the fee imposed. The indicia so impressed shall be prima facie evidence of payment of the annual license fee imposed by this article. Indicia printing approval shall be received from only the commissioner by wholesalers and distributors who have paid the annual license fee provided in section three of this article.
Except as may be otherwise provided in the rules and regulations prescribed by the commissioner under authority of this article, such indicia shall be impressed by each wholesaler or distributor prior to the sale of such boards or games to a retailer. Each wholesaler or distributor making such sales must be authorized to do business in this state prior to the sale or delivery of any charitable raffle boards or games to any retailer in this state.

Whenever any charitable raffle boards or games are found in the place of business of any retailer without the indicia so impressed, the prima facie presumption shall arise that such charitable raffle boards or games are kept therein in violation of the provisions of this article.

§47-23-6. Form of indicia; custody; security for payments.

The commissioner shall design the indicia to be used as herein provided for impression on charitable raffle boards or games. The charitable raffle boards or games shall have the purchase price clearly imprinted thereon and shall have printed or impressed thereon the words "State of West Virginia — Raffle Board Stamp" or such other words and figures as the commissioner may deem proper.

§47-23-7. Surety bonds required; release of surety; new bond.

The commissioner may require wholesalers and distributors to file continuous surety bond in an amount to be fixed by the commissioner except that the amount shall not be less than one thousand dollars. Upon completion of the filing of a surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all fees prescribed by this article.

Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of sixty days from the
date the surety shall have lodged, by certified mail, with
the tax commissioner a written request to be dis-
charged. This shall not relieve, release or discharge the
surety from liability already accrued or which shall
accrue before the expiration of the sixty-day period.
Whenever any surety shall seek release as herein
provided, it shall be the duty of the wholesaler or
distributor to supply the commissioner with another
bond.

§47-23-8. How fee paid; reports required; due date;
records to be kept; inspection of records and
stocks; examination of witnesses, summons, etc.

The fee hereby imposed shall be paid by each licensed
wholesaler or distributor to the commissioner on or
before the fifteenth day of April, July, October and
January for the preceding three calendar months. The
measure of the fee shall be determined by multiplying
the total amount of the retail face value of all charitable
raffle boards and games sold by wholesalers or distrib-
utors to retailers during the said three-month period by
six percent. All fees due and owing to the commissioner
by reason of this article, if paid after the due dates
required by this section, shall be subject to the provi-
sions of article ten, chapter eleven of this code. Each
wholesaler or distributor shall provide with each
quarterly payment of fees a report covering the business
transacted in the previous three calendar months and
providing such other information as the commissioner
may deem necessary for the ascertainment or assess-
ment of the fee imposed by this article. Such report shall
be signed under penalty of perjury on such forms as the
tax commissioner may prescribe and the wholesaler or
distributor shall at the time of filing remit all fees owed
or due.

The commissioner may authorize any wholesaler or
distributor holding the license required by this article
to use any metering device approved by the commis-
sioner, such devices to be sealed by the commissioner,
before being used, which device shall be used only in
accordance with the regulations prescribed by the
A wholesaler or distributor shall pay the fee in advance where a metering device is used, in which event such wholesaler or distributor shall deliver the metering device to the commissioner who shall seal the meter in accordance with the prepayment so made.

The reports prescribed herein are required, although a fee might not be due or no business transacted for the period covered by the report.

Each person required to file a report under this article shall make and keep such records as shall be prescribed by the commissioner that are necessary to substantiate the returns required by this article, including, but not limited to, inventories, receipts, disbursements and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority of the commissioner, each delivery ticket or invoice for each purchase or sale of charitable raffle boards or games must be recorded upon a serially numbered invoice showing the name and address of the seller and the purchaser, the point of delivery, the date, quantity and price of the product sold, and the fee must be set out separately, and such other reasonable information as the commissioner may require. These invoicing requirements also apply to cash sales and a person making such sales must maintain such records as may be reasonably necessary to substantiate his return.

In addition to the commissioner's powers set forth in section five, article ten, chapter eleven of this code, the commissioner shall have authority to inspect or examine the stock of charitable raffle boards and games kept in and upon the premises of any person where charitable raffle boards and games are placed, stored or sold, and he shall have authority to inspect or examine the records, books, papers and any equipment or records of manufacturers, wholesalers and distributors or any other person for the purpose of determining the quantity of charitable raffle boards and games acquired or disbursed to verify the truth and accuracy of any statement or report and to ascertain whether the fee
imposed by this article has been properly paid.

In addition to the commissioner's powers set forth in section five, article ten, chapter eleven of this code, and as a further means of obtaining the records, books and papers of a manufacturer, wholesaler, distributor or any other person and ascertaining the amount of fees and reports due under this article, the commissioner shall have the power to examine witnesses under oath; and if the witness shall fail or refuse at the request of the commissioner to grant access to the books, records or papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and such court shall thereupon issue summons to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of fee and reports due, if any.

§47-23-9. Penalty for failure to file return when no fee due; crimes.

(a) Penalty for failure to file required return where no fee due. — In the case of any failure to make or file a return when no fee is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of such failure or fraction thereof.

(b) It shall be a misdemeanor, punishable pursuant to the terms of this article, if any person:

(1) Makes any false entry upon an invoice required to be made under the provisions of this article or with intent to evade the fee imposed by this article presents any such false entry for the inspection of the commissioner;

(2) Prevents or hinders the commissioner from making a full inspection of any place where charitable
raffle boards or games subject to the fee imposed by this state are sold or stored or prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(3) Sells any charitable raffle boards or games in this state without there having been first affixed thereto the indicia required by this article;

(4) Being a retailer in this state, has in his possession any charitable raffle boards or games not bearing the indicia herein required to be affixed thereto or, whoever fails to produce on demand by the commissioner invoices of all charitable raffle boards and games purchased or received by him within three years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control;

(5) Being a retailer in this state, purchases or acquires charitable raffle boards and games from any person other than a wholesaler or distributor licensed under this article; or

(6) Who is not a wholesaler or distributor of charitable raffle boards or games, as provided by this article, shall have in his possession within the state any charitable raffle boards or games not bearing the proper indicia of this state, such possession shall be inferred to be for the purpose of evading the payment of the fees imposed or due thereon.

(c) Any person convicted of violating the provisions of subsection (b) of this section shall be confined in the county jail for not less than one year or fined not less than one thousand dollars nor more than ten thousand dollars, or both fined and imprisoned.

(d) Any person who falsely or fraudulently makes, forges, alters or counterfeits any indicia prescribed, or defined, by the provisions of this article, or its related rules and regulations, or who knowingly and willfully makes, causes to be made, purchases, receives or has in his possession, any device for forging or counterfeiting any indicia, or has in his possession, any indicia not
properly issued by the commissioner or tampers with or
alters any stamping device authorized by the commis-
sioner, or uses more than once any indicia provided for
and required by this article for the purpose of evading
the fee hereby imposed, shall be guilty of a felony, and,
upon conviction thereof, shall be sentenced to pay a fine
of not less than five thousand dollars nor more than ten
thousand dollars or imprisoned in the penitentiary for
a term of not less than one year nor more than five
years, or both fined and imprisoned.

(e) Whenever the commissioner, or any of his deputies
or employees authorized by him, or any peace officer of
this state shall discover any charitable raffle boards or
games subject to the fee as provided by this article and
upon which the fee has not been paid as herein required,
such charitable raffle boards and games shall thereupon
be deemed to be contraband, and the commissioner, or
such deputy or employee or any peace officer of this
state, is hereby authorized and empowered forthwith to
seize and take possession of such charitable raffle boards
or games, without a warrant, and such charitable raffle
boards and games shall be forfeited to the state, and the
commissioner shall retain the forfeited charitable raffle
boards and games until they are no longer needed as
evidence in any prosecution of the person from whom
the raffle boards and games were seized. The commis-
sioner may within a reasonable time thereafter destroy
such charitable raffle boards and games or may affix
the indicia required by this article upon each charitable
raffle board or game and sell said charitable raffle
boards or games at public auction to the highest bidder:
Provided, That such seizure and destruction or public
auction shall not be deemed to relieve any person from
fine or imprisonment as provided herein for violation of
any provisions of this article. Such destruction may be
made in any county the commissioner deems most
convenient and economical. All revenue from said
license fee shall be deposited in the special revenue
account established under the authority of section two-
a, article nine, chapter eleven of this code and used to
support the investigatory activities provided for in said
section.
(f) Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under this article.

§47-23-10. Transportation of unstamped charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.

Every person who shall knowingly transport charitable raffle boards or games not bearing indicia as required by section six of this article upon the public highways, waterways, airways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which shall show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee, or the tax, if any, of the state or foreign country at the point of ultimate destination: Provided, That any common carrier which has issued a bill of lading for a shipment of charitable raffle boards and games and is without notice to itself or to any of its agents or employees that said charitable raffle boards or games have no proper indicia affixed thereto as required by section six of this article shall be deemed to have complied with this article and the vehicle or vessel in which said charitable raffle boards or games are being transported shall not be subject to confiscation hereunder. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the charitable raffle boards or games so transported, the vehicle or vessel in which the charitable raffle boards or games are being transported and any paraphernalia or devices used in connection with such, are declared to be contraband goods and may be seized by the commissioner, his agents or employees or by any peace officer of the state without a warrant.

Any person who transports charitable raffle boards or
games in violation of this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than three hundred dollars nor more than
five thousand dollars, or imprisoned in the county jail
not more than one year, or both fined and imprisoned.

Charitable raffle boards and games seized under this
section shall be forthwith destroyed in the manner
provided hereinafter in this section and such destruction
shall not relieve the owner of the destroyed charitable
raffle boards and games of any action by the commis-
sioner for violations of this or any other sections of this
article.

The commissioner shall immediately, after any
seizure made pursuant to this section, institute a
proceeding for the confiscation thereof in the circuit
court of the county in which the seizure is made. The
court may proceed in a summary manner and may
direct confiscation by the commissioner: Provided, That
any person claiming to be the holder of a security
interest in any vehicle or vessel, the disposition of which
is provided for above, may present his petition so
alleging and be heard, and in the event it appears to the
court that the property was unlawfully used by a person
other than such claimant, and if the said claimant
acquired his security interest in good faith and without
knowledge that the vehicle or vessel was going to be so
used, the court shall waive forfeiture in favor of such
claimant and order the vehicle or vessel returned to such
claimant.

§47-23-11. Administration; rules.

(a) The commissioner shall promulgate rules to
administer the provisions of this article in accordance
with the provisions of chapter twenty-nine-a of this code.
Additionally, the commissioner shall promulgate a rule
which sets forth a means of verifying on the face of
every charitable raffle board or game that the charit-
able raffle board or game is distributed by a wholesaler
licensed pursuant to the provisions of this article.

(b) The commissioner shall deny an application for a
license if he finds that the issuance thereof would be in
violation of the provisions of this article.
(c) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article or administrative rule if the commissioner finds that said failure will substantially impair the commissioner’s ability to administer the provisions of this article with regard to said licensee.

(d) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler’s or distributor’s license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.


If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the applicability of such provision to other persons or circumstances shall not be affected thereby.


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 fees imposed by this article with like effect as if said act were applicable only to the fees imposed by this article and were set forth in extenso in this article.

CHAPTER 157
(Com. Sub. for H. B. 2088—By Delegate Burk)

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

AN ACT to amend and reenact sections twelve and sixteen, article ten, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all
relating to tax liens; providing for a ten-year limitation
on enforcement; requiring the notice of lien to include
the date the tax, addition to tax, penalties and interest
are due and payable or the date the tax return is filed;
eliminating the exception to the statute of limitations on
collections where there has been a false or fraudulent
return filed or no return filed; and requiring the tax
commissioner to record extensions by agreement.

Be it enacted by the Legislature of West Virginia:

That sections twelve and sixteen, article ten, chapter eleven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, all to read
as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-12. Liens, release; subordination; foreclosure.

(a) General. — Any tax, additions to tax, penalties or
interest due and payable under this article or any of the
other articles of this chapter to which this article is
applicable shall be a debt due this state. It shall be a
personal obligation of the taxpayer and shall be a lien
upon the real and personal property of the taxpayer.

(b) Duration of lien. — The lien created by this section
shall continue until the liability for the tax, additions to
tax, penalties and interest is satisfied or upon the
expiration of ten years from the date the tax, additions
to tax, penalties and interest are due and payable under
section eight of this article or the date the tax return
is filed, whichever is later.

(c) Recordation. — The lien created by this section
shall be subject to the restrictions and conditions
embodied in article ten-c, chapter thirty-eight of this
code and any amendment made or which may hereafter
be made thereto: Provided, That the notice of lien shall
indicate the date the tax, additions to tax, penalties and
interest are due and payable under section eight of this
article or the date the tax return was filed.
(d) **Release or subordination.** — The tax commissioner, pursuant to rules or regulations prescribed by him, may issue his certificate of release of any lien created pursuant to this section when the debt is adequately secured by bond or other security. He shall issue his certificate of release when the debt secured has been satisfied. The certificate of release shall be issued in duplicate. One copy shall be forwarded to the taxpayer, and the other copy shall be forwarded to the clerk of the county commission of the county wherein the lien is recorded. The clerk of the county commission shall record the release without payment of any fee and such recordation shall constitute a release and full discharge of the lien. The tax commissioner may issue his certificate of release of any such lien as to all or any part of the property subject to the lien, or may subordinate such lien to any other lien or interest, but only if there is paid to the state an amount not less than the value of the interest of the state in such property, or if the interest of the state in such property has no value.

(e) **Foreclosure.** — The tax commissioner may enforce any lien created and recorded under this section, against any property subject to such lien by civil action in the circuit court of the county wherein such property is located, in order to subject such property to the payment of the tax secured by such lien. All persons having liens upon or having any interest in the property shall be made parties to such action. The court may appoint a receiver or commissioner who shall ascertain and report all liens, claims and interests in and upon the property, the validity, amount and priority of each. The court shall, after notice to all parties, proceed to adjudicate all matters involved therein, shall determine the validity, amount and priorities of all liens, claims and interests in and upon the property and shall decree a sale of such property by the sheriff or any commissioner to whom the action is referred, and shall decree distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties.

(f) **Discharge of lien.** — A sale of property against
which the state has a lien under this section, made
pursuant to an instrument creating a lien on such
property, or made pursuant to a statutory lien on such
property, or made pursuant to a judicial order to enforce
any judgment in any civil action, shall be made subject
to and without disturbing the state tax lien if the state
tax lien was recorded more than thirty days before such
sale, unless:

(1) The tax commissioner is made a party to such civil
action, or

(2) The tax commissioner is given notice of such sale
in writing not less than fifteen days prior to sale, or

(3) The tax commissioner consents to such sale. Such
notice shall contain the name of the owner of the
property and the social security number or federal
employer identification number of the owner.

§11-10-16. Limitations on collection.

(a) Where assessment is issued. — Every proceeding
instituted by the tax commissioner for the collection of
the amount found to be due under an assessment which
has become final of any tax, additions to tax, penalties
or interest imposed by this article or any of the other
articles of this chapter to which this article is applica-
ble, irrespective of whether such proceeding shall be
instituted in a court or by utilization of other methods
provided by law for the collection of such tax, additions
to tax, penalty or interest, shall be brought or com-
enced within ten years after the date on which such
assessment has become final.

(b) Where assessment is not issued. — Every proceed-
ing instituted by the tax commissioner for the collection
of the amount determined to be due by methods
provided by law other than the issuance of an assess-
ment, of any tax, additions to tax, penalties or interest
imposed by this article or any of the other articles of
this chapter to which this article is applicable, irrespec-
tive of whether such proceeding shall be instituted in a
court or by utilization of other methods provided by law
for the collection of such tax, additions to tax, penalties
or interest, shall be brought or commenced within ten
years after the date on which the taxpayer filed the
annual return required to be filed by any of the articles
of this chapter and, if no annual return is required, such
ten-year period shall begin on the day after the latest
periodical return required to be filed in any year is filed.

(c) Exception as to inheritance tax liens. — This
section shall not apply to, or in any manner affect, the
inheritance tax liens created by sections nine and
eighteen, article eleven of this chapter.

(d) Extension of time for institutions of collection
proceedings by agreement. — The tax commissioner and
the taxpayer may enter into written agreement to
extend the period within which the tax commissioner
may institute proceedings for the collection of the
amount found to be due under an assessment which has
become final, or the amount determined to be due by
methods provided by law other than the issuance of the
assessment, of any tax, additions to tax, penalties or
interest imposed by this article or any of the other
articles of this chapter to which this article is applica-
ble. Such period shall not exceed two years. The period
so agreed upon may be extended for additional periods
not in excess of two years each by subsequent agree-
ments in writing made before the expiration of the
period previously agreed upon.

An extension of a tax lien, including an extension
agreed to in writing by the taxpayer and the tax
commissioner, beyond ten years is not effective under
the provisions of this section unless the extension is
docketed by the tax commissioner in the office of the
county commission as is required under the provisions
of article ten-c, chapter thirty-eight of this code for
docketing tax liens.
AN ACT to amend and reenact section three, article fourteen, chapter eleven 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 sixteen; and to amend and reenact section four, article six, chapter twenty-nine of said code, all relating to highway construction programs throughout the state; providing an increase in the gasoline tax; providing a sunset date for the increase; providing legislative findings; providing that the tax increase be deposited in an appropriated special revenue account to be used only to match available federal funds; and clarifying persons subject to civil service by gubernatorial appointment.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.
§11-14-16. Disposition of increase in tax collected.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of fifteen and one-
half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as hereinafter prescribed in this article: Provided, That beginning the first day of May, one thousand nine hundred ninety-three, the tax levied by this article shall be twenty and one-half cents per gallon: Provided, however, That on and after the first day of August, two thousand one, the tax levied by this article shall be fifteen and one-half cents per gallon.

§11-14-16. Disposition of increase in tax collected.

(a) The Legislature finds:

(1) That the "Intermodal Surface Transportation Efficiency Act of 1991" provides a window of opportunity for highway and bridge construction in the state of West Virginia;

(2) That the "Intermodal Surface Transportation Efficiency Act of 1991" provides for one billion dollars of regular federal highway and bridge funding over the effective period of the legislation;

(3) That the "Intermodal Surface Transportation Efficiency Act of 1991" additionally authorizes the necessary funding to complete the Appalachian highway corridor system in the state of West Virginia;

(4) That the "Intermodal Surface Transportation Efficiency Act of 1991" provides authorization for additional funding for other specifically identified highway corridors and projects throughout the state of West Virginia;

(5) That the anticipated level of total funding resulting from the passage of the "Intermodal Surface Transportation Act of 1991", if matched by sufficient state funds, would reach approximately six billion dollars through the year two thousand one;

(6) That this program level would be made possible by a five cent increase in the rate of tax on gasoline and special fuels;

(7) That such a program level would enable a continued aggressive highway paving, bridge safety and
highway maintenance program; and

(8) That the highways constructed and improvements to the existing transportation system in the state of West Virginia resulting from this highway construction program would be a substantial stimulus to economic development in this state.

(b) The Legislature further finds that in view of this anticipated highways construction program, the division of highways must increase its efficiency and professionalism and make better use of the resources provided to the division by the citizens of our state. To this end, the division of highways shall undertake the efficiency initiatives set forth in subsection (c) of this section, as well as other efficiency initiatives deemed appropriate by the secretary of the department of transportation and the director of the division of highways. The secretary of the department of transportation shall report to the Legislature on the first day of the regular legislative session, one thousand nine hundred ninety-four, regarding the implementation of all the efficiency initiatives undertaken by the division of highways. The report shall also include the source and amount of savings from these efficiency initiatives. Any savings resulting from these efficiency initiatives shall be utilized by the department of transportation to increase state funds available to match federal dollars to promote the highway construction program.

(c) The following efficiency initiatives shall be implemented by the division of highways:

(1) Reduction in the division's passenger vehicle fleet by one hundred seventy vehicles; and

(2) Restriction on the use and number of passenger vehicles utilized for twenty-four hour duty so as to cause a reduction in the total cost of operation of the twenty-four hour duty vehicle fleet by fifty percent.

(d) The amount of the tax collected attributable to the five cent increase in the tax collected under the provisions of this article effective the first day of May, one thousand nine hundred ninety-three, shall be
deposited in a special account in the state treasury known as the "Federal Aid Highway Matching Fund" and shall only be used to match federal moneys available for highway purposes as authorized by Title 23 and Title 40 or other provisions of the United States Code: Provided, That the "Federal Aid Highway Matching Fund" shall be appropriated by line item by the Legislature.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on the first day of July, one thousand nine hundred ninety-two, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred ninety-six, and in each fourth year thereafter, the governor may, by executive order, with the written consent of the state personnel board and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

(1) All judges, officers and employees of the judiciary;

(2) All members, officers and employees of the Legislature;

(3) All officers elected by popular vote and employees of the officer;

(4) All secretaries of departments and employees within the office of a secretary;
(5) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order;

(6) Excluding the policy-making positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature;

(7) All policymaking positions;

(8) Patients or inmates employed in state institutions;

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor;

(10) All employees of the office of the governor, including all employees assigned to the executive mansion;

(11) County road supervisors employed by the division of highways or their successors;

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for ninety days or less during a working year;

(13) Members and employees of the board of regents or its successor agencies;

(14) Uniformed personnel of the division of public safety; and

(15) Seasonal employees in the state forests, parks, and recreational areas working less than 1,560 hours per calendar year: Provided, That notwithstanding any provision of law to the contrary, seasonal employees shall not be considered full-time employees.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the governor contributes in an essential
way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the governor including all employees assigned to the executive mansion, as well as any persons appointed by the governor to fill policy-making positions and county road supervisors or their successors; in that such offices or positions are confidential in character and/or require their holders to act as advisors to the governor or the governor's appointees, to formulate and implement the policies and goals of the governor or of the governor's appointees, or to help the governor or the governor's appointees communicate with and explain their policies and views to the public, the Legislature and the press.

CHAPTER 159
(Com. Sub. for H. B. 2451—By Mr. Speaker, Mr. Chambers and Delegates Gallagher, Brown and Houvouras)

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

AN ACT to amend and reenact section thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia brewpubs; barrel tax; and reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. NONINTOXICATING BEER.


(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of five
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3 dollars and fifty cents on each barrel of thirty-one
gallons and in like ratio on each part barrel of nonin-
toxicating beer manufactured in this state for sale
within this state, whether contained or sold in barrels,
bottles or other containers, and a like tax is hereby
levied and imposed upon all nonintoxicating beer
manufactured outside of this state and brought into this
state for sale within this state; but no nonintoxicating
beer manufactured, sold or distributed in this state is
subject to more than one barrel tax. The brewer
manufacturing or producing nonintoxicating beer
within this state for sale within this state shall pay the
barrel tax on such nonintoxicating beer, and, except as
provided otherwise, the distributor who is the original
consignee of nonintoxicating beer manufactured or
produced outside of this state, or who brings such
nonintoxicating beer into this state, shall pay the barrel
tax on such nonintoxicating beer manufactured or
produced outside of this state: Provided, That the barrel
tax imposed by this section shall not apply to nonintox-
icating beer manufactured by a brewpub.

(b) On or before the tenth day of each month during
the license period, every brewer or operator of a
brewpub who manufactures or produces nonintoxicating
beer within this state shall file a report in writing,
under oath, to the tax commissioner, in the form
prescribed by the tax commissioner, stating its total
sales, or in the case of a brewpub, its total estimated
production of nonintoxicating beer within this state
during that month, and at the same time shall pay the
tax levied by this article on such production. On or
before the tenth day of each month during the license
period, every distributor who is the original consignee
of nonintoxicating beer manufactured or produced
outside this state or who brings such beer into this state
for sale shall file a report in writing, under oath, to the
tax commissioner, in the form prescribed by the tax
commissioner, stating its total estimated purchases of
such nonintoxicating beer during that month, and at the
same time shall pay the tax thereon levied by this article
for such estimated monthly purchase: Provided, That
the tax commissioner may allow, or require, a brewer
who manufactures or produces nonintoxicating beer outside this state to file the required report and pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator of a brewpub who files a report under this subsection may adjust its monthly estimated sales or purchases or production report or reports by filing amended reports by the twenty-fifth day of the reporting month.

(c) Every brewer or distributor or operator of a brewpub who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases or production, in a form and at a time prescribed by the tax commissioner, stating actual nonintoxicating beer sales, purchases, or production and other information which the tax commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases or production made in excess of the amount estimated for that month.

(d) Any brewer or distributor or operator of a brewpub who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors and operators of brewpubs shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the tax commissioner.

(f) Brewpubs shall keep such records as required by the federal government and may, in lieu of the record-keeping and reporting requirements contained in subsections (a) through (e) of this section, file copies of the federal reports contemporaneously with the tax commissioner at the time of such filings with the federal government. The filing of duplicate copies of the federal reports with the state tax commissioner shall be deemed as compliance with subsections (a) through (e) of this section.
AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred ninety-one; preserving prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-three, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred ninety-two, or thereafter, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-three, shall be given effect.
19   (b) Effective date. — The amendments to this section
20   enacted in the year one thousand nine hundred ninety-
21   three shall be retroactive and shall apply to taxable
22   years beginning on or after the first day of January, one
23   thousand nine hundred ninety-two, to the extent
24   allowable under federal income tax law. With respect
25   to taxable years that begin prior to the first day of
26   January, one thousand nine hundred ninety-two, the law
27   in effect for each of those years shall be fully preserved
28   as to each such year.

CHAPTER 161
(S. B. 71—Originating in the Committee on Finance)

[Passed March 10, 1998; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article twenty-
three, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section three, article twenty-four of
said chapter, relating to updating the meaning of
 certain terms used in the West Virginia business
franchise tax act and the West Virginia corporation net
income tax act by bringing them into conformity with
their meanings for federal income tax purposes for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred ninety-one;
preserving prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

Article

ARTICLE 23. BUSINESS FRANCHISE TAX.
§11-23-3a. Meaning of terms; general rule.
(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States, or to the Internal Revenue Code, or to the federal income tax law shall mean the provisions of the laws of the United States as related to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-three, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred ninety-two, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred ninety-three, shall be given effect.

(b) Effective date. — The amendments to this section reenacted in the year one thousand nine hundred ninety-three shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-two, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred ninety-three, shall be given effect.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as
amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred ninety-three, shall be given effect in determining the taxes imposed by this article for any taxable year beginning the first day of January, one thousand nine hundred ninety-two, and thereafter, but no amendment to the laws of the United States effective on or after the first day of January, one thousand nine hundred ninety-three, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the "Federal Tax Reform Act of 1986" and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the "Federal Tax Reform Act of 1986" was enacted, that were not amended or repealed by the "Federal Tax Reform Act of 1986". Except when inappropriate, any references in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 shall include reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-three shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-two, to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, one thousand nine hundred ninety-two, the law in effect for each of those years shall be fully preserved as to each such year.
AN ACT to amend and reenact section two, article two, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the enforcement of tax delinquencies by civil action; and the prosecution of such actions without the payment of fees and costs or the giving of bond or security.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.

§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

(a) Taxes are hereby declared to be debts owing by the taxpayer, for which he shall be personally liable. After delinquency, the sheriff may enforce this liability by appropriate action in any court of competent jurisdiction. No such action shall be brought after five years from the time the action accrued.

(b) In any such action, the sheriff shall be permitted to prosecute the same without paying fees or costs, and without providing bond or security, as may otherwise be required of civil litigants by the provisions of this code, and shall have all services and process, including the services of witnesses, without paying therefor: Provided, That where the sheriff recovers in or as the result of such action, whether by way of settlement or judgment, such fees and costs shall be recoverable from the opposite party and upon receipt of any recovery, the sheriff shall pay such fees or costs to the officer who otherwise would have been entitled thereto but for the provisions of this section.
CHAPTER 163
(H. B. 2082—By Delegates Martin, Love, Wallace and L. White)

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

AN ACT to repeal sections four, five and eight, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six, seven and ten of said article two-g, all relating to the tree fruit industry self-improvement assessment program; deleting provision for implementing or terminating the program by referendum of producers; deleting provision allowing refunds of assessments to producers; requiring promulgation of rules by board; requiring board to set amount of assessments by rule; continuation of program.

Be it enacted by the Legislature of West Virginia:

That sections four, five and eight, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections six, seven and ten of said article two-g be amended and reenacted to read as follows:

ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.

§19-2G-7. Assessment on sales; reimbursement for collecting.

§19-2G-10. Continuation of program.

§19-2G-6. Tree fruit industry self-improvement assessment board; administration of program; report to Legislature; rules and regulations.

(a) There is hereby created a West Virginia tree fruit self-improvement assessment board consisting of nine persons who are residents of the state and citizens of the United States and who are and have been actually engaged in the industry of producing tree fruits for the preceding five years. The nine persons who shall serve as members of the board shall be appointed by the
governor for terms of three years and may serve successive terms: Provided, That the initial appointments of members of the board shall be three members to serve for terms of one year each, three members to serve for terms of two years each and three members to serve for terms of three years each.

(b) The governor shall make appointments to fill any vacancies which may occur on the board and these appointments shall be only for the unexpired term of the position on the board. In making appointments to the board, the governor shall consider the recommendations made by organizations and groups in West Virginia which are concerned with or engaged in the production of tree fruits for the purpose of marketing tree fruits to consumers or processors. If the governor fails to make an appointment within ninety days after the expiration of any term or within ninety days after a vacancy occurs, the board shall, with the concurrence of a majority of the members still serving, make the necessary appointment. Each member shall hold office until the expiration of his term or until a successor is duly appointed and qualified.

(c) The board shall elect a chairman, a secretary and a treasurer from its membership and shall meet at such times and places as designated by call of the chairman or by a majority of the board. All board meetings shall be held in accordance with the state open meetings law. A stipend shall be paid to each member from board collections not to exceed thirty-five dollars per meeting for each meeting actually attended, and each member shall be reimbursed for his actual expenses incurred with respect to each meeting for room, meals and mileage in the same amount as is provided for by the rules and regulations promulgated by the governor for reimbursing state officials and employees of the state. No board member may receive any other salary or compensation for his services.

(d) The board may contract for services, employ and discharge employees, provide for such facilities and equipment as are necessary for the employees to perform their duties and may cooperate with other state
or federal agencies or other organizations whose
activities may be beneficial to the purposes of this
article. The board may not expend funds to influence
legislation or for any political campaign.

(e) The board shall administer the tree fruit self-
 improvement assessment program. All such activities
shall be directed toward increasing the sale of tree fruits
produced in the state without reference to any particu-
lar firm, individual, brand or trade name.

(f) The board shall submit a report, including a
complete fiscal accounting of its activities, to the
Legislature not later than the fifteenth day of January
of each year.

(g) The board shall promulgate rules and regulations
to carry out the purposes of this article after a public
hearing following due notice to all interested persons
and compliance with the provisions of the state admi-
nistrative procedures set forth in chapter twenty-nine-
a of this code.

§19-2G-7. Assessment on sales; reimbursement for
 collecting.

(a) All tree fruit markets, packers, processors,
wholesalers, dealers and other persons, excluding
persons purchasing tree fruits for their personal
consumption or use, purchasing tree fruits, including
direct shipments from producers, shall deduct the
assessments, which shall be set by rules promulgated by
the board as provided for in section six of this article,
from the settlement for such tree fruit and to forward
it within thirty days to the treasurer of the board.

(b) The board shall keep accurate records of the
amounts of assessments and the dates on which they are
received, and of the expenditures of funds and the dates
on which they are made. These records shall be
preserved for at least five years.

§19-2G-10. Continuation of program.

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

CHAPTER 164

(Com. Sub. for S. B. 430—Originating in the Committee on the Judiciary)

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

AN ACT to amend and reenact section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code, all relating to taxation procedure and administration; permitting disclosure of certain business registration information to the state treasurer for recovery and disposition of unclaimed property; defining due diligence; reducing the time period for a presumption of abandonment of property from seven years to five years; clarifying state's authority to take custody of abandoned property; requiring the holder of unclaimed property to exercise due diligence to locate the whereabouts of the owner of the property; and definitions.

Be it enacted by the Legislature of West Virginia:

That section five-s, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two, three, four, five, seven, eight, eight-a, eight-b, nine and eleven, article eight, chapter thirty-six of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
36. Estates and Property.
CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

(a) Purpose. — The Legislature hereby recognizes the importance of confidentiality of taxpayer information as a protection of taxpayers' privacy rights and to enhance voluntary compliance with the tax law. The Legislature also recognizes the citizens' right to accountable and efficient state government. To accomplish these ends, the Legislature hereby creates certain exceptions to the general principle of confidentiality of taxpayer information.

(b) Exceptions to confidentiality. —

(1) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer, and the amount, by category, of any credit asserted on a tax return under articles thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g and thirteen-h of this chapter and article one, chapter five-e of this code for any tax year beginning on or after the first day of July, one thousand nine hundred ninety-one. The categories by dollar amount of credit received shall be as follows:

(A) More than $1.00, but not more than $50,000;
(B) More than $50,000, but not more than $100,000;
(C) More than $100,000, but not more than $250,000;
(D) More than $250,000, but not more than $500,000;
(E) More than $500,000, but not more than $1,000,000;
and
(F) More than $1,000,000.

(2) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the following information regarding any compromise of a pending civil tax case that occurs on or after the effective date of this section in which the tax commissioner is required to seek the written
recommendation of the attorney general and the
attorney general has not recommended acceptance of
such compromise or when the tax commissioner com-
promises any civil tax case for an amount that is more
than two hundred fifty thousand dollars less than the
assessment of tax owed made by the tax commissioner:

(A) The names and addresses of taxpayers that are
parties to such compromise;

(B) A summary of such compromise;

(C) Any written advice or recommendation rendered
by the attorney general regarding such compromise;
and

(D) Any written advice or recommendation rendered
by the tax commissioner’s staff.

Under no circumstances may the tax return of the
taxpayer nor any other information which would
otherwise be confidential under any other provisions of
law be disclosed pursuant to the provisions of this
subsection.

(3) Notwithstanding any provision in this code to the
contrary, the tax commissioner may disclose any
relevant return information to the prosecuting attorney
for the county in which venue lies for a criminal tax
offense when there is reasonable cause, based upon and
substantiated by such information, to believe that a
criminal tax law has been or is being violated.

(4) Notwithstanding any provision in this code to the
contrary, the tax commissioner may enter into written
exchange of information agreements with the commis-
sioners of labor, employment security and workers’
compensation to disclose and receive return information:
Provided, That the tax commissioner may promulgate
rules pursuant to chapter twenty-nine-a of this code
regarding further agencies with which written ex-
change of information agreements may be sought:
Provided, however, That the tax commissioner may not
promulgate emergency rules regarding further agencies
with which written exchange of information agreements
may be sought. Such agreements shall be published in
the state register and shall only be for the purpose of facilitating premium collection, tax collection and facilitating licensure requirements directly enforced, administered or collected by the respective agencies.

The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information so disclosed shall remain confidential in the hands of such other division to the extent provided by section five-d of this article and by other applicable federal or state laws.

(5) Notwithstanding any provision of this code to the contrary, the tax commissioner may enter into a written agreement with the state treasurer to disclose to the state treasurer the following business registration information: (1) The names, addresses and federal employer identification numbers of businesses which have registered to do business in West Virginia; and (2) the type of business activity and organization of those businesses. Disclosure of such information shall begin as soon as practicable after the effective date of this subsection and may be used only for the purpose of recovery and disposition of unclaimed property in accordance with the provisions of article eight, chapter thirty-six of this code. The provisions of this subsection shall not be construed to preclude or limit disclosure of tax information authorized by other provisions of this code. Any confidential return information disclosed hereunder or thereunder shall otherwise remain confidential to the extent provided by section five-d of this article and by other applicable federal or state laws.

(c) Tax expenditure reports. — Beginning on the fifteenth day of January, one thousand nine hundred ninety-two and every fifteenth day of January thereafter, the governor shall submit to the president of the Senate and the speaker of the House of Delegates a tax expenditure report. Such report shall expressly identify all tax expenditures. Within three-year cycles, such reports shall be considered together to analyze all tax expenditures by describing the annual revenue loss and benefits of the tax expenditure based upon information
available to the tax commissioner. For purposes of this
section, the term "tax expenditure" shall mean a
provision in the tax laws administered under this
article, including, but not limited to, exclusions,
deductions, tax preferences, credits and deferrals
designed to encourage certain kinds of activities or to
aid taxpayers in special circumstances: Provided, That
the tax commissioner shall promulgate rules setting
forth the procedure by which he or she will compile such
reports and setting forth a priority for the order in
which the reports will be compiled according to type of
tax expenditure.

(d) Federal and state return information confidential.
— Notwithstanding any other provisions of this section
or of this code, no return information made available to
the tax commissioner by the Internal Revenue Service
or department or agency of any other state may be
disclosed to another person in any manner inconsistent
with the provisions of Section 6103 of the Internal
Revenue Code of 1986, as amended, or of such other
states' confidentiality laws.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROP-
ERTY ACT.

§36-8-1. Definitions and use of terms.
§36-8-2. Property held by banking or financial organizations.
§36-8-3. Unclaimed funds held by life insurance corporations.
§36-8-4. Deposits and refunds held by utilities.
§36-8-5. Undistributed dividends and distributions of business associations.
§36-8-7. Property held by fiduciaries.
§36-8-8. Property held by courts and public officers and agencies.
§36-8-8.a Providing for recovery of abandoned property.
§36-8-8b. Presumption of abandonment of personal property held by federal
government.
§36-8-9. Miscellaneous personal property held for another person; excep-
tion; prohibiting the levying of charges on inactive savings
account.

§36-8-1. Definitions and use of terms.

1 As used in this article, unless the context otherwise
2 requires:
(a) "Banking organization" means any bank, trust company or a private banker engaged in business in this state, or a banking institution as defined in section one, article four, chapter thirty-one of this code.

(b) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership or any association for business purposes of two or more individuals.

(c) "Due diligence" shall include, but not be limited to, the mailing of a letter by first-class mail to the last known address of the owner as indicated on the records of the holder.

(d) "Financial organization" means any savings and loan association, building and loan association, industrial loan company, credit union, business association which issues travelers' checks or investment company engaged in business in this state.

(e) "Holder" means any person in possession of property subject to this article belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this article.

(f) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(g) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this article or his legal representative.

(h) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity; but shall not include any retirement system supported entirely or in part by the state of West Virginia.
(i) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

§36-8-2. Property held by banking or financial organizations.

The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any noninterest bearing demand, savings or matured time deposit made in this state with a banking organization, or other financial organization, excluding any charges which may lawfully be withheld, if the owner has not within the immediately preceding five years increased or decreased the amount of the deposit:

Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the deposit within the five-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Corresponded in writing with the organization concerning the deposit; or

(2) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization.

In any case where the owner has taken any of the actions specified in paragraph (1) or (2) of this subdivision there shall thereafter be no presumption of abandonment unless and until another five years have passed without any increase or decrease in the amount of the deposit and without any of such actions having been taken in the last year of such further five-year period.

(b) Any interest bearing demand, savings or matured time deposit made in this state with a banking organization or other financial organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, if the owner has not
within the immediately preceding fifteen years increased or decreased the amount of the deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the deposit within the fifteen-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Presented the passbook or other similar evidence of deposit for the crediting of interest; or

(2) Corresponded in writing with the organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the organization.

In any case where the owner has taken any of the actions specified in paragraph (1), (2) or (3) of this subdivision there shall thereafter be no presumption of abandonment unless and until another fifteen years have passed without any increase or decrease in the amount of the deposit and without any of such actions having been taken in the last year of such further fifteen-year period.

(c) Any noninterest bearing funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding five years increased or decreased the amount of the funds or deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the funds or deposit within said five-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Corresponded in writing with the financial organization concerning the funds or deposit; or

(2) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.
In any case where the owner has taken any of the actions specified in paragraph (1) or (2) of this subdivision there shall thereafter be no presumption of abandonment unless and until another five years have passed without any increase or decrease in the amount of the funds or deposit and without any of such actions having been taken in the last year of such further five-year period.

(d) Any interest bearing funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, if the owner has not within the immediately preceding fifteen years increased or decreased the amount of the funds or deposit: Provided, That notwithstanding the fact that there has been no increase or decrease in the amount of the funds or deposit within said fifteen-year period, there shall be no presumption of abandonment if the owner has within the immediately preceding year:

(1) Presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

In any case where the owner has taken any of the actions specified in paragraph (1), (2) or (3) of this subdivision (d), there shall thereafter be no presumption of abandonment unless and until another fifteen years have passed without any increase or decrease in the amount of the funds or deposit and without any of such actions having been taken in the last year of such further fifteen-year period.

(e) Any sum payable on any check certified in this state or on any written instrument issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of
limitation, a certificate of deposit and draft that has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within the preceding year corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(f) Any funds or other personal property, tangible or intangible, removed from a safe-deposit box or any other safekeeping depository in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

(g) No holder may impose with respect to property described in this section any charges due to dormancy or inactivity or cease payment of interest unless there is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest.

(h) Any amount held or owing by any organization for the payment of a travelers check on which such organization is directly liable shall be presumed abandoned if such amount is held or owing for payment of a travelers check which shall have been outstanding for more than fifteen years from the date of its sale.

§36-8-3. Unclaimed funds held by life insurance corporations.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last-known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the
funds, it is presumed that the last-known address of the
person entitled to the funds is the same as the last-
known address of the insured or annuitant according to
the records of the corporation.

(b) "Unclaimed funds," as used in this section, means
all moneys held and owing by any life insurance
corporation unclaimed and unpaid for more than five
years after the moneys became due and payable as
established from the records of the corporation under
any life or endowment insurance policy or annuity
contract which has matured or terminated. A life
insurance policy not matured by actual proof of the
death of the insured is deemed to be matured and the
proceeds thereof are deemed to be due and payable if
such policy was in force when the insured attained the
limiting age under the mortality table on which the
reserve is based, unless the person appearing entitled
thereto has within the preceding five years: (1) As-
signed, readjusted or paid premiums on the policy, or
subjected the policy to loan; or (2) corresponded in
writing with the life insurance corporation concerning
the policy. Moneys otherwise payable according to the
records of the corporation are deemed due and payable
although the policy or contract has not been surrendered
as required.

§36-8-4. Deposits and refunds held by utilities.

The following funds held or owing by any utility are
presumed abandoned:

(a) Any deposit made subsequent to the year one
thousand nine hundred fifty-seven, by a subscriber with
a utility to secure payment for, or any sum paid in
advance for, utility services to be furnished in this state,
less any lawful deductions, that has remained unclaimed
by the person appearing on the records of the utility
entitled thereto for more than five years after the
termination of the services for which the deposit or
advance payment was made.

(b) Any sum which a utility has been ordered to
refund and which was received subsequent to the year
one thousand nine hundred fifty-seven, for utility
services rendered in this state, together with any
interest thereon, less any lawful deductions, that has
remained unclaimed by the person appearing on the
records of the utility entitled thereto for more than five
years after the date it became payable in accordance
with the final determination or order providing for the
refund.

§36-8-5. Undistributed dividends and distributions of
business associations.

Any stock or other certificate of ownership, or any
dividend, profit, distribution, interest, payment on
principal or other sum held or owing by a business
association for or to a shareholder, certificate holder,
member, bondholder or other security holder, or a
participating patron of a cooperative, who has not
claimed it or corresponded in writing with the business
association concerning it, within five years after the date
prescribed for payment or delivery, is presumed
abandoned if:

(a) It is held or owing by a business association
organized under the laws of or created in this state; or
(b) It is held or owing by a business association doing
business in this state, but not organized under the laws
of or created in this state and the records of the business
association indicate that the last-known address of the
person entitled thereto is in this state.

§36-8-7. Property held by fiduciaries.

All intangible personal property and any income or
increment thereon, held in a fiduciary capacity for the
benefit of another person is presumed abandoned unless
the owner has, within five years after the final date for
distribution of such property and the cessation of all
active fiduciary duties as required by law or the
instrument under which the fiduciary is acting, in-
creased or decreased the principal, accepted payment of
principal or income, corresponded in writing with the
fiduciary concerning the property, or otherwise indi-
cated an interest as evidenced by a memorandum on file
with the fiduciary:
(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last-known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

§36-8-8. Property held by courts and public officers and agencies.

(a) All intangible personal property held for the owner by any state or federal court, public corporation, public authority or public officer in this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than five years is presumed abandoned: Provided, That this provision shall in no way affect such property in the custody or control of any state or federal court in any pending action: Provided, however, That if any federal statute provides for the distribution of any unclaimed property subject to the jurisdiction of a federal court, this statute shall not apply.

(b) Notwithstanding the provisions of subsection (a) of this section, all intangible personal property in the custody or control of a general receiver of a state court of record appointed pursuant to the provisions of article six, chapter fifty-one of this code, that has remained unclaimed by the owner for more than five years is presumed abandoned: Provided, That any such property in the custody or control of any such general receiver in which there is any contingent remainder interest, or any vested remainder interest which is subject to open to let in persons not yet in being or to open to let in members of any class, or any executory interest, or executory devise interest, or any base, qualified, conditional or limited fee estate or interest, or any other qualified, conditional, limited or determinable estate or interest, shall not be presumed abandoned until such property has remained unclaimed for more than five
30 years after such estate or interest has vested or any such class has closed and the persons entitled to such property have been determined.

§36-8-8a. Providing for recovery of abandoned property.

1 With respect to property originating or issued by this state, any political subdivision thereof or any entity incorporated, organized, created or otherwise located therein, the following provision shall apply:

5 (a) Unless presumed abandoned and subject to the custody of this state by any other provision of law, all intangible property, including, but not limited to, any interest, dividend, or other earnings thereon, less any lawful charges, that is held by a business association, federal, state or local government or person or entity, regardless of where the holder may be found, is presumed abandoned and subject to the custody of this state as unclaimed property if:

(1) The address of the owner was never known or the last-known address of the owner is unknown; and

(2) The entity originating or issuing the intangible property is in this state or any of its political subdivisions or is incorporated, organized, created or otherwise located in this state.

(b) Subsection (a) of this section shall apply to all property held at the time of enactment or at anytime thereafter regardless of when such property became or becomes presumptively abandoned.

§36-8-8b. Presumption of abandonment of personal property held by federal government.

1 (a) All tangible personal property or intangible personal property, including choses in action in amounts certain, and all debts owed, entrusted funds or other property held by any federal, state or local government or governmental subdivision, agency, entity, officer or appointee thereof, shall be presumed abandoned in this state if the last-known address of the owner of the property is in this state and the property has remained unclaimed for five years: Provided, That if another
provision of law provides for a presumption of abandon-
ment and custodial taking of the subject property by this
state upon the passage of a longer period of time, such
longer period of time shall control.

(b) This section shall apply to all abandoned property
held by any federal, state or local government or
governmental subdivision, agency, entity, officer or
appointee thereof, at the time of enactment, or at any
time thereafter, regardless of when such property
became or becomes presumptively abandoned.

§36-8-9. Miscellaneous personal property held for
another person; exception; prohibiting the
levying of charges on inactive savings
account.

All personal property not otherwise covered by this
article, including any income or increment thereon and
after deducting any lawful charges, that is held or
owing in this state in the ordinary course of the holder's
business and has remained unclaimed by the owner for
more than five years after it became payable or
distributable is presumed abandoned: Provided, That
this section shall not apply to such property held or
owing by a utility prior to the year one thousand nine
hundred fifty-seven: Provided, however, That notwith-
standing the provisions of section two of this article, no
banking or other financial organization or institution
shall, after the effective date of this section, demand,
collect, charge or contract to receive any charge due to
dormancy or inactivity on any interest bearing savings
or time deposit for any period of time prior to the
withdrawal of such funds by the depositor, his personal
agent or representative, or the accrual under this article
of the right of the state to deposit or sell as abandoned
property any such deposit. For purposes of this proviso,
any interest bearing savings or time deposit shall be
deemed to be dormant or inactive if the depositor, his
personal agent or representative has not within the
immediately preceding two years increased or decreased
the amount of the deposit.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this article shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of fifty dollars or more presumed abandoned under this article;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under fifty dollars each may be reported in aggregate;

(4) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this article.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before the thirty-first day of March of each year as of the thirty-first day of December next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner,
the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. All holders shall exercise due diligence, as defined in subdivision (c), section one of this article, at least sixty days but no more than one hundred twenty days prior to submission of the report to ascertain the whereabouts of the owner if: (1) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate; and (2) the property has a value of fifty dollars or more.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this article shall include all items of property which, under the provisions hereof, would have been presumed abandoned on the effective date of this article had this article been in effect on the first day of July, one thousand nine hundred fifty-two.

(h) The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that the person has failed to report property that should have been reported pursuant to this section.

(i) Every person filing a report shall deliver or pay to the state treasurer all abandoned property specified in the report, at the time of the report.

If an examination of the records of a person results in disclosure of property reportable and deliverable under this section, the treasurer may assess the cost of the examination against the holder at a rate established by administrative regulation promulgated pursuant to chapter twenty-nine-a of this code, but in no case may the charges exceed the value of the property found to be reportable and deliverable.
CHAPTER 165
(H. B. 2626—By Delegates L. White, Manuel, Pethtel, Gallagher, Kessel, Pino and Tribett)

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

AN ACT to amend and reenact section three, article one, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article six-a of said chapter, all relating to unemployment compensation coverage and benefits.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 21A.
UNEMPLOYMENT COMPENSATION.

Article
1. Bureau of Employment Programs.
6A. Extended Benefits Program.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.


1 As used in this chapter, unless the context clearly requires otherwise:

3 “Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

6 “Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with the thirtieth day of June of any calendar year.

10 “Average annual payroll” means the average of the last three annual payrolls of an employer.
“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

“Benefit year” with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year; however, if a claim is effective on the first day of a quarter, the benefit year will be fifty-three weeks, in order to prevent an overlapping of the base period wages. An initial claim for benefits filed in accordance with the provisions of this chapter shall be considered to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

“Benefits” means the money payable to an individual with respect to his unemployment.

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, the thirty-first day of December, or the equivalent thereof as the commissioner may by regulation prescribe.

“Commissioner” means the bureau of employment programs' commissioner.

“Computation date” means the thirtieth day of June
the year immediately preceding the first day of January
on which an employer's contribution rate becomes
effective.

"Employing unit" means an individual, or type of
organization, including any partnership, association,
trust, estate, joint-stock company, insurance company,
corporation (domestic or foreign), state or political
subdivision thereof, or their instrumentalities, as
provided in paragraph (b), subdivision (9) of the
definition of "employment" in this section, institution of
higher education, or the receiver, trustee in bankruptcy,
trustee or successor thereof, or the legal representative
of a deceased person, which has on the first day of
January, one thousand nine hundred thirty-five, or
subsequent thereto, had in its employ one or more
individuals performing service within this state.

"Employer" means:

(1) Until the first day of January, one thousand nine
hundred seventy-two, any employing unit which for
some portion of a day, not necessarily simultaneously, in
each of twenty different calendar weeks, which weeks
need not be consecutive, within either the current
calendar year, or the preceding calendar year, has had
in employment four or more individuals irrespective of
whether the same individuals were or were not em-
ployed on each of such days;

(2) Any employing unit which is or becomes a liable
employer under any federal unemployment tax act;

(3) Any employing unit which has acquired or
acquires the organization, trade or business, or substan-
tially all the assets thereof, of an employing unit which
at the time of such acquisition was an employer subject
to this chapter;

(4) Any employing unit which, after the thirty-first
day of December, one thousand nine hundred sixty-
three, and until the first day of January, one thousand
nine hundred seventy-two, in any one calendar quarter,
in any calendar year, has in employment four or more
individuals and has paid wages for employment in the
(5) Any employing unit which, after the thirty-first day of December, one thousand nine hundred sixty-three, and until the first day of January, one thousand nine hundred seventy-two, in any three-week period, in any calendar year, has in employment ten or more individuals;

(6) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

(7) Any employing unit which, after the thirty-first day of December, one thousand nine hundred seventy-one, (i) in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more, or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each such day) except as provided in subdivisions (11) and (12) hereof;

(8) Any employing unit for which service in employment, as defined in subdivision (9) of the definition of "employment" in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment, as defined in subdivision (10) of the definition of "employment" in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment, as defined in paragraphs (b) and (c) of subdivision (9) of the definition of "employment" in this section, is performed after the thirty-first day of December, one
thousand nine hundred seventy-seven;

(11) Any employing unit for which agricultural labor, as defined in subdivision (12) of the definition of "employment" in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-seven; or

(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after the thirty-first day of December, one thousand nine hundred seventy-seven.

"Employment", subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to the first day of January, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after the thirty-first day of December, one thousand nine hundred seventy-one, by an employee, as defined in section 3306 (i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to the first day of January, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after the thirty-first day of December, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual’s entire service, performed within or both within and without this state if: (a) The service is localized in this state, or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is
directed or controlled, is in this state; or (ii) the base of
operations or place from which such service is directed
or controlled is not in any state in which some part of
the service is performed but the individual's residence
is in this state;

(5) Service not covered under paragraph (4) of this
subdivision and performed entirely without this state
with respect to no part of which contributions are
required and paid under an unemployment compensa-
tion law of any other state or of the federal government,
is employment subject to this chapter if the individual
performing such services is a resident of this state and
the commissioner approves the election of the employing
unit for whom such services are performed that the
entire service of such individual is employment subject
to this chapter;

(6) Service is localized within a state, if: (a) The
service is performed entirely within such state; or (b) the
service is performed both within and without such state,
but the service performed without such state is inci-
dental to the individual's service within this state, as, for
example, is temporary or transitory in nature or consists
of isolated transactions;

(7) Services performed by an individual for wages are
employment subject to this chapter unless and until it
is shown to the satisfaction of the commissioner that: (a)
Such individual has been and will continue to be free
from control or direction over the performance of such
services, both under his contract of service and in fact;
and (b) such service is either outside the usual course
of the business for which such service is performed or
that such service is performed outside of all the places
of business of the enterprise for which such service is
performed; and (c) such individual is customarily
engaged in an independently established trade, occupa-
tion, profession or business;

(8) All service performed by an officer or member of
the crew of an American vessel (as defined in section
three hundred five of an act of Congress entitled Social
Security Act Amendment of 1946, approved the tenth
day of August, one thousand nine hundred forty-six), on
or in connection with such vessel, provided that the
operating office, from which the operations of such
vessel operating on navigable waters within and without
the United States is ordinarily and regularly supervised,
managed, directed and controlled, is within this state;

(9) (a) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-one, by
an individual in the employ of this state or any of its
instrumentalities (or in the employ of this state and one
or more other states or their instrumentalities) for a
hospital or institution of higher education located in this
state: Provided, That such service is excluded from
“employment” as defined in the Federal Unemployment
Tax Act solely by reason of section 3306 (c) (7) of that
act and is not excluded from “employment” under
subdivision (11) of the exclusion from employment in
this section;

(b) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-seven, in
the employ of this state or any of its instrumentalities
or political subdivisions thereof or any of its instrumen-
talities or any instrumentality of more than one of the
foregoing or any instrumentality of any foregoing and
one or more other states or political subdivisions:
Provided, That such service is excluded from “employ-
ment” as defined in the Federal Unemployment Tax Act
by section 3306 (c) (7) of that act and is not excluded
from “employment” under subdivision (15) of the
exclusion from employment in this section; and

(c) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-seven, in
the employ of a nonprofit educational institution which
is not an institution of higher education;

(10) Service performed after the thirty-first day of
December, one thousand nine hundred seventy-one, by
an individual in the employ of a religious, charitable,
educational or other organization but only if the
following conditions are met:

(a) The service is excluded from “employment” as
defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after the thirty-first day of December, one thousand nine hundred seventy-one (except in Canada and in the case of Virgin Islands after the thirty-first day of December, one thousand nine hundred seventy-one, and before the first day of January, the year following the year in which the secretary of labor approves for the first time an unemployment insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is considered “employment” under the provisions of subdivision (4), (5) or (6) of this definition of “employment” or the parallel provisions of another state’s law) if:

(a) The employer’s principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.
An “American employer”, for purposes of this subdivision (11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after the thirty-first day of December, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (b) of this subdivision (12); or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (b) of this subdivision (12), ten or more individuals, regardless of whether they were employed at the same moment of time;

(b) Such service is not performed in agricultural labor if performed before the first day of January, one thousand nine hundred ninety-five, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader: (i) If such crew leader holds a valid certificate of registration under the Migrant and
Seasonal Agricultural Worker Protection Act; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12): (i) Such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person; and

(e) For the purposes of this subdivision (12), the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and (iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(13) The term "employment" includes domestic service after the thirty-first day of December, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after the thirty-first day of December, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.
Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period are employment.

The term "employment" does not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until the thirty-first day of December, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment", until the thirty-first day of December, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the secretary of labor under section 1603 (c) of the federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided
in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after the thirtieth day of June, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of “employment” in this section. For purposes of this subdivision (5), the term “agricultural labor” includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in
section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(6) Domestic service in a private home except as provided in subdivision (13) of the definition of "employment" in this section;

(7) Service performed by an individual in the employ of his son, daughter or spouse;

(8) Service performed by a child under the age of
eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed: (i) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to the first day of January, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to the first day of January, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison
or correctional institution, and after the thirty-first day
of December, one thousand nine hundred seventy-seven,
by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school,
college or university, if such service is performed: (i) By
a student who is enrolled and is regularly attending
classes at such school, college or university, or (ii) by the
spouse of such a student, if such spouse is advised, at
the time such spouse commences to perform such
service, that: (I) The employment of such spouse to
perform such service is provided under a program to
provide financial assistance to such student by such
school, college or university; and (II) such employment
will not be covered by any program of unemployment
insurance;

(13) Service performed by an individual who is
enrolled at a nonprofit or public educational institution
which normally maintains a regular faculty and
curriculum and normally has a regularly organized
body of students in attendance at the place where its
educational activities are carried on as a student in a
full-time program, taken for credit at such institution,
which combines academic instruction with work exper-
ience, if such service is an integral part of such
program, and such institution has so certified to the
employer, except that this subdivision shall not apply to
service performed in a program established for or on
behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if
such service is performed by a patient of the hospital,
as defined in this section; and

(15) Service in the employ of a governmental entity
referred to in subdivision (9) of the definition of
“employment” in this section if such service is per-
fomed by an individual in the exercise of duties (i) as
an elected official; (ii) as a member of a legislative body,
or a member of the judiciary, of a state or political
subdivision; (iii) as a member of the state national guard
or air national guard; (iv) as an employee serving on a
temporary basis in case of fire, storm, snow, earthquake,
flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as: (I) A major nontenured policymaking or advisory position, or (II) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, are in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training
to prepare students for gainful employment in a recognized occupation; and

(4) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual is totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment is partially unemployed in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than twenty dollars each month and which are required to be reported to the employer by the employee, bonuses, and the cash value of all remuneration in any medium
other than cash except for agricultural labor and domestic service: Provided, That the term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after the thirty-first day of December, one thousand nine hundred thirty-nine, and prior to the first day of January, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after the year one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on and after the first day of January, one thousand nine hundred sixty-two, the term "wages" does not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one
thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term “employment” includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars or eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: Provided, however, That if the definition of the term “wages” as contained in section 3306 (b) of the Internal Revenue Code of 1954, as amended, is amended: (a) Effective prior to the first day of January, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand dollars, or (b) effective on or after the first day of January, one thousand nine hundred sixty-two, to include remuneration in excess of three thousand six hundred dollars, or (c) effective on or after the first day of January, one thousand nine hundred seventy-two, to include remun-
eration in excess of four thousand two hundred dollars; or (d) effective on or after the first day of January, one thousand nine hundred seventy-eight, to include remuneration in excess of six thousand dollars; or (e) effective on or after the first day of January, one thousand nine hundred eighty, to include remuneration in excess of eight thousand dollars, paid to an individual by an employer under the Federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this article or his predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after the thirty-first day of December, one thousand nine hundred fifty-two (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), to, or on behalf of, an individual in its employ or any of his dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection
with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after the thirty-first day of December, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary: (A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403 (a) of the Federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer after the thirty-first day of December, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after the thirty-first day of December, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans
received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, That the term totally or partially unemployed shall not be interpreted to include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B) employees who are on vacation by reason of the employer's request provided they are so informed at least ninety days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with the regulations prescribed by the commissioner.

"Weekly benefit rate" means the maximum amount of benefit an eligible individual will receive for one week of total unemployment.

"Year" means a calendar year or the equivalent thereof, as determined by the commissioner.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.


As used in this article, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which
there is a state "on" indicator; and

(B) Ends with either of the following weeks, whichever occurs later:

(i) The third week after the first week for which there is a state "off" indicator; or

(ii) The thirteenth consecutive week of such period.

Notwithstanding the foregoing provisions of this section, no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state, and no extended benefit period may become effective in this state prior to the sixty-first day following the date of enactment of the Federal-State Extended Unemployment Compensation Act of 1970, and, within the period beginning on such sixty-first day and ending on December thirty-one, one thousand nine hundred seventy-one, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and state "off" indicator, respectively.

(2) There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this article:

(A) Equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) Equaled or exceeded four percent.

(C) The determination of whether there has been a state "on" indicator beginning any extended benefit period shall be made hereunder as if subsection (2) did not contain paragraph (A) thereof, but only if the commissioner determines that the rate of insured unemployment (not seasonally adjusted) equals or
43 exceeds five percent.

44 (3) After the twenty-fifth day of September, one
45 thousand nine hundred eighty-two, there is a “state ‘on’
46 indicator” for this state for a week if the commissioner
47 determines, in accordance with the regulations of the
48 United States secretary of labor, that for the period
49 consisting of such week and the immediately preceding
50 twelve weeks, the rate of insured unemployment (not
51 seasonally adjusted) under this article:

52 (A) Equaled or exceeded one hundred twenty percent
53 of the average of such rates for the corresponding
54 thirteen-week period ending in each of the preceding
55 two calendar years, and

56 (B) Equaled or exceeded five percent.

57 (C) An extended benefit period shall be made here-
58 under as if subsection (3) did not contain paragraph (A)
59 thereof, but only if the commissioner determines that
60 the rate of insured unemployment (not seasonally
61 adjusted) equals or exceeds six percent.

62 (4) There is a state “off” indicator for a week if, for
63 the period consisting of such week and the immediately
64 preceding twelve weeks, either subsection (2) or (3) were
65 not satisfied.

66 (5) “Rate of insured unemployment,” for purposes of
67 subdivisions (2) and (3) of this section, means the
68 percentage derived by dividing:

69 (A) The average weekly number of individuals filing
70 claims for regular compensation in this state for weeks
71 of unemployment with respect to the most recent
72 thirteen-consecutive-week period, as determined by the
73 commissioner on the basis of his reports to the United
74 States secretary of labor, by

75 (B) The average monthly employment covered under
76 this chapter for the first four of the most recent six
77 completed calendar quarters ending before the end of
78 such thirteen-week period.

79 (6) “Regular benefits” means benefits payable to an
80 individual under this chapter or under any other state
law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) other than extended benefits.

(7) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., chapter 85) payable to an individual under the provisions of this article for weeks of unemployment in his eligibility period.

(8) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) Has received, prior to such week, all of the regular benefits which were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., chapter 85) in his current benefit year that includes such week: Provided, That for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits which were available to him although (i) as a result of a pending appeal with respect to wages and/or employment which were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits, or (ii) he may be entitled to regular benefits with respect to future weeks of unemployment, but such benefits are not payable with respect to such week of unemployment by reason of the provisions of section one-a, article six of this chapter; or

(B) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year which would include such week; and

(C) Has no right to unemployment benefits or allow-
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ances, as the case may be, under the Railroad Unem-
ployment Insurance Act, the Trade Expansion Act of
1962, the Automotive Products Trade Act of 1965 and
such other federal laws as are specified in regulations
issued by the United States secretary of labor; and has
not received and is not seeking unemployment benefits
under the unemployment compensation law of the
Virgin Islands or of Canada; but if he is seeking such
benefits and the appropriate agency finally determines
that he is not entitled to benefits under such law he is
considered an exhaustee.

(10) "State law" means the unemployment insurance
law of any state, approved by the United States
secretary of labor under section 3304 of the Internal
Revenue Code of 1954.

(11) No individual shall be entitled to extended
benefits during a period of unemployment if he was
disqualified under the provisions of subdivision (1),(2) or
(3) of section three, article six of this chapter, which
disqualification shall not be terminated until such
individual has returned to covered employment and has
been employed in covered employment for at least thirty
working days.

(12) (A) Notwithstanding any other provisions of this
section, an individual shall be ineligible for payment of
extended benefits for any week of unemployment in his
eligibility period if the commissioner finds that during
such period:

(i) He failed to accept any offer of suitable work or
failed to apply for any suitable work (as defined under
subdivision (12) (C) of this section), to which he was
referred by the commissioner; or

(ii) He failed to actively engage in seeking work as
prescribed under subdivision (12) (E) of this section.

(B) Any individual who has been found ineligible for
extended benefits by reason of the provisions in
subdivision (12) (A) of this section shall also be denied
benefits beginning with the first day of the week
following the week in which such failure occurred and
until he has been employed in each of four subsequent 
weeks (whether or not consecutive) and has earned 
remuneration equal to not less than four times the 
extended weekly benefit amount;

(C) For purposes of this subdivision (12) (A) (i) of this 
section, the term "suitable work" means, with respect to 
any individual, any work which is within such individ-
ual's capabilities: Provided, That the gross average 
weekly remuneration payable for the work must exceed 
the sum of:

(i) The individual's average weekly benefit amount (as 
determined under subdivision (12) (D) of this section) 
plus;

(ii) The amount, if any, of supplemental unemploy-
ment benefits (as defined in section 501 (c) (17) (D) of 
the Internal Revenue Code of 1954) payable to such 
individual for such week; and further,

(iii) Pays wages equal to the higher of:

(I) The minimum wages provided by section (6) (a) (1) 
of the Fair Labor Standards Act of 1938, without regard 
to any exemption; or

(II) The state or local minimum wage;

(iv) Provided that no individual shall be denied 
extended benefits for failure to accept an offer or 
referral to any job which meets the definition of 
suitability as described above if:

(I) The position was not offered to such individual in 
writing and was not listed with the employment service; 
or

(II) Such failure could not result in a denial of benefits 
under the definition of suitable work for regular benefit 
claimants in section five, article six of this chapter, to 
the extent that the criteria of suitability in that section 
are not inconsistent with the provisions of this subdivi-
sion (12) (C) of this section; or

(III) The individual furnishes satisfactory evidence to 
the commissioner that his or her prospects for obtaining
work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section five, article six of this chapter, without regard to the definition specified by subdivision (12) (C) of this section.

(D) Notwithstanding the provisions of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under subdivision (12) (C) (iii) (I) of this section.

(E) For the purposes of subdivision (12) (A) (ii) of this section an individual shall be treated as actively engaged in seeking work during any week if:

(i) The individual has engaged in a systematic and sustained effort to obtain work during such week, and

(ii) The individual furnishes tangible evidence that he has engaged in such effort during such week.

(F) The employment service shall refer any claimant entitled to extended benefits under this article to any suitable work which meets the criteria prescribed in subdivision (12) (C) of this section.

(G) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period if such individual has been disqualified for regular benefits under this chapter because he or she voluntarily left work, was discharged for misconduct or refused an offer of suitable work unless the disqualification imposed for such reasons has been terminated in accordance with specific conditions established under this subdivision requiring the individual to perform service for remuneration subsequent to the date of such disqualification.

(13) Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of
extended benefits that such individual would, but for
this section, be entitled to receive in that extended
benefit period, with respect to weeks of unemployment
beginning after the end of the benefit year, shall be
reduced (but not below zero) by the product of the
number of weeks for which the individual received any
amounts as trade readjustment allowances within that
benefit year, multiplied by the individual’s weekly
benefit amount for extended benefits.

(14) An unemployed individual shall be eligible to
receive benefits with respect to any week only if it has
been found that he has been paid wages by an employer
who was subject to the provisions of this chapter during
the base period of his current benefit year in an amount
at least equal to forty times his benefit rate for total
unemployment.

(15) The provisions of subdivisions (11) and (12) of this
section shall not apply at any time should such provi­sions be temporarily or permanently suspended by
federal law. If these provisions are suspended by federal
law, the provisions of state law which apply to claims
for and the payment of regular benefits shall apply to
claims for and the payment of extended benefits.

CHAPTER 166

(Com. Sub. for H. B. 2494—By Delegate Pethtel)

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

AN ACT to amend and reenact sections two hundred one and
two hundred seven, article one, chapter forty-six of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact
articles three and four of said chapter, all relating
generally to negotiable instruments; providing defini­tions; excepting accord and satisfaction from effect of
reservation of rights; providing for application of article
and rules for resolving inconsistent provisions of law;
providing rules for construing instruments; providing
that instruments are not payable with interest unless provision for interest is stated in the instrument; providing rules for determining when a postdated instrument is payable; providing contribution rules for liable multiple parties to an instrument; providing statute of limitations; notice of right to defend action; negotiation, transfer and involvement of instruments; reacquisition of an instrument; persons entitled to enforce instrument; holders in due course; when instrument is transferred for value or consideration; defenses to the obligation of a party to pay an instrument; rules for notices; claims of property or possessory right in an instrument; enforcement of lost, destroyed, or stolen instruments; effect of instruments on obligations; rules for determining when a person is obligated on an instrument; rules for determining when signature on an instrument is given effect; acceptance of instruments; obligations of parties issuing, accepting, drawing, or indorsing certain instruments; establishing burden of proof for signatures on an instrument; providing for certain warranties with respect to an instrument; damages upon an obligated bank's refusal to pay certain instruments; instruments signed for accommodation; conversion of instrument; presentment; dishonor; notice of dishonor; discharge and effect of discharge; payment; tender of payment; bank deposits and collections; electronic presentment; agreements for electronic presentment; permitting presentment by transmission of an image of an item or encoded information rather than the item itself; statute of limitations; depository bank holder of unindorsed item; transfer, presentment, and encoding and retention warranties; time of determining insufficiency of account; permitting statements of bank accounts sufficient to permit customer to reasonably identify items paid when bank retains items for seven years.

Be it enacted by the Legislature of West Virginia:

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

Article
4. Bank Deposits and Collections.

ARTICLE 1. GENERAL PROVISIONS.

§46-1-201. General definitions.
§46-1-207. Performance or acceptance under reservation of rights.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

9 (2) "Aggrieved party" means a party entitled to resort to a remedy.

11 (3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract.")

19 (4) "Bank" means any person engaged in the business of banking.

21 (5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

24 (6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a
document serving for air transportation as a bill of lading for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous" means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this chapter and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of
creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this chapter to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are
deliverable to the bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the Federal Bankruptcy Law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when:

(a) He has actual knowledge of it; or

(b) He has received a notice or notification of it; or

(c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to his attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other
place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this chapter.

(30) "Person" includes an individual or an organization (see section 1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.
(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper, which is subject to article nine. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article nine. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the
circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized signature" means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209), a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.
§46-1-207. Performance or acceptance under reservation of rights.

(a) A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest” or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-101. Short title.
§46-3-102. Subject matter.
§46-3-103. Definitions.
§46-3-104. Negotiable instrument.
§46-3-105. Issue of instrument.
§46-3-106. Unconditional promise or order.
§46-3-107. Instrument payable in foreign money.
§46-3-108. Payable on demand or at definite time.
§46-3-109. Payable to bearer or to order.
§46-3-110. Identification of person to whom instrument is payable.
§46-3-111. Place of payment.
§46-3-112. Interest.
§46-3-113. Date of instrument.
§46-3-114. Contradictory terms of instrument.
§46-3-115. Incomplete instrument.
§46-3-116. Joint and several liability; contribution.
§46-3-117. Other agreements affecting instrument.
§46-3-118. Statute of limitations.
§46-3-119. Notice of right to defend action.
§46-3-201. Negotiation.
§46-3-202. Negotiation subject to rescission.
§46-3-203. Transfer of instrument; rights acquired by transfer.
§46-3-204. Indorsement.
§46-3-205. Special indorsement; blank indorsement; anomalous indorsement.
§46-3-206. Restrictive indorsement.
§46-3-207. Reacquisition.
§46-3-301. Person entitled to enforce instrument.
§46-3-302. Holder in due course.
§46-3-303. Value and consideration.
§46-3-304. Overdue instrument.
§46-3-305. Defenses and claims in recoupment.
§46-3-306. Claims to an instrument.
§46-3-308. Proof of signatures and status as holder in due course.
§46-3-309. Enforcement of lost, destroyed, or stolen instrument.
§46-3-310. Effect of instrument on obligation for which taken.
§46-3-311. Accord and satisfaction by use of instrument.
§46-3-312. Lost, destroyed, or stolen cashier's check, teller's check or certified check.
§46-3-401. Signature.
§46-3-402. Signature by representative.
§46-3-403. Unauthorized signature.
§46-3-404. Impostors: fictitious payees.
§46-3-405. Employer's responsibility for fraudulent indorsement by employee.
§46-3-406. Negligence contributing to forged signature or alteration of instrument.
§46-3-407. Alteration.
§46-3-408. Drawee not liable on unaccepted draft.
§46-3-409. Acceptance of draft: certified check.
§46-3-410. Acceptance varying draft.
§46-3-411. Refusal to pay cashier's checks, teller's checks and certified checks.
§46-3-412. Obligation of issuer of note or cashier's check.
§46-3-413. Obligation of acceptor.
§46-3-414. Obligation of drawer.
§46-3-415. Obligation of indorser.
§46-3-416. Transfer warranties.
§46-3-417. Presentment warranties.
§46-3-418. Payment of acceptance by mistake.
§46-3-419. Instruments signed for accommodation.
§46-3-420. Conversion of instrument.
§46-3-501. Presentment.
§46-3-502. Dishonor.
§46-3-503. Notice of dishonor.
§46-3-504. Excused presentment and notice of dishonor.
§46-3-505. Evidence of dishonor.
§46-3-601. Discharge and effect of discharge.
§46-3-602. Payment.
§46-3-603. Tender of payment.
§46-3-604. Discharge by cancellation or renunciation.
§46-3-605. Discharge of indorsers and accommodation parties.

PART 1. GENERAL PROVISIONS AND DEFINITIONS.

§46-3-101. Short title.

1 This article shall be known and may be cited as
2 Uniform Commercial Code — Negotiable Instruments.

§46-3-102. Subject matter.

1 (a) This article applies to negotiable instruments. It
does not apply to money, to payment orders governed by
article four-a, or to securities governed by article eight.
(b) If there is conflict between this article and article four or nine, articles four and nine govern.

(c) Regulations of the board of governors of the federal reserve system and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

§46-3-103. Definitions.

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary
unreasonably from general banking usage not disapproved by this article or article four.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance" Section 3-409.
"Accommodated party" Section 3-419.
"Accommodation party" Section 3-419.
"Alteration" Section 3-407.
"Anomalous indorsement" Section 3-205.
"Blank indorsement" Section 3-205.
"Cashier's check" Section 3-104.
"Certificate of deposit" Section 3-104.
"Certified check" Section 3-409.
"Check" Section 3-104.
"Consideration" Section 3-303.
"Draft" Section 3-104.
"Holder in due course" Section 3-302.
"Incomplete instrument" Section 3-115.
"Indorsement" Section 3-204.
"Indorser" Section 3-204.
61. "Instrument" Section 3-104.
63. "Issuer" Section 3-105.
64. "Negotiable instrument" Section 3-104.
65. "Negotiation" Section 3-201.
66. "Note" Section 3-104.
67. "Payable at a definite time" Section 3-108.
68. "Payable on demand" Section 3-108.
69. "Payable to bearer" Section 3-109.
70. "Payable to order" Section 3-109.
71. "Payment" Section 3-602.
72. "Person entitled to enforce" Section 3-301.
73. "Presentment" Section 3-501.
74. "Reacquisition" Section 3-207.
75. "Special indorsement" Section 3-205.
76. "Teller's check" Section 3-104.
77. "Transfer of instrument" Section 3-203.
78. "Traveler's check" Section 3-104.
79. "Value" Section 3-303.
80. (c) The following definitions in other articles apply to this article:
81. "Bank" Section 4-105.
82. "Banking day" Section 4-104.
83. "Clearing house" Section 4-104.
84. "Collecting bank" Section 4-105.
85. "Depositary bank" Section 4-105.
86. "Documentary draft" Section 4-104.
87. "Intermediary bank" Section 4-105.
88. "Item" Section 4-104.
§46-3-104. Negotiable instrument.

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person
entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§46-3-105. Issue of instrument.

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.
§46-3-106. Unconditional promise or order.

(a) Except as provided in this section, a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment or acceleration or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purpose of section 3-104(a).

§46-3-107. Instrument payable in foreign money.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§46-3-108. Payable on demand or at definite time.

(a) A promise or order is “payable on demand” if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder or (ii) does not state any time of payment.

(b) A promise or order is “payable at a definite time” if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i)
10 prepayment, (ii) acceleration, (iii) extension at the option
11 of the holder or (iv) extension to a further definite time
12 at the option of the maker or acceptor or automatically
13 upon or after a specified act or event.
14
15 (c) If an instrument, payable at a fixed date, is also
16 payable upon demand made before the fixed date, the
17 instrument is payable on demand until the fixed date
18 and, if demand for payment is not made before that
19 date, becomes payable at a definite time on the fixed
20 date.

§46-3-109. Payable to bearer or to order.

1 (a) A promise or order is payable to bearer if it:
2 (1) States that it is payable to bearer or to the order
3 of bearer or otherwise indicates that the person in
4 possession of the promise or order is entitled to payment;
5 (2) Does not state a payee; or
6 (3) States that it is payable to or to the order of cash
7 or otherwise indicates that it is not payable to an
8 identified person.
9
10 (b) A promise or order that is not payable to bearer
11 is payable to order if it is payable (i) to the order of an
12 identified person or (ii) to an identified person or order.
13 A promise or order that is payable to order is payable
14 to the identified person.
15
16 (c) An instrument payable to bearer may become
17 payable to an identified person if it is specially indorsed
18 pursuant to section 3-205(a). An instrument payable to
19 an identified person may become payable to bearer if
20 it is indorsed in blank pursuant to section 3-205(b).

§46-3-110. Identification of person to whom instrument is
payable.

1 (a) The person to whom an instrument is initially
2 payable is determined by the intent of the person,
3 whether or not authorized, signing as, or in the name
4 or behalf of, the issuer of the instrument. The instru-
5 ment is payable to the person intended by the signer
6 even if that person is identified in the instrument by a
name or other identification that is not that of the
intended person. If more than one person signs in the
name or behalf of the issuer of an instrument and all
the signers do not intend the same person as payee, the
instrument is payable to any person intended by one or
more of the signers.

(b) If the signature of the issuer of an instrument is
made by automated means, such as a check-writing
machine, the payee of the instrument is determined by
the intent of the person who supplied the name or
identification of the payee, whether or not authorized to
do so.

(c) A person to whom an instrument is payable may
be identified in any way, including by name, identifying
number, office, or account number. For the purpose of
determining the holder of an instrument, the following
rules apply:

(1) If an instrument is payable to an account and the
account is identified only by number, the instrument is
payable to the person to whom the account is payable.
If an instrument is payable to an account identified by
number and by the name of a person, the instrument
is payable to the named person, whether or not that
person is the owner of the account identified by number.

(2) If an instrument is payable to (i) a trust, an estate,
or a person described as trustee or representative of a
trust or estate, the instrument is payable to the trustee,
the representative, or a successor of either, whether or
not the beneficiary or estate is also named, (ii) a person
described as agent or similar representative of a named
or identified person, the instrument is payable to the
represented person, the representative, or a successor of
the representative, (iii) a fund or organization that is not
a legal entity, the instrument is payable to a representa-
tive of the members of the fund or organization or (iv)
an office or to a person described as holding an office,
the instrument is payable to the named person, the
incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons
alternatively, it is payable to any of them and may be
negotiated, discharged, or enforced by any or all of them
in possession of the instrument. If an instrument is
payable to two or more persons not alternatively, it is
payable to all of them and may be negotiated, dis-
charged, or enforced only by all of them. If an instru-
ment payable to two or more persons is ambiguous as
to whether it is payable to the persons alternatively, the
instrument is payable to the persons alternatively.

§46-3-111. Place of payment.

1 Except as otherwise provided for items in article four,
an instrument is payable at the place of payment stated
in the instrument. If no place of payment is stated, an
instrument is payable at the address of the drawee or
maker stated in the instrument. If no address is stated,
the place of payment is the place of business of the
drawee or maker. If a drawee or maker has more than
one place of business, the place of payment is any place
of business of the drawee or maker chosen by the person
entitled to enforce the instrument. If the drawee or
maker has no place of business, the place of payment
is the residence of the drawee or maker.

§46-3-112. Interest.

1 (a) Unless otherwise provided in the instrument (i) an
instrument is not payable with interest and (ii) interest
on an interest-bearing instrument is payable from the
date of the instrument.

(b) Interest may be stated in an instrument as a fixed
or variable amount of money or it may be expressed as
a fixed or variable rate or rates. The amount or rate of
interest may be stated or described in the instrument
in any manner and may require reference to informa-
tion not contained in the instrument. If an instrument
provides for interest, but the amount of interest payable
cannot be ascertained from the description, interest is
payable at the judgment rate in effect at the place of
payment of the instrument and at the time interest first
accrues.

§46-3-113. Date of instrument.

1 (a) An instrument may be antedated or postdated.
The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in section 4-401 (c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§46-3-114. Contradictory terms of instrument.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, hand written terms prevail over both, and words prevail over numbers.

§46-3-115. Incomplete instrument.

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under section 3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under section 3-104, but, after completion, the requirements of section 3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under section 3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

§46-3-116. Joint and several liability; contribution.

(a) Except as otherwise provided in the instrument,
two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in section 3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

§46-3-117. Other agreements affecting instrument.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by agreement under this section, the agreement is a defense to the obligation.

§46-3-118. Statute of limitations.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within
six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller’s check, cashier’s check, or traveler’s check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three years after the cause of action accrues.

§46-3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this article
or article four, the defendant may give the third person
written notice of the litigation, and the person notified
may then give similar notice to any other person who
is answerable over. If the notice states (i) that the person
notified may come in and defend and (ii) that failure to
do so will bind the person notified in an action later
brought by the person giving the notice as to any
determination of fact common to the two litigations, the
person notified is so bound unless after seasonable
receipt of the notice the person notified does come in and
defend.

PART 2. NEGOTIATION TRANSFER, AND ENDORSEMENT.

§46-3-201. Negotiation.

(a) "Negotiation" means a transfer of possession,
whether voluntary or involuntary, or an instrument by
a person other than the issuer to a person who thereby
becomes its holder.

(b) Except for negotiation by a remitter, if an
instrument is payable to an identified person, negotia-
tion requires transfer of possession of the instrument
and its indorsement by the holder. If an instrument is
payable to bearer, it may be negotiated by transfer of
possession alone.

§46-3-202. Negotiation subject to rescission.

(a) Negotiation is effective even if obtained (i) from
an infant, a corporation exceeding its powers, or a
person without capacity, (ii) by fraud, duress, or mistake
or (iii) in breach of duty or as part of an illegal
transaction.

(b) To the extent permitted by other law, negotiation
may be rescinded or may be subject to other remedies,
but those remedies may not be asserted against a
subsequent holder in due course or a person paying the
instrument in good faith and without knowledge of facts
that are a basis for rescission or other remedy.

§46-3-203. Transfer of instrument; rights acquired by
transfer.

(a) An instrument is transferred when it is delivered
by a person other than its issuer for the purpose of
giving to the person receiving delivery the right to
enforce the instrument.

(b) Transfer of an instrument, whether or not the
transfer is a negotiation, vests in the transferee any
right of the transferor to enforce the instrument,
including any right as a holder in due course, but the
transferee cannot acquire rights of a holder in due
course by a transfer, directly or indirectly, from a
holder in due course if the transferee engaged in fraud
or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is
transferred for value and the transferee does not become
a holder because of lack of indorsement by the trans-
feror, the transferee has a specifically enforceable right
to the unqualified indorsement of the transferor, but
negotiation of the instrument does not occur until the
indorsement is made.

(d) If a transferor purports to transfer less than the
entire instrument, negotiation of the instrument does not
occur. The transferee obtains no rights under this article
and has only the rights of a partial assignee.

§46-3-204. Indorsement.

(a) “Indorsement” means a signature, other than that
of a signer as maker, drawer, or acceptor, that alone or
accompanied by other words is made on an instrument
for the purpose of (i) negotiating the instrument, (ii)
restricting payment of the instrument or (iii) incurring
indorser's liability on the instrument, but regardless of
the intent of the signer, a signature and its accompan-
ying words is an indorsement unless the accompanying
words, terms of the instrument, place of the signature,
or other circumstances unambiguously indicate that the
signature was made for a purpose other than indorse-
ment. For the purpose of determining whether a
signature is made on an instrument, a paper affixed to
the instrument is a part of the instrument.

(b) “Indorser” means a person who makes an
indorsement.
(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§46-3-205. Special indorsement; blank indorsement; anomalous indorsement.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in section 3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§46-3-206. Restrictive indorsement.

(a) An indorsement limiting payment to a particular
person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in section 4-201(b) or (ii) in blank or to a particular bank using the words “for deposit,” “for collection,” or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words
to the effect that payment is to be made to the indorsee
as agent, trustee, or other fiduciary for the benefit of
the indorser or another person, the following rules
apply:

(1) Unless there is notice of breach of fiduciary duty
as provided in section 3-307, a person who purchases the
instrument from the indorsee or takes the instrument
from the indorsee for collection or payment may pay the
proceeds of payment or the value given for the instru-
ment to the indorsee without regard to whether the
indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or
person who pays the instrument is neither given notice
nor otherwise affected by the restriction in the indor-
sement unless the transferee or payor knows that the
fiduciary dealt with the instrument or its proceeds in
breach of fiduciary duty.

(e) The presence on an instrument of an indorsement
to which this section applies does not prevent a
purchaser of the instrument from becoming a holder in
due course of the instrument unless the purchaser is a
converter under subsection (c) or has notice or knowl-
edge of breach of fiduciary duty as stated in subsection
(d).

(f) In an action to enforce the obligation of a party
to pay the instrument, the obligor has a defense if
payment would violate an indorsement to which this
section applies and the payment is not permitted by this
section.

§46-3-207. Reacquisition.

Reacquisition of an instrument occurs if it is trans-
ferred to a former holder, by negotiation or otherwise.
A former holder who reacquires the instrument may
cancel indorsements made after the reacquirer first
became a holder of the instrument. If the cancellation
causes the instrument to be payable to the reacquirer
or to bearer, the reacquirer may negotiate the instru-
ment. An indorser whose indorsement is canceled is
discharged, and the discharge is effective against any
subsequent holder.
PART 3. ENFORCEMENT OF INSTRUMENTS.

§46-3-301. Person entitled to enforce instrument.

1 “Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§46-3-302. Holder in due course.

1 (a) Subject to subsection (c) and section one hundred six-d, “holder in due course” means the holder of an instrument if:

2 (1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

3 (2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in section 3-306 and (vi) without notice that any party has a defense or claim in recoupment described in section 3-305(a).

4 (b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

5 (c) Except to the extent a transferor or predecessor
27 in interest has rights as a holder in due course, a person
does not acquire rights of a holder in due course of an
instrument taken (i) by legal process or by purchase in
an execution, bankruptcy, or creditor's sale or similar
proceeding, (ii) by purchase as part of a bulk transaction
not in ordinary course of business of the transferor or
(iii) as the successor in interest to an estate or other
organization.

35 (d) If, under section 3-303(a)(1), the promise of
performance that is the consideration for an instrument
has been partially performed, the holder may assert
rights as a holder in due course of the instrument only
to the fraction of the amount payable under the
instrument equal to the value of the partial performance
divided by the value of the promised performance.

39 (e) If (i) the person entitled to enforce an instrument
has only a security interest in the instrument and (ii)
the person obliged to pay the instrument has a defense,
claim in recoupment, or claim to the instrument that
may be asserted against the person who granted the
security interest, the person entitled to enforce the
instrument may assert rights as a holder in due course
only to an amount payable under the instrument which,
at the time of enforcement of the instrument, does not
exceed the amount of the unpaid obligation secured.

42 (f) To be effective, notice must be received at a time
and in a manner that gives a reasonable opportunity to
act on it.

45 (g) This section is subject to any law limiting status
as a holder in due course in particular classes of
transactions.

§46-3-303. Value and consideration.

1 (a) An instrument is issued or transferred for value
2 if:

3 (1) The instrument is issued or transferred for a
4 promise of performance, to the extent the promise has
5 been performed;

6 (2) The transferee acquires a security interest or
other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

§46-3-304. Overdue instrument.

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, ninety days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument
remains overdue until the default is cured;

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date;

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date or principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§46-3-305. Defenses and claims in recoupment.

(a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a) (1), but
is not subject to defenses of the obligor stated in subsection (a) (2) or claims in recoupment stated in subsection (a) (3) against a person other than the holder.  

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.  

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy and lack of legal capacity.  

§46-3-306. Claims to an instrument.  
1 A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.  

1 (a) In this section:  
2 (1) “Fiduciary” means an agent, trustee, partner, corporate officer or director or other representative owing a fiduciary duty with respect to an instrument.
(2) “Represented person” means the principal, beneficiary, partnership, corporation or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§46-3-308. Proof of signatures and status as holder in due course.
(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§46-3-309. Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
12 (b) A person seeking enforcement of an instrument
13 under subsection (a) must prove the terms of the
14 instrument and the person's right to enforce the
15 instrument. If that proof is made, section 3-308 applies
16 to the case as if the person seeking enforcement had
17 produced the instrument. The court may not enter
18 judgment in favor of the person seeking enforcement
19 unless it finds that the person required to pay the
20 instrument is adequately protected against loss that
21 might occur by reason of a claim by another person to
22 enforce the instrument. Adequate protection may be
23 provided by any reasonable means.

§46-3-310. Effect of instrument on obligation for which
taken.

1 (a) Unless otherwise agreed, if a certified check,
cashier's check or teller's check is taken for an obliga-
tion, the obligation is discharged to the same extent
discharge would result if an amount of money equal to
the amount of the instrument were taken in payment of
the obligation. Discharge of the obligation does not
affect any liability that the obligor may have as an
indorser of the instrument.

9 (b) Unless otherwise agreed and except as provided
in subsection (a), if a note or an uncertified check is
taken for an obligation, the obligation is suspended to
the same extent the obligation would be discharged if
an amount of money equal to the amount of the
instrument were taken, and the following rules apply:

15 (1) In the case of an uncertified check, suspension of
the obligation continues until dishonor of the check or
until it is paid or certified. Payment or certification of
the check results in discharge of the obligation to the
extent of the amount of the check.

20 (2) In the case of a note, suspension of the obligation
continues until dishonor of the note or until it is paid.
Payment of the note results in discharge of the obliga-
tion to the extent of the payment.

24 (3) Except as provided in paragraph (4), if the check
or note is dishonored and the obligee of the obligation
for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor or (ii) that stated in subsection (b) in any other case.

§46-3-311. Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proved that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant
sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and (ii) the instrument or accompanying communication was sent to a lock box for the receipt of payments of undisputed claims.

(2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (l)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

§46-3-312. Lost, destroyed, or stolen cashier’s check, teller’s check or certified check.

(a) In this section:

(1) “Check” means a cashier’s check, teller’s check or certified check.

(2) “Claimant” means a person who claims the right to receive the amount of a cashier’s check, teller’s check or certified check that was lost, destroyed or stolen.

(3) “Declaration of loss” means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier’s check or teller’s check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure and (iv) the declarer cannot reasonably obtain possession of the check because the
check was destroyed, its whereabouts cannot be deter-
mined or it is in the wrongful possession of an unknown
person or a person that cannot be found or is not
amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's
check or teller's check or the acceptor of a certified
check.

(b) A claimant may assert a claim to the amount of
a check by a communication to the obligated bank
describing the check with reasonable certainty and
requesting payment of the amount of the check, if (i) the
claimant is the drawer or payee of a certified check or
the remitter or payee of a cashier's check or teller's
check, (ii) the communication contains or is accompa-
ied by a declaration of loss of the claimant with respect
to the check, (iii) the communication is received at a
time and in a manner affording the bank a reasonable
time to act on it before the check is paid and (iv) the
claimant provides reasonable identification if requested
by the obligated bank. Delivery of a declaration of loss
is a warranty of the truth of the statements made in the
declaration. If a claim is asserted in compliance with
this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i)
the time the claim is asserted or (ii) the ninetieth day
following the date of the check, in the case of a cashier's
check or teller's check, or the ninetieth day following the
date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no
legal effect and the obligated bank may pay the check
or, in the case of a teller's check, may permit the drawee
to pay the check. Payment to a person entitled to enforce
the check discharges all liability of the obligated bank
with respect to the check.

(3) If the claim becomes enforceable before the check
is presented for payment, the obligated bank is not
obliged to pay the check.

(4) When the claim becomes enforceable, the obli-
gated bank becomes obliged to pay the amount of the
check to the claimant if payment of the check has not
been made to a person entitled to enforce the check.
Subject to section 4-302(a)(1), payment to the claimant
discharges all liability of the obligated bank with
respect to the check.

(c) If the obligated bank pays the amount of a check
to a claimant under subsection (b)(4) and the check is
presented for payment by a person having rights of a
holder in due course, the claimant is obliged to (i) refund
the payment to the obligated bank if the check is paid
or (ii) pay the amount of the check to the person having
rights of a holder in due course if the check is
dishonored.

(d) If a claimant has the right to assert a claim under
subsection (b) and is also a person entitled to enforce a
cashier's check, teller's check or certified check which
is lost, destroyed or stolen, the claimant may assert
rights with respect to the check either under this section
or section 3-309.

PART 4. LIABILITY OF PARTIES.

§46-3-401. Signature.

(a) A person is not liable on an instrument unless (i)
the person signed the instrument or (ii) the person is
represented by an agent or representative who signed
the instrument and the signature is binding on the
represented person under section 3-402.

(b) A signature may be made (i) manually or by
means of a device or machine and (ii) by the use of any
name, including a trade or assumed name, or by a word,
mark, or symbol executed or adopted by a person with
present intention to authenticate a writing.

§46-3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a
representative signs an instrument by signing either the
name of the represented person or the name of the
signer, the represented person is bound by the signature
to the same extent the represented person would be
bound if the signature were on a simple contract. If the
represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§46-3-403. Unauthorized signature.

(a) Unless otherwise provided in this article or article four, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this article.

(b) If the signature of more than one person is
required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article.

§46-3-404. Impostors; fictitious payees.

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (section 3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.
(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§46-3-405. Employer's responsibility for fraudulent indorsement by employee.

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored, transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an
instrument or takes it for value or for collection, if an
employer entrusted an employee with responsibility
with respect to the instrument and the employee or a
person acting in concert with the employee makes a
fraudulent indorsement of the instrument, the indorse-
ment is effective as the indorsement of the person to
whom the instrument is payable if it is made in the
name of that person. If the person paying the instrument
or taking it for value or for collection fails to exercise
ordinary care in paying or taking the instrument and
that failure substantially contributes to loss resulting
from the fraud, the person bearing the loss may recover
from the person failing to exercise ordinary care to the
extent the failure to exercise ordinary care contributed
to the loss.

(c) Under subsection (b), an indorsement is made in
the name of the person to whom an instrument is
payable if (i) it is made in a name substantially similar
to the name of that person or (ii) the instrument,
whether or not indorsed, is deposited in a depositary
bank to an account in a name substantially similar to
the name of that person.

§46-3-406. Negligence contributing to forged signature
or alteration of instrument.

(a) A person whose failure to exercise ordinary care
substantially contributes to an alteration of an instru-
ment or to the making of a forged signature on an
instrument is precluded from asserting the alteration or
the forgery against a person who, in good faith, pays the
instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the
preclusion fails to exercise ordinary care in paying or
taking the instrument and that failure substantially
contributes to loss, the loss is allocated between the
person precluded and the person asserting the preclu-
sion according to the extent to which the failure of each
to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving
failure to exercise ordinary care is on the person
asserting the preclusion. Under subsection (b), the
burden of proving failure to exercise ordinary care is
on the person precluded.

§46-3-407. Alteration.
(a) “Alteration” means (i) an unauthorized change in
an instrument that purports to modify in any respect the
obligation of a party or (ii) an unauthorized addition of
words or numbers or other change to an incomplete
instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration
fraudulently made discharges a party whose obligation
is affected by the alteration unless that party assents or
is precluded from asserting the alteration. No other
alteration discharges a party, and the instrument may
be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently
altered instrument or a person taking it for value, in
good faith and without notice of the alteration, may
enforce rights with respect to the instrument (i)
according to its original terms or (ii) in the case of an
incomplete instrument altered by unauthorized comple-
tion, according to its terms as completed.

§46-3-408. Drawee not liable on unaccepted draft.
A check or other draft does not of itself operate as an
assignment of funds in the hands of the drawee available
for its payment, and the drawee is not liable on the
instrument until the drawee accepts it.

§46-3-409. Acceptance of draft; certified check.
(a) “Acceptance” means the drawee’s signed agree-
ment to pay a draft as presented. It must be written on
the draft and may consist of the drawee’s signature
alone. Acceptance may be made at any time and
becomes effective when notification pursuant to instruc-
tions is given or the accepted draft is delivered for the
purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been
signed by the drawer, is otherwise incomplete, is
overdue or has been dishonored.
(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§46-3-410. Acceptance varying draft.

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at the particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§46-3-411. Refusal to pay cashier's checks, teller's checks and certified checks.

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligation bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsec-
tion (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument or (iv) payment is prohibited by law.

§46-3-412. Obligation of issuer of note or cashier's check.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under section 3-415.

§46-3-413. Obligation of acceptor.

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable “as originally drawn” or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under section 3-414 or 3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of
§46-3-414. Obligation of drawer.

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under section 3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under sections 3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within thirty days after its date, (ii) the drawee suspends payments after expiration of the thirty-day period without paying the check and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.
§46-3-415. Obligation of indorser.

(a) Subject to subsections (b), (c), (d) and (e), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in sections 3-115 and 3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by section 3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depositary bank for collection, within thirty days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

§46-3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim
in recoupment of any party which can be asserted
against the warrantor; and

(5) The warrantor has no knowledge of any insolvency
proceeding commenced with respect to the maker or
acceptor or, in the case of an unaccepted draft, the
drawer.

(b) A person to whom the warranties under subsec-
tion (a) are made and who took the instrument in good
faith may recover from the warrantor as damages for
breach of warranty an amount equal to the loss suffered
as a result of the breach, but not more than the amount
of the instrument plus expenses and loss of interest
incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be
disclaimed with respect to checks. Unless notice of a
claim for breach of warranty is given to the warrantor
within thirty days after the claimant has reason to know
of the breach and the identity of the warrantor, the
liability of the warrantor under subsection (b) is
discharged to the extent of any loss caused by the delay
in giving notice of the claim.

(d) A (cause of action) for breach of warranty under
this section accrues when the claimant has reason to
know of the breach.

§46-3-417. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee
for payment of acceptance and the drawee pays or
accepts the draft, (i) the person obtaining payment or
acceptance, at the time of presentment and (ii) a
previous transferor of the draft, at the time of transfer,
warrant to the drawee making payment or accepting the
draft in good faith that:

(1) The warrantor is, or was, at the time the warran-
tor transferred the draft, a person entitled to enforce the
draft or authorized to obtain payment or acceptance of
the draft on behalf of a person entitled to enforce the
draft;

(2) The draft has not been altered; and
(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest.
resulting from the breach.

(3) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A (cause of action) for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§46-3-418. Payment of acceptance by mistake.

(a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to section 4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by section 3-417 or 4-407.

(d) Notwithstanding section 4-215, if an instrument is
paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§46-3-419. Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on
the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§46-3-420. Conversion of instrument.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by the transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

PART 5. DISHONOR.

§46-3-501. Presentment.
(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to article four, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawers or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than two p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.
§46-3-502. Dishonor.

(a) Dishonor of a note is governed by the following rules:

1. If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

2. If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

3. If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

1. If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under section 4-301 or 4-302, or becomes accountable for the amount of the check under section 4-302.

2. If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

3. If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

4. If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if
presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsections (b) (2), (3) and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under section 3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§46-3-503. Notice of dishonor.

(a) The obligation of an indorser stated in section 3-415(a) and the obligation of a drawer stated in section 3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under section 3-504(b).

(b) Notice of dishonor may be given by any person;
may be given by any commercially reasonable means, including an oral, written or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to section 3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument or (ii) by any other person within thirty days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty days following the day on which dishonor occurs.

§46-3-504. Excused presentment and notice of dishonor.

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control
§46-3-505. Evidence of dishonor.

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) which purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

PART 6. DISCHARGE AND PAYMENT.

§46-3-601. Discharge and effect of discharge.

(a) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not
6 effective against a person acquiring rights of a holder
7 in due course of the instrument without notice of the
8 discharge.

§46-3-602. Payment.

1 (a) Subject to subsection (b), an instrument is paid to
2 the extent payment is made (i) by or on behalf of a party
3 obliged to pay the instrument and (ii) to a person
4 entitled to enforce the instrument. To the extent of the
5 payment, the obligation of the party obliged to pay the
6 instrument is discharged even though payment is made
7 with knowledge of a claim to the instrument under
8 section 3-306 by another person.
9
10 (b) The obligation of a party to pay the instrument
11 is not discharged under subsection (a) if:
12
13 (1) A claim to the instrument under section 3-306 is
14 enforceable against the party receiving payment and (i)
15 payment is made with knowledge by the payor that
16 payment is prohibited by injunction or similar process
17 of a court of competent jurisdiction or (ii) in the case
18 of an instrument other than a cashier's check, teller's
19 check or certified check, the party making payment
20 accepted, from the person having a claim to the
21 instrument, indemnity against loss resulting from
22 refusal to pay the person entitled to enforce the
23 instrument; or
24
25 (2) The person making payment knows that the
26 instrument is a stolen instrument and pays a person it
27 knows is in wrongful possession of the instrument.

§46-3-603. Tender of payment.

1 (a) If tender of payment of an obligation to pay an
2 instrument is made to a person entitled to enforce the
3 instrument, the effect of tender is governed by princi-
4 ples of law applicable to tender of payment under a
5 simple contract.
6
7 (b) If tender of payment of an obligation to pay an
8 instrument is made to a person entitled to enforce the
9 instrument and the tender is refused, there is discharge,
10 to the extent of the amount of the tender, of the
obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged.

If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§46-3-604. Discharged by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature or the addition of words to the instrument indicating discharge or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

§46-3-605. Discharge of indorsers and accommodation parties.

(a) In this section, the term "indorser" includes a drawer having the obligation described in section 3-414(d).

(b) Discharge, under section 3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharge party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of
the due date of the obligation of a party to pay the
instrument, the extension discharges an indorser or
accommodation party having a right of recourse against
the party whose obligation is extended to the extent the
endorser or accommodation party proves that the
extension caused loss to the indorser or accommodation
party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument
agrees, with or without consideration, to a material
modification of the obligation of a party other than an
extension of the due date, the modification discharges
the obligation of an indorser or accommodation party
having a right of recourse against the person whose
obligation is modified to the extent the modification
causes loss to the indorser or accommodation party with
respect to the right of recourse. The loss suffered by the
endorser or accommodation party as a result of the
modification is equal to the amount of the right of
recourse unless the person enforcing the instrument
proves that no loss was caused by the modification or
that the loss caused by the modification was an amount
less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument
is secured by an interest in collateral and a person
entitled to enforce the instrument impairs the value of
the interest in collateral, the obligation of an indorser
or accommodation party having a right of recourse
against the obligor is discharged to the extent of the
impairment. The value of an interest in collateral is
impaired to the extent (i) the value of the interest is
reduced to an amount less than the amount of the right
of recourse of the party asserting discharge or (ii) the
reduction in value of the interest causes an increase in
the amount by which the amount of the right of recourse
exceeds the value of the interest. The burden of proving
impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an
interest in collateral not provided by an accommodation
party and a person entitled to enforce the instrument
impairs the value of the interest in collateral, the
obligation of any party who is jointly and severally liable
with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under article nine or other law, to a debtor or surety or other person secondarily liable or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d) or (e) unless the person entitled to enforce the instrument knows of the accommodation or has notice under section 3-419 (c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge or (ii) the instrument or a separate agreement of the party provides for waiver if discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

§46-4-101. Short title.
§46-4-102. Applicability.
§46-4-103. Variation by agreement; measure of damages; action constituting ordinary care.
§46-4-104. Definitions and index of definitions.
§46-4-105. "Bank"; "depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank."
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§46-4-110. Electronic presentment.
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§46-4-201. Status of collecting banks as agent and provisional status of credits; applicability of article; item indorsed “pay any bank.”
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§46-4-203. Effect of instructions.
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§46-4-205. Depositary bank holder of unindorsed item.
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§46-4-401. When bank may charge customer’s account.
§46-4-402. Bank’s liability to customer for wrongful dishonor; time of determining insufficiency of account.
§46-4-403. Customer’s right to stop payment; burden of proof of loss.
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§46-4-405. Death or incompetence of customer.
§46-4-406. Customer’s duty to discover and report unauthorized signature or alteration.
§46-4-407. Payor bank’s right to subrogation or improper payment.
§46-4-501. Handling of documentary drafts: duty to send for presentment and to notify customer of dishonor.
§46-4-502. Presentment of “on arrival” drafts.
§46-4-503. Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.
§46-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.
PART 1. GENERAL PROVISIONS AND DEFINITIONS.

§46-4-101. Short title.

This article may be cited as Uniform Commercial Code - Bank Deposits and Collections.

§46-4-102. Applicability.

(a) To the extent that items within this article are also within articles three and eight, they are subject to those articles. If there is conflict, this article governs article three but article eight governs this article.

(b) The liability of a bank for action or nonaction with respect to an item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or nonaction by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

§46-4-103. Variation by agreement; measure of damages; action constituting ordinary care.

(a) The effect of the provisions of this article may be varied by agreement but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not unreasonable.

(b) Federal reserve regulations and operating circulaters, clearing-house rules, and the like, have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or nonaction approved by this article or pursuant to federal reserve regulations or operating circulaters is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.
(d) The specification or approval of certain procedures by this article is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

§46-4-104. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-308), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;
(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article four-a or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment" Section 4-110.

"Bank" Section 4-105.

"Collecting bank" Section 4-105.

"Depositary bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment notice" Section 4-110.

(c) The following definitions in other articles of this chapter apply to this article:

"Acceptance" Section 3-409.
In this article:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company;

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank unless the
item is presented for immediate payment over the counter;

(3) “Payor bank” means a bank that is the drawee of a draft;

(4) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) “Collecting bank” means a bank handling an item for collection except the payor bank;

(6) “Presenting bank” means a bank presenting an item except a payor bank.

§46-4-106. Payable through or payable at bank; collecting bank.

(a) If an item states that it is “payable through” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is “payable at” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item and (ii) the item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

§46-4-107. Separate office of a bank.

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this article and under article three.

§46-4-108. Time of receipt of items.

(a) For the purpose of allowing time to process items, prove balances and make the necessary entries on its
books to determine its position for the day, a bank may
fix an afternoon hour of two p.m. or later as a cutoff
hour for the handling of money and items and the
making of entries on its books.

(b) An item or deposit of money received on any day
after a cutoff hour so fixed or after the close of the
banking day may be treated as being received at the
opening of the next banking day.

§46-4-109. Delays.
(a) Unless otherwise instructed, a collecting bank in
a good faith effort to secure payment of a specific item
drawn on a payor other than a bank, and with or
without the approval of any person involved, may waive,
modify or extend time limits imposed or permitted by
this chapter for a period not exceeding two additional
banking days without discharge of drawers or indorsers
or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond
time limits prescribed or permitted by this chapter or
by instruction is excused if (i) the delay is caused by
interruption of communication or computer facilities,
suspension of payments by another bank, war, emer-
gency conditions, failure of equipment or other circum-
stances beyond the control of the bank and (ii) the bank
exercises such diligence as the circumstances require.

§46-4-110. Electronic presentment.
(a) "Agreement for electronic presentment" means an
agreement, clearing-house rule or federal reserve
regulation or operating circular, providing that present-
ment of an item may be made by transmission of an
image of an item or information describing the item
("presentment notice") rather than delivery of the item
itself. The agreement may provide for procedures
governing retention, presentment, payment, dishonor
and other matters concerning items subject to the
agreement.

(b) Presentment of an item pursuant to an agreement
for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to “item” or “check” in this article means the presentment notice unless the context otherwise indicates.

§46-4-111. Statute of limitations.

An action to enforce an obligation, duty or right arising under this article must be commenced within three years after the (cause of action) accrues.

PART 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS.

§46-4-201. Status of collecting banks as agent and provisional status of credits; applicability of article; item indorsed “pay any bank.”

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment setoff. If an item is handled by banks for purposes of presentment, payment, collection or return, the relevant provisions of this article apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or
§46-4-202. Responsibility for collection or return; when action timely.

(a) A collecting bank must exercise ordinary care in:

1. Presenting an item or sending it for presentment;
2. Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;
3. Settling for an item when the bank receives final settlement; and
4. Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a) (1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

§46-4-203. Effect of instructions.

Subject to article three concerning conversion of instruments (section 3-420) and restrictive indorsements (section 3-206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

§46-4-204. Methods of sending and presenting; sending directly to payor bank.

(a) A collecting bank shall send items by a reasonably
prompt method taking into consideration relevant
instructions, the nature of the item, the number of those
items on hand, the cost of collection involved and the
method generally used by it or others to present those
items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a nonbank payor if authorized by its
transferor; and

(3) An item other than documentary drafts to a
nonbank payor, if authorized by federal reserve regu-
lation or operating circular, clearing-house, rule or the
like.

(c) Presentment may be made by a presenting bank
at a place where the payor bank or other payor has
requested that presentment be made.

§46-4-205. Depositary bank holder of unindorsed item.

If a customer delivers an item to a depositary bank
for collection:

(1) The depositary bank becomes a holder of the item
at the time it receives the item for collection if the
customer at the time of delivery was a holder of the
item, whether or not the customer indorses the item,
and, if the bank satisfies the other requirements of
section 3-302, it is a holder in due course; and

(2) The depositary bank warrants to collecting banks,
the payor bank or other payor, and the drawer that the
amount of the item was paid to the customer or
deposited to the customer's account.

§46-4-206. Transfer between banks.

Any agreed method that identifies the transferor
bank is sufficient for the item's further transfer to
another bank.

§46-4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an
item and receives a settlement or other consideration
3 warrants to the transferee and to any subsequent collecting bank that:

5 (1) The warrantor is a person entitled to enforce the item;

7 (2) All signatures on the item are authentic and authorized;

9 (3) The item has not been altered;

10 (4) The item is not subject to a defense or claim in recoupment (section 3-305(a)) of any party that can be asserted against the warrantor; and

13 (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the
warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§46-4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to endorse the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, (i) breach of warranty is a defense to the obligation of the acceptor and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty
under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If, (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§46-4-209. Encoding and retention warranties.

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item
pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and present-
ment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

§46-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the
security interest continues to that extent and is subject to article nine but:

(1) No security agreement is necessary to make the security interest enforceable (section 9-203 (1)(a));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

§46-4-211. When bank gives value for purposes of holder in due course.

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of section 3-302 on what constitutes a holder in due course.

§46-4-212. Presentment by notice of item not payable by, through or at a bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 3-501 is not received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

§46-4-213. Medium and time of settlement by bank.
(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by federal reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a federal reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement is:

(i) With respect to tender of settlement by cash, a cashier’s check, or teller’s check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a federal reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to section 4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier’s check or teller’s check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving
authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

§46-4-214. Right of charge-back or refund; liability of collecting bank; return of item.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the item if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4-301).

(d) The right to charge-back is not affected by:

(1) Previous use of a credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.
A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

§46-4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

(a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing-house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with
its customer becomes final.

(e) Subject to, (i) applicable law stating a time for availability of funds and, (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received the provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depositary bank and the payor bank and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

§46-4-216. Insolvency and preference.

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of
(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

PART 3. COLLECTION OF ITEMS: PAYOR BANKS

§46-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item (other than a documentary draft) presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline it:

(1) Returns the item; or

(2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearing-house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to
§46-4-302. Payor bank's responsibility for late return of item.

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of a presentment warranty (section 4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

§46-4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;
(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule or agreement;

(4) The bank becomes accountable for the amount of the item under section 4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a) items may be accepted, paid, certified or charged to the indicated account of its customer in any order.


§46-4-401. When bank may charge customer's account.

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in section 4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect
to the check described in section 4-303. A bank shall accept nine such notices each year for each account without charge for acceptance of the notice or monitoring for the postdated check. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under section 4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§46-4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

(a) Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election
of the payor bank, a subsequent balance determination
is made for the purpose of reevaluating the bank’s
decision to dishonor the item, the account balance at that
time is determinative of whether a dishonor for insuf-
ficiency of available funds is wrongful.

§46-4-403. Customer’s right to stop payment; burden of proof of loss.

(a) A customer or any person authorized to draw on
the account if there is more than one person may stop
payment of any item drawn on the customer’s account
or close the account by an order to the bank describing
the item or account with reasonable certainty received
at a time and in a manner that affords the bank a
reasonable opportunity to act on it before any action by
the bank with respect to the item described in section
4-303. If the signature of more than one person is
required to draw on an account, any of these persons
may stop payment or close the account.

(b) A stop-payment order is effective for six months,
but it lapses after fourteen calendar days if the original
order was oral and was not confirmed in writing within
that period. A stop-payment order may be renewed for
additional six-month periods by a writing given to the
bank within a period during which the stop-payment
order is effective.

(c) The burden of establishing the fact and amount of
loss resulting from the payment of an item contrary to
a stop-payment order or order to close an account is on
the customer. The loss from payment of an item
contrary to a stop-payment order may include damages
for dishonor of subsequent items under section 4-402.

§46-4-404. Bank not obligated to pay check more than six months old.

A bank is under no obligation to a customer having
a checking account to pay a check, other than a certified
check, which is presented more than six months after
its date, but it may charge its customer’s account for a
payment made thereafter in good faith.

§46-4-405. Death or incompetence of customer.
§46-4-406. Customer's duty to discover and report unauthorized signature or alteration.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of
an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (c), the customer is precluded from asserting against the bank:

(1) The customer’s unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer’s unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (subsection (a)) discover and report the customer’s unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may
not recover for breach of warranty under section 4-208
with respect to the unauthorized signature or alteration
to which the preclusion applies.

(g) A bank shall offer at least one account, at a
reasonable charge, that provides for the return to the
customer of all items or legible copies of all items. With
respect to accounts which do not provide for the return
of all items or legible copies of all items, a bank must
provide eighteen items, or legible copies of eighteen
items, in accord with subsection (b) of this section, per
year, per account, without charge to the customer.
Where a bank returns a copy to the customer, the copy
together with a copy of the bank’s statement showing
payment of the item shall be prima facie evidence of
payment.

§46-4-407. Payor bank’s right to subrogation on im-
proper payment.

1 If a payor bank has paid an item over the order of
the drawer or maker to stop payment, or after an
account has been closed, or otherwise under circumstan-
ces giving a basis for objection by the drawer or maker,
to prevent unjust enrichment and only to the extent
necessary to prevent loss to the bank by reason of its
payment of the item, the payor bank is subrogated to
the rights:

(1) Of any holder in due course on the item against
the drawer or maker;

(2) Of the payee or any other holder of the item
against the drawer or maker either on the item or under
the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any
other holder of the item with respect to the transaction
out of which the item arose.

PART 5. COLLECTION OF DOCUMENTARY DRAFTS.

§46-4-501. Handling of documentary drafts; duty to send
for presentment and to notify customer of
dishonor.

1 A bank that takes a documentary draft for collection
shall present or send the draft and accompanying
documents for presentment and, upon learning that the
draft has not been paid or accepted in due course, shall
seasonably notify its customer of the fact even though
it may have discounted or bought the draft or extended
credit available for withdrawal as of right.

§46-4-502. Presentment of “on arrival” drafts.

If a draft or the relevant instructions require
presentment “on arrival,” “when goods arrive” or the
like, the collecting bank need not present until in its
judgment a reasonable time for arrival of the goods has
expired. Refusal to pay or accept because the goods have
not arrived is not dishonor; the bank must notify its
transferor of the refusal but need not present the draft
again until it is instructed to do so or learns of the
arrival of the goods.

§46-4-503. Responsibility of presenting bank for docu-
ments and goods; report of reasons for
dishonor; referee in case of need.

Unless otherwise instructed and except as provided in
article five a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on
acceptance of the draft if it is payable more than three
days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment
for acceptance or presentment for payment, may seek
and follow instructions from any referee in case of need
designated in the draft or, if the presenting bank does
not choose to utilize the referee’s services, it must use
diligence and good faith to ascertain the reason for
dishonor, must notify its transferor of the dishonor and
of the results of its effort to ascertain the reasons
therefor and must request instructions.

However, the presenting bank is under no obligation
with respect to goods represented by the documents
except to follow any reasonable instructions seasonably
received; it has a right to reimbursement for any
expense incurred in following instructions and to
prepayment of or indemnity for those expenses.
§46-4-504. Privilege of presenting bank to deal with goods; security interest for expenses.

1 (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

2 (b) For its reasonable expenses incurred by action under subsection (a), the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

CHAPTER 167
(Com. Sub. for S. B. 566—By Senator Anderson)

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

AN ACT to amend and reenact section thirty-seven, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to purchasing by the state generally; preference for resident vendors; including corporation nonresident vendors which have an affiliate or subsidiary in this state which employ a minimum of one hundred state residents as being eligible for the resident vendor preference which is based on the vendor having its principal place of business or headquarters in West Virginia; increasing from sixty percent to seventy-five percent the number of resident employees required for a resident vendor to qualify for the vendor preference based on the number of West Virginia residents employed by the vendor; allowing a nonresident corporation employing at least one hundred employees in the state or a nonresident corporation whose affiliate or subsidiary employs at least one hundred employees in this state to qualify for a vendor preference if seventy-five percent of its employees are state residents; and including corporation nonresident vendors which have...
an affiliate or a subsidiary in this state within the preference.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

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

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

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

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

(3) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this subdivision and made written claim for the preference, at the time the bid was submitted; or

(4) From a vendor who meets either the requirements of both subdivisions (1) and (2) of this subsection or subdivisions (1) and (3) of this subsection, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted.
(b) If the secretary of the department of tax and revenue determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the project for which the preference was received the secretary may: (1) Reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the project.

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

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

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

(f) This section may be cited as the "Jobs for West Virginians Act of 1990".
CHAPTER 168
(S. B. 572—By Senators Minard, Wiedebusch, Dittmar, Holliday, Felton and Yoder)

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

AN ACT to amend and reenact section six, article three-a, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exceptions on purchases from the handicapped.

Be it enacted by the Legislature of West Virginia:

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

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


1. The purchasing unit is exempt from the operation of the mandatory provisions of section ten, article three of this chapter when:

   (1) The director of purchasing determines that the commodity or printing so produced or provided does not meet the reasonable requirements of the purchasing unit;

   (2) The committee or central nonprofit agency determines that a nonprofit workshop cannot reasonably provide the commodity or printing;

   (3) The purchasing director determines, after considering any recommendation of the committee or bids which may have been offered, that the commodity or printing is not of a fair market price; or

   (4) The purchasing director determines, after consulting with the committee, that the commodity or printing is not of like quality to other commodities or printing available.
No purchasing unit may evade the intent of this section when required goods or services are reasonably available from nonprofit workshops.

CHAPTER 169
(H. B. 2638—By Delegate Kiss)

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

AN ACT to repeal section five, article three, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article one, chapter forty-one of said code; to amend and reenact sections eleven, twelve and thirteen, article five of said chapter; to amend and reenact sections three and three-b, article one, chapter forty-two of said code; to amend and reenact sections one, two, three, three-a and four, article three of said chapter forty-two; to amend and reenact section fourteen, article one, chapter forty-four of said code; to amend and reenact section one, article three, chapter fifty-eight of said code; and to further amend said article by adding thereto a new section, designated section one-a, all relating to the probate of estates; effect of a divorce or annulment of a marriage on dispositions, appointments, conveyances or nominations made in testator’s will with respect to former spouse; making certain technical corrections to statutory language; clarifying operative date of certain provisions; setting forth right of surviving spouse to an elective share in the case of intestacy; entitling a surviving spouse to the supplemental share if the amount provided by the will and other entitlements is less than the supplemental share; clarifying the source of payment of the supplemental elective share amount; eliminating need to notify persons against whom surviving spouse is not proceeding for elective share; reducing the time period to challenge certain probate matters; providing for the intestate share of a decedent’s surviving spouse when decedent is not survived by any descendants; removing requirement that appraisers be
appointed to appraise decedents' estates; requiring personal representatives to appraise such estates; setting forth when personal representative is guilty of a misdemeanor; providing criminal penalties; and permitting and providing procedures for appeals of county commission final orders in cases involving the elective shares of surviving spouses.

Be it enacted by the Legislature of West Virginia:

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

Chapter

41. Wills.
42. Descent and Distribution.
44. Administration of Estates and Trusts.
58. Appeal and Error.

CHAPTER 41. WILLS.

Article

1. Capacity to Make; Requisites; Validity.
5. Production, Probate and Record of Wills.

ARTICLE 1. CAPACITY TO MAKE; REQUISITES; VALIDITY.

§41-1-6. Revocation by divorce; no revocation by other changes of circumstances.

(a) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision
conferring a general or special power of appointment on
the former spouse, and any nomination of the former
spouse as executor, trustee, conservator, or guardian,
unless the will expressly provides otherwise. Property
prevented from passing to a former spouse because of
revocation by divorce or annulment passes as if the
former spouse failed to survive the decedent, except that
the provisions of section three, article three, chapter
forty-one do not apply, and other provisions conferring
some power or office on the former spouse are inter-
preted as if the spouse failed to survive the decedent.
If provisions are revoked solely by this section, they are
revived by testator's remarriage to the former spouse.
For purposes of this section, divorce or annulment
means any divorce or annulment which would exclude
the spouse as a surviving spouse. A decree of separation
which does not terminate the status of husband and wife
is not a divorce for purposes of this section. No change
of circumstances other than as described in this section
revokes a will.

(b) This section applies to all divorces, annulments or
remarriages which become effective after the fifth day
of June, one thousand nine hundred ninety-two.

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-11. Impeachment or establishment of will—By person who was not
party to prior proceeding; trial by jury.

§41-5-12. Impeachment or establishment in court—By person under dis-
ability or nonresident.

§41-5-13. Probate of foreign will.

§41-5-11. Impeachment or establishment of will — By
person who was not party to prior proceed-
ing; trial by jury.

1 After a judgment or order entered as aforesaid in a
2 proceeding for probate ex parte, any person interested
3 who was not a party to the proceeding, or any person
4 who was not a party to a proceeding for probate in
5 solemn form, may proceed by complaint to impeach or
6 establish the will, on which complaint, if required by
7 any party, a trial by jury shall be ordered, to ascertain
8 whether any, and if any, how much, of what was so
9 offered for probate, be the will of the decedent. The
court may require all other testamentary papers of the
decedent to be produced, and the inquiry shall then be
which one of all, or how much of any, of the testamen-
tary papers is the will of the decedent. If the judgment
or order was entered by the circuit court on appeal from
the county commission, such complaint shall be filed
within one year from the date thereof, and if the
judgment or order was entered by the county commis-
sion and there was no appeal therefrom, such complaint
shall be filed within one year from the date of such order
of the county commission. If no such complaint be filed
within the time prescribed, the judgment or order shall
be forever binding. Any complaint filed under this
section shall be in the circuit court of the county wherein
probate of the will was allowed or denied.

§41-5-12. Impeachment or establishment in court — By
person under disability or nonresident.

Notwithstanding the two preceding sections, any
person interested who, at the time of the judgment or
order is under the age of eighteen years, or is a convict
or a mentally incapacitated person, may file a complaint
to impeach or establish the will, within one year after
he becomes of age, or other disability ceases; and any
person interested who, at that time, resided out of the
state, or was proceeded against by publication, may,
unless he actually appeared as a party or was personally
summoned, file such complaint within one year after the
entry of such judgment or order.

§41-5-13. Probate of foreign will.

Where a will relative to an estate within this state has
been proved without the same, an authenticated copy
thereof and the certificate of probate thereof, may be
offered for probate in this state. When such copy is so
offered, the county commission, or the clerk thereof in
the vacation of the commission, to which or to whom it
is offered, shall presume, in the absence of evidence to
the contrary, that the will was duly executed and
admitted to probate as a will of personalty in the state
or country of the testator’s domicile, and shall admit
such copy to probate as a will of personalty in this state;
and if it appears from such copy that the will was
proved in the foreign court of probate to have been so
executed as to be a valid will of land in this state by
the laws thereof, such copy may be admitted to probate
as a will of real estate. But any person interested may,
within one year from the time such authenticated copy
is admitted to record, upon reasonable notice to the
parties interested, have the order admitting the same set
aside, upon due and satisfactory proof that such
authenticated copy was not a true copy of such will, or
that the probate of such will has been set aside by the
court by which it was admitted to probate, or that such
probate was improperly made.

CHAPTER 42.
DESCENT AND DISTRIBUTION.

Article
1. Descent.

ARTICLE 1. DESCENT.

§42-1-3b. Requirement that heir survive decedent for one hundred twenty
hours.


1. The intestate share of a decedent's surviving spouse
2. is:
3. (a) The entire intestate estate if:
4. (1) No descendant of the decedent survives the
decedent; or
5. (2) All of the decedent's surviving descendants are
also descendants of the surviving spouse and there is no
other descendant of the surviving spouse who survives
the decedent;
6. (b) Three fifths of the intestate estate, if all of the
decedent's surviving descendants are also descendants of
the surviving spouse and the surviving spouse has one
or more surviving descendants who are not descendants
of the decedent;
7. (c) One half of the intestate estate, if one or more of
§42-1-3b. Requirement that heir survive decedent for one hundred twenty hours.

An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of a decedent or of an individual who would otherwise be an heir, or the times of death of both, cannot be determined, and it is not established that the individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under section three-c of this article.

ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECEDENT.

§42-3-1. Right to elective share.
§42-3-2. Augmented estate.
§42-3-3. Right of election personal to surviving spouse.
§42-3-3a. Waiver of right to elect; other rights.
§42-3-4. Proceeding for elective share; time limit.

§42-3-1. Right to elective share.

(a) The surviving spouse of a decedent who dies domiciled in this state has a right of election, against either the will or the intestate share, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Length of Time Married</th>
<th>Elective-Share Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Supplemental Amount Only</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>3% of the augmented estate.</td>
</tr>
<tr>
<td>2 years but less than 3 years</td>
<td>6% of the augmented estate.</td>
</tr>
</tbody>
</table>

If the decedent and the spouse were married to each other, the elective-share percentage is:

Less than 1 year ................. Supplemental Amount Only
1 year but less than 2 years ....... 3% of the augmented estate.
2 years but less than 3 years ..... 6% of the augmented estate.
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<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>3 years but less than 4 years ..... 9% of the augmented estate.</td>
</tr>
<tr>
<td>16</td>
<td>4 years but less than 5 years ..... 12% of the augmented estate.</td>
</tr>
<tr>
<td>17</td>
<td>5 years but less than 6 years ..... 15% of the augmented estate.</td>
</tr>
<tr>
<td>18</td>
<td>6 years but less than 7 years ..... 18% of the augmented estate.</td>
</tr>
<tr>
<td>19</td>
<td>7 years but less than 8 years ..... 21% of the augmented estate.</td>
</tr>
<tr>
<td>20</td>
<td>8 years but less than 9 years ..... 24% of the augmented estate.</td>
</tr>
<tr>
<td>21</td>
<td>9 years but less than 10 years ... 27% of the augmented estate.</td>
</tr>
<tr>
<td>22</td>
<td>10 years but less than 11 years .. 30% of the augmented estate.</td>
</tr>
<tr>
<td>23</td>
<td>11 years but less than 12 years .. 34% of the augmented estate.</td>
</tr>
<tr>
<td>24</td>
<td>12 years but less than 13 years .. 38% of the augmented estate.</td>
</tr>
<tr>
<td>25</td>
<td>13 years but less than 14 years .. 42% of the augmented estate.</td>
</tr>
<tr>
<td>26</td>
<td>14 years but less than 15 years .. 46% of the augmented estate.</td>
</tr>
<tr>
<td>27</td>
<td>15 years or more ............... 50% of the augmented estate.</td>
</tr>
</tbody>
</table>

(b) If the sum of the amounts described in subdivisions (3) and (4), subsection (b) of section two, and subdivisions (1) and (3), subsection (a), section six of this article, and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under subsections (b) and (c), section six of this article, is less than twenty-five thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to twenty-five thousand dollars, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections (b) and (c), section six of this article.

(c) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

§42-3-2. Augmented estate.

1 (a) Definitions.
2 (1) In this section:
3 (i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. The notation of a state documentary fee on a recorded instrument is prima facie evidence that the transfer
described therein was made to a bona fide purchaser.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in himself or herself or his or her creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(2) In subsections (b)(2)(iii) and (iv), "transfer" includes an exercise or release of a power of appointment, but does not include a lapse of a power of appointment.

(b) The augmented estate consists of the sum of:

(1) The value of the decedent's probate estate, reduced by funeral and administration expenses and enforceable claims;
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(2) The value of the decedent's reclaimable estate. The decedent's reclaimable estate is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before his or her death, or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period next preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse or surviving spouse;

(ii) Property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, acquired during the marriage of the decedent and the surviving spouse, if the decedent held that interest immediately before his or her death or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse;

(iii) Proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy, had the power to change the beneficiary of the insurance policy, or the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone immediately before his or her death or if and to the extent the decedent, while married to his or her surviving spouse and during the two-year period next preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and
(iv) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

(A) Any transfer to the extent that the decedent retained at the time of or during the two-year period next preceding his or her death the possession or enjoyment of, or right to income from the property;

(B) Any transfer to the extent that, at the time of or during the two-year period next preceding the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate;

(C) Any transfer of property, to the extent the decedent's contribution to it, as a percentage of the whole, was made within two years before the decedent's death, by which the property is held, at the time of or during the two-year period next preceding the decedent's death, by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or

(D) Any transfer made to a donee within two years before the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed ten thousand dollars.

(3) The value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(4) The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable
claims against that property or that spouse, plus the value of amounts that would have been includible in the surviving spouse's reclaimable estate had the spouse predeceased the decedent. But amounts that would have been includible in the surviving spouse's reclaimable estate under subsection (b)(2)(iii) are not valued as if he or she were deceased.

(c) Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate (i) to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise or release, or (ii) if irrevocably made with the written consent or joinder of the surviving spouse.

(d) Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under subsections (b)(2)(i), (ii) and (iv) is valued as of the time of the transfer. If the terms of more than one of the subparagraphs or sub-subparagraphs of subsection (b)(2) apply, the property is included in the augmented estate under the subparagraph or sub-subparagraph that yields the highest value. For the purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.

(e) (1) Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken
after the payor or other third party received written
notice of an intention to file a petition for the elective
share or that a petition for the elective share has been
filed.

(2) The written notice of intention to file a petition for
the elective share or that a petition for the elective share
has been filed must be mailed to the payor's or other
third party's main office or home by registered or
certified mail, return receipt requested, or served upon
the payor or other third party in the same manner as
a summons in a civil action. Upon receipt of written
notice of intention to file a petition for the elective share
or that a petition for the elective share has been filed,
a payor or other third party may pay any amount owed
or transfer or deposit any item of property held by it
to or with the court having jurisdiction of the probate
proceedings relating to the decedent's estate, or if no
proceedings have been commenced, to or with the court
having jurisdiction of probate proceedings relating to
decedents' estates located in the county of the decedent's
residence. The court shall hold the funds or item of
property and, upon its determination under subsection
(d) of section four of this article, shall order disburse-
ment in accordance with the determination. If no
petition is filed in the court within the specified time
under subsection (a) of section four of this article or, if
filed, the demand for an elective share is withdrawn
under subsection (c) of section four of this article, the
court shall order disbursement to the designated
beneficiary. Payments, transfers, or deposits made to or
with the court discharge the payor or other third party
from all claims for the value of amounts paid to or items
of property transferred to or deposited with the court.

(3) Upon petition to the probate court by the benefi-
ciary designated in a governing instrument, the court
may order that all or part of the property be paid to
the beneficiary in an amount and subject to conditions
consistent with this section.

(f) (1) A person who purchases property from a
recipient for value and without notice, or who receives
a payment or other item of property in partial or full
satisfaction of a legally enforceable obligation, is neither obligated under this part to return the payment, item of property, or benefit nor is liable under this part for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit included in the decedent’s reclaimable estate is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in section six of this article.

(2) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent’s reclaimable estate, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in section six of this article to the person who would have been entitled to it were that section or part of that section not preempted.

§42-3-3. Right of election personal to surviving spouse.

1 (a) The right of election may be exercised only by a surviving spouse who is living when the petition for the elective share is filed in the court under subsection (a), section four of this article. If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by his or her conservator, guardian, or agent under the authority of a power of attorney.

(b) If the election is exercised on behalf of a surviving spouse who is an incapacitated person, the court must set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under subsections (b) and (c), section six of this article and must appoint a trustee to administer that property for the support of the surviving spouse. For the purposes of this subsection, an election on behalf
of a surviving spouse by an agent under a durable power
of attorney is presumed to be on behalf of a surviving
spouse who is an incapacitated person. The trustee must
administer the trust in accordance with the following
terms and such additional terms as the court determines
appropriate:

(1) Expenditures of income and principal may be
made in the manner, when, and to the extent that the
trustee determines suitable and proper for the surviving
spouse's support, without court order but with regard
to other support, income, and property of the surviving
spouse and benefits of medical or other forms of
assistance from any state or federal government or
governmental agency for which the surviving spouse
must qualify on the basis of need;

(2) During the surviving spouse's incapacity, neither
the surviving spouse nor anyone acting on behalf of the
surviving spouse has a power to terminate the trust; but
if the surviving spouse regains capacity, the surviving
spouse then acquires the power to terminate the trust
and acquire full ownership of the trust property free of
trust, by delivering to the trustee a writing signed by
the surviving spouse declaring the termination;

(3) Upon the surviving spouse's death, the trustee
shall transfer the unexpended trust property under the
residuary clause, if any, of the will of the predeceased
spouse against whom the elective share was taken, as if
that predeceased spouse died immediately after the
surviving spouse, or, if there was no residuary clause or
no will of that predeceased spouse, to the persons and
in such shares as would succeed to that predeceased
spouse's intestate estate as if that predeceased spouse
died immediately after the surviving spouse.

§42-3-3a. Waiver of right to elect; other rights.

(a) The right of election of a surviving spouse may be
waived, wholly or partially, before or after marriage, by
a written contract, agreement, or waiver signed by the
surviving spouse.

(b) A surviving spouse's waiver is not enforceable if
the surviving spouse proves that:
(1) He or she did not execute the waiver voluntarily;

or

(2) The waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of “all rights,” or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share by each spouse in the property of the other and renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

§42-3-4. Proceeding for elective share; time limit.

(a) Except as provided in subsection (b), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share. Except as provided in subsection (b), the
decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, against whom the spouse chooses to proceed under subsection (d) of this section, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, in the hands of those persons against whom the spouse chooses to proceed under subsection (d) of this section, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the elective share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section six of this article. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be main-
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relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under section two had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

The real and personal estate of every deceased person, or in which such deceased person had an interest at the time of his or her death, shall be appraised by the personal representative of such deceased person. Such personal representative, after first taking an oath for the purpose, shall list and appraise at its real and actual value all the real estate and all the tangible property of every description owned by the deceased at the time of his or her death including, but not limited to, all real estate and tangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another person by reason of the death of such decedent whose estate is being so appraised and irrespective of whether such real estate or tangible property is subject to administration and located in each county or the counties, as the case may be. The personal representative shall also list and appraise at its real and actual value all of the decedent’s intangible property of every description, including moneys, credits, investments, annuities, life insurance policies, (irrespective of whether such policies are payable to named beneficiaries or in trust or otherwise), judgments and decrees for moneys, notes, bonds, accounts and all other evidences of debt, whether owing to him or her by persons or corporations in or out of the state, and the number and value, including both the par value, if any, and the actual value, of any shares of
capital stock owned by the decedent in any corporation,
and every other item of intangible property of what-
soever nature or kind, including all intangible property
in which the decedent had an interest as joint tenant or
otherwise or in which any beneficial interest passes to
another by reason of the death of such decedent, and
irrespective of whether such intangible property is
subject to administration and whether located in this
state or elsewhere. Any real estate or interest therein
so appraised shall be identified with particularity and
description, shall identify the source of title in the
decedent and the location of such realty for purposes of
real property ad valorem taxation. In addition to all
other information required by law, the appraisement
shall contain and include a questionnaire designed and
formulated by the tax commissioner which is designed
for the purpose of examining the personal representa-
tive to determine that he or she has made a thorough
and proper search and investigation as to the existence
and value of each and every kind and species of property
required to be included within, and subject to appraise-
ment by, the provisions of this or any other section of
this code, which said questionnaire shall be completed
and answered upon the oath or adjuration of the
personal representative or fiduciary.

The appraisement, list and questionnaire aforesaid
shall be executed in triplicate and shall be signed by the
personal representative and be forthwith returned to the
clerk of the county commission by whom such personal
representative was appointed or to the fiduciary
supervisor. Such clerk or supervisor shall inspect such
appraisement, list and questionnaire, see that the same
are in proper form, and that all property, if any,
suggested by the questionnaire is included within the
appraisement. If such appraisement, list and question-
aire are returned to a fiduciary supervisor within ten
days after they are received and approved by him or
her, such supervisor shall deliver two copies of the same
to the clerk of the county commission. Upon receipt of
the appraisement, list and questionnaire, the clerk of the
county commission shall record the same, with the
certificate of approval of the supervisor, and mail one
copy of the same to the tax commissioner of West Virginia. The date of return of an appraisement shall be entered by the clerk of the county commission in his or her record of fiduciaries. Every such appraisement and list shall be prima facie evidence of the value of the property embraced therein, and that the personal estate embraced therein which is subject to administration came to the hands of the personal representative. No person shall be permitted by any means whatsoever to avoid the appraisement and listing of his or her estate and of all property, real, tangible and intangible, of whatsoever nature and kind, in which a beneficial interest passes to another by reason of the death of the decedent and irrespective of whether such property is subject to administration as herein provided, nor shall his or her personal representative be permitted to do so. Any personal representative who fails, refuses or declines to comply with the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Every personal representative shall have authority to retain or hire the services of such expert or experts as may be deemed appropriate to assist and advise him or her in and about his or her duties in appropriately and accurately appraising all or any part of the assets or property to be appraised according to the provisions of this section. Such expert or experts so retained or hired shall be compensated a reasonable sum by the personal representative from the assets coming into his or her hands or of which he or she is embraced, which compensation and the reasonableness thereof shall be subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

§58-3.1. When appeal lies to circuit court.
§58-3-1a. Procedures for appeals.

§58-3-1. When appeal lies to circuit court.
An appeal shall lie to the circuit court of the county from the final order of the county commission in the following cases: (a) In cases of contested elections tried and determined by such court; (b) in cases of contempt; (c) the establishment and regulation of a road, way, bridge, public landing, ferry or mill; (d) the probate of a will; (e) the appointment and qualification of a personal representative, guardian, including, but not limited to, all fiduciaries made pursuant to article ten-a, chapter forty-four of this code, or committee, and the settlement of their accounts; (f) the disposition of disputes arising from the provisions of article three, chapter forty-two of this code, which appeal shall be de novo; (g) in any other case by law specially provided.

§58-3-1a. Procedures for appeals.

Any interested person may appeal the final order of the county commission described by the provisions of subdivision (f), section one of this article to the circuit court as a matter of right by requesting the appeal within four months after the final order of the county commission is rendered. The appeal shall be determined by trial de novo. Upon receipt of the request for appeal, the clerk of the county commission shall collect the circuit court filing fee therefor and forward the same, together with the final order and the request, to the clerk of the circuit court. The court may require the clerk of the county commission to file with the circuit clerk all or any portion of the record of the proceedings which resulted in the final order. No bond may be required from any party to the appeal. The final order of the county commission shall be stayed pending the appeal proceedings. If, after the appeal is filed in the circuit court, the matter is not brought on for hearing before the end of the second term thereafter, the appeal shall be considered abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance. Upon such dismissal, the final order of the county commission is affirmed. No appeal which has been so dismissed by the circuit court may be reinstated after the expiration of the next regular term following such dismissal.
CHAPTER 170

(Com. Sub. for H. B. 2636—By Mr. Speaker, Mr. Chambers, and Delegates Houvouras and Brown)

AN ACT to amend and reenact section six, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wine shipments; and allowing the shipment of limited quantities of wine from other states or nations to adults in this state if the other states or nations give an equal reciprocal privilege to adults, licensed retailers and distributors of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

§60-8-6. License or registration required for sale or shipment of wine; shipment of limited quantities of wine to adult residents permitted.

1 (a) Except as to the commissioner and except as provided in subsection (b) of this section, no person may offer for sale or sell wine in this state, or offer wine for shipment into this state, except to a distributor who is duly licensed under this article. Every person, whether resident or nonresident in this state, who is engaged in or desires to engage in the sale or shipment of wine to a distributor for resale under this article shall, prior to engaging in such activities, register with the commissioner. If any such person violates the provisions of this article, he shall not be permitted to sell, ship or deliver any wine to a distributor or to the commissioner, or otherwise engage in the wine business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During
such one-year period, it shall be unlawful for any distributor within this state to buy or receive wine from such person or to have any dealings with such person with respect thereto. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses under this article.

(b) Notwithstanding the provisions of this chapter or any other law to the contrary, an adult resident or a duly licensed retailer or distributor of alcoholic beverages in a state or nation which affords adults and duly licensed retailers and distributors of this state an equal reciprocal shipping privilege may ship, for personal use and not for resale, not more than two cases of wine per month, not to exceed eighteen liters of wine in any month to any adult resident in this state. Delivery of a shipment pursuant to this section shall not be deemed to constitute a sale in this state. The shipping container of any wine sent into or out of this state under this subsection shall be clearly labeled to indicate that the package cannot be delivered to any person under the age of twenty-one or to an intoxicated person. No adult resident or duly licensed retailer or distributor may advertise the availability of wines by shipment to residents of this state.

CHAPTER 171
(H. B. 2802—By Delegates Staton, Rowe, Huffman, Faircloth, L. White and Ashley)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]
twenty-three of said code; to amend and reenact sections one-c, four, five, five-a, five-b, fifteen and seventeen, article two of said chapter; to further amend said article by adding thereto three new sections, designated sections one-d, five-c and five-d; to further amend said chapter by adding thereto a new article, designated article two-b; to amend and reenact sections one-e, three, three-a, three-c, six, eight-c, sixteen and nineteen, article four of said chapter; to further amend said article by adding thereto five new sections, designated sections one-f, twenty-two, twenty-three, twenty-four and twenty-five; and to amend and reenact sections one, one-b, one-h and six, article five of said chapter, all relating to workers' compensation generally; creation of compensation programs performance council; purpose; appointment of members; membership; terms; chair; qualifications; selection by governor; compensation and traveling expenses; insurance; meetings; quorum; powers and duties; special rule-making authority; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees; commissioner of the bureau of employment programs; compensation programs performance council; official seal; legal services; rules; office hours; records; confidentiality; exceptions; depositions; investigations; rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof; omission to subscribe to workers' compensation fund or perform duty required by commissioner; false testimony or certification; criminal penalties; extraterritorial coverage; approval and change of agreements; primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts; classification of industries; accounts; rate of premiums; prior notice of rate changes; exceptions; application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties; collection of premiums from
defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs; legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights; statute of limitations; effective date for new payments; previous payments due not affected; uncollectible receivables; write-offs; liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor; employer right to hearing; content of petition; appeal; occupational safety and health activities; voluntary compliance; consultative services; mandatory programs; safety committees; requirements; rules; exceptions; premium rate credits; qualified loss management program; loss management firms; penalties; rules; temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated; certain psychiatric injuries and diseases not compensable; schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirements; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders; wrongfully seeking payment for services or supplies; criminal penalties; restitution; suspension or termination of providers of health care; classification of and criteria for disability benefits; occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims;
commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules; wrongfully seeking compensation; criminal penalties; restitution; termination of compensation; permanent disability evaluations; limitations; notice; permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability; permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction; permanent total disability benefits; reduction of disability benefits for wages earned by claimant; notice by commissioner of decision; procedures on claims; objections and hearing; mediation; refusal to reopen claim; notice; objection; hearings on objections to commissioner's decisions by office of administrative law judges; and providing for the application of claims and cases of self-insured employers.

Be it enacted by the Legislature of West Virginia:

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

Chapter
21A. Unemployment Compensation.
22A. Mines and Minerals.
23. Workers' Compensation.

CHAPTER 21A.
UNEMPLOYMENT COMPENSATION.

ARTICLE 3. COMPENSATION PROGRAMS PERFORMANCE COUNCIL.

§21A-3-1. Creation of compensation programs performance council; purpose.

There is hereby created within the bureau of employment programs a “compensation programs performance council”. The purpose of said council shall be to ensure the effective, efficient and financially stable operation of the unemployment compensation system and the workers' compensation system of the state of West Virginia.

§21A-3-2. Appointment of members.

The members of the council shall be appointed by the governor by and with the advice and consent of the Senate.

§21A-3-3. Membership; terms; chair.

The compensation programs performance council shall consist of nine members: Four representing the interests of employees; four representing the interests of employers; and the commissioner of the bureau of employment programs.
The term of each member except the commissioner shall be for six years. The term of the commissioner shall continue for that period in which he or she holds that office.

The terms of all the initially appointed members of the council shall begin on the first day of July, one thousand nine hundred ninety-three.

Of the persons initially appointed, four members, including two members of each of the two representative groups, shall be designated to serve for terms of two years each, two members, including one member of each of the two representative groups, shall be designated to serve for terms of four years each, and two members, including one member of each of the two representative groups shall be designated to serve for terms of six years each. As these appointments expire, subsequent appointments shall be for six-year terms.

The commissioner shall serve as chair of the council and shall be entitled to vote on all matters. The council shall elect from its members a vice chair.

§21A-3-4. Qualifications; selection by governor.

Members of the council shall be selected with special reference to their ability and fitness to effectuate the purposes of this chapter and chapter twenty-three of this code.

In appointing members of this council to represent the interests of employees, the governor shall select members as follows:

One member shall be appointed from a list of at least three names submitted to the governor by the united mine workers of America;

Two members shall be appointed from a list of at least six names submitted to the governor by the West Virginia labor federation, with one representing construction trades and one representing industrial workers; and

One member selected by the governor to represent the general interests of employees covered under the
provisions of this chapter and chapter twenty-three of this code.

In appointing members of this council to represent the interests of employers, the governor shall select members as follows:

One member shall be appointed from a list of at least three names submitted to the governor by the West Virginia coal industry;

One member shall be appointed from a list of at least three names submitted to the governor by the West Virginia manufacturers association;

One member shall be appointed from a list of at least three names submitted to the governor by the West Virginia chamber of commerce; and

One member selected by the governor to represent the general interests of employers covered under the provisions of this chapter and chapter twenty-three of this code.

The governor shall ensure that employer representation includes a representative of small businesses employing fifty or less employees on a regular basis.

§21A-3-5. Compensation and traveling expenses; insurance.

Members of the council shall receive reasonable compensation for each day actually served in attendance at meetings of the council and such traveling expenses as are incurred in the performance of his or her duties. Payment for traveling expenses shall be made consistent with state law.

Each member of this council shall be provided appropriate liability insurance, without additional premium, by the state board of risk and insurance management established pursuant to article twelve, chapter twenty-nine of this code.

§21A-3-6. Meetings; quorum.

The council shall hold meetings at any time at the call of the commissioner. The commissioner shall call a
meeting whenever three of the other members of the
council request the commissioner to do so. The exact
date and time of each meeting shall be determined by
the commissioner.

A majority of the members of the council shall
constitute a quorum for the conduct of council business
and, except as stated in subdivision (m), section seven
of this article, all issues shall be resolved by a majority
vote of the total membership.

§21A-3-7. Powers and duties; special rule-making
authority.

The council shall have the following powers and
duties:

(a) Assist the governor and the commissioner in the
development of overall administrative policy for the
unemployment compensation and workers’ compensa-
tion systems of the state.

(b) Recommend legislation and establish regulations
designed to ensure the effective administration and
financial viability of the unemployment compensation
system and the workers’ compensation system of West
Virginia.

(c) Review and approve, reject or modify rules and
regulations that are proposed or promulgated by the
commissioner for operation of the workers’ compensa-
tion system before the filing of the rules and regulations
with the secretary of state. This provision is applicable
to any instance under chapter twenty-three of this code
which authorizes the commissioner to promulgate rules
and regulations. Notwithstanding any provision in this
code to the contrary, including sections one and two,
article three and section three, article seven both of
chapter twenty-nine-a of this code, any rules and
regulations adopted pursuant to this section which are
applicable to the provisions of chapter twenty-three of
this code shall not be subject to sections nine through
sixteen, all of article three, chapter twenty-nine-a of this
code. The commissioner and the compensation programs
performance council shall follow the remaining provi-
sessions of said article for giving notice to the public of their actions and the holding of hearings or receiving of comments on the rules. No later amendment to this code shall have precedence over this section unless such later amendment specifically provides to the contrary.

(d) In accordance with the laws and regulations of West Virginia and the United States government, establish and monitor performance measurements to ensure the timeliness and accuracy of activities performed under the unemployment compensation laws and the workers' compensation laws.

(e) Have the final right of approval of all base rates for employers covered by the workers' compensation law as recommended by the commissioner.

(f) Advocate sufficient administrative resources to effectively operate the unemployment compensation system and the workers' compensation system of West Virginia.

(g) Approve the designation of health care providers to make decisions regarding appropriateness of medical services pursuant to subsection (d), section one, article five, chapter twenty-three of this code.

(h) Ensure that the unemployment compensation system and the workers' compensation system of West Virginia develop and pursue an effective program of outreach and communication to employers, workers and others involved in these programs.

(i) Analyze opportunities to affect efficiencies and improvements for employers and workers by developing common definitions, interrelated systems and other internal operational improvements, including long-range planning for improvements.

(j) Develop programs, linkages in the public sector and the private sector, and information materials designed to promote the early return to work of individuals receiving unemployment compensation benefits or workers' compensation benefits.

(k) Examine the current design and report recom-
mendations to the governor and the Legislature regarding the second injury reserve of the surplus fund and the financial viability of the state's workers' compensation system.

(l) Consider such other matters regarding the unemployment compensation system or the workers' compensation system as the commissioner or any appointed member of the council may desire.

(m) On or before the first day of September, one thousand nine hundred ninety-three, establish vocational standards to be considered in making decisions on permanent total disability awards under subdivision (n), section six, article four, chapter twenty-three of this code: Provided, That the compensation programs performance council is expressly authorized to establish this standard irrespective of court decisions interpreting any previous enactment of said subdivision: Provided, however, That adoption of said vocational standard shall require an affirmative vote of two thirds of the members of said compensation programs performance council.

(n) Adopt criteria for the determination and standards for the payment of attorneys' fees pursuant to subdivision (2), subsection (c), section sixteen, article four, chapter twenty-three of this code.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface-mining operations unless such person has first obtained a permit from the commissioner in accordance with the following:

(a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an
application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.

(b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the commissioner: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the commissioner.

(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the commissioner may extend a permit for such longer term: Provided, however, That subject to the prior approval of the commissioner, with such approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's permit application or application for transfer is granted or denied.
(d) Proof of insurance shall be required on an annual basis.

(e) A permit shall terminate if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: Provided, That the commissioner may grant reasonable extensions of time upon a timely showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(f) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of one thousand dollars. All permit fees and renewal fees provided for in this section or elsewhere in this article shall be collected by the commissioner and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the commissioner, for the administration of this article.

(g) Prior to the issuance of any permit, the commissioner of energy shall ascertain from the commissioner of labor compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the commissioner of energy shall forward a copy to the commissioner of labor, who shall assure continued compliance under such permit.

(h) Prior to the issuance of any permit, the director of the division of environmental protection shall ascertain from the commissioner of the bureau of employment programs whether the applicant is in compliance with the provisions of section five, article two, chapter twenty-three of this code. If the applicant
is not in compliance, then the permit shall not be issued
until the applicant returns to compliance: Provided,
That in all such inquiries the commissioner of the
bureau of employment programs shall make response to
the division of environmental protection within fifteen
calendar days, otherwise failure to respond timely shall
be considered to indicate the applicant is in compliance
and such failure will not be used to preclude issuance
of the permit.

CHAPTER 23. WORKERS' COMPENSATION.

Article
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ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

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§23-1-1. Commissioner of the bureau of employment
programs; compensation programs perfor­
manence council; official seal; legal services;
rules.

1 The commissioner of the bureau of employment
programs appointed under the provisions of section one,
article two, chapter twenty-one-a of this code, has the
sole responsibility for the administration of this chapter
except for such matters as are entrusted to the compen­
sation programs performance council created pursuant
to section one, article three, chapter twenty-one-a of this
code. In the administration of this chapter, the commis­
sioner shall exercise all the powers and duties described
in this chapter and in article two of said chapter. The commissioner is authorized to promulgate rules and regulations to implement the provisions of articles one through five of this chapter. The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Commissioner of Employment Programs" and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers' compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers' compensation appeal board, or in any proceedings before the office of judges, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person's regular salary.

§23-1-4. Office hours; records; confidentiality; exceptions.

(a) The offices of the commissioner shall be open for the transaction of business between the hours of eight-thirty o'clock a.m., and five o'clock p.m., of each and every day, excepting Saturdays, Sundays and legal holidays, and be open upon such additional days and at such additional times as the commissioner may elect, and be in charge of his or her secretary or some other competent person.

(b) Except as expressly provided for in this subsec-
tion, information obtained from employers and claim-
ants pursuant to this chapter for the purposes of its administration shall not be subject to the provisions of chapter twenty-nine-b of this code unless such provisions are hereafter specifically made applicable in whole or in part. Such information as may be reasonably necessary may be released in formal orders or opinions of any tribunal or court which is presented with an issue arising under this chapter as well as in the presentations of the parties before any such tribunal or court. Similarly, claimants or other interested parties to an issue arising under this chapter may, upon request, obtain information from the division's records to the extent necessary for the proper presentation or defense of a claim or other matter. Information may be released to any requestor if all identifying information has first been eliminated from the records. Nothing in this subsection shall prevent the release of information to another agency of the state or of the federal government for the legitimate purposes of those agencies: Provided, That any such agency shall guarantee the confidentiality of the information so provided to the fullest extent possible in keeping with its own statutory and regulatory mandates. Nothing in this section shall prevent the commissioner from complying with any subpoena duces tecum: Provided, however, That the issuing tribunal or court shall take such actions as may be proper to maintain the confidentiality of the information.

The commissioner may release, pursuant to a proper request under the provisions of chapter twenty-nine-b of this code, the following information:

1. The base premium rate for a specific employer;
2. Whether or not a specific employer has obtained coverage under the provisions of this chapter;
3. Whether or not a specific employer is in good standing or is delinquent or in default according to the commissioner's records and the time periods thereof; and
4. If a specific employer is delinquent or in default, what the payments due the commissioner are and what
50 the components of that payment are including the time
51 periods affected.


(a) In an investigation into any matter arising under
this chapter, the commissioner may cause depositions of
witnesses residing within or without the state to be
taken in the manner prescribed by law for like depo-
sitions in the circuit court, but such depositions shall be
upon reasonable notice to claimant and employer or
other affected persons or their respective attorneys. The
commissioner shall designate the person to represent
him or her for the taking of any such deposition.

(b) The commissioner shall also have discretion to
accept and consider depositions taken within or without
the state by either the claimant or employer, provided
due and reasonable notice of the taking of such depo-
sitions was given to the other party, claimant or
employer, as the case may be, or his or her attorney:
Provided, That the commissioner, upon due notice both
to the employer and claimant, shall have authority to
refuse or permit the taking of such depositions or to
reject such depositions after the taking thereof, if in his
or her opinion they were taken at such place or under
such circumstances as imposed an undue burden or
hardship upon the opposite party, and the commission-
er's discretion to accept, refuse to approve, or reject such
depositions shall be binding in the absence of abuse of
such discretion.

§23-1-13. Rules of procedure and evidence; persons
authorized to appear in proceedings; with-
holding of psychiatric and psychological
reports and providing summaries thereof.

(a) The commissioner shall adopt reasonable and
proper rules of procedure, regulate and provide for the
kind and character of notices, and the service thereof,
in cases of accident and injury to employees, the nature
and extent of the proofs and evidence, the method of
taking and furnishing the same to establish the rights
to benefits or compensation from the fund hereinafter
provided for, or directly from employers as hereinafter
provided, as the case may require, and the method of making investigations, physical examinations and inspections, and prescribe the time within which adjudications and awards shall be made.

(b) At hearings and other proceedings before the commissioner or before the duly authorized representative of the commissioner, an employer who is a natural person may appear, and a claimant may appear, only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of rule 8.0—admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a representative from a labor organization who has been recognized by the commissioner as being qualified to represent a claimant or who is an individual otherwise found to be qualified by the commissioner to act as a representative. Such representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures; or

(4) Pro se.

(c) At hearings and other proceedings before the commissioner or before the duly authorized representative of the commissioner, an employer who is not a natural person may appear only as follows:

(1) By an attorney duly licensed and admitted to the practice of law in this state;

(2) By a nonresident attorney duly licensed and admitted to practice before a court of record of general jurisdiction in another state or country or in the District of Columbia who has complied with the provisions of
rule 8.0—admission pro hac vice, West Virginia supreme court rules for admission to the practice of law, as amended;

(3) By a member of the board of directors of a corporation or by an officer of the corporation, for purposes of representing the interest of the corporation in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures; or

(4) By a representative from an employer service company who has been recognized by the commissioner as being qualified to represent an employer or who is an individual otherwise found to be qualified by the commissioner to act as a representative. Such representative shall participate in the presentation of facts, figures and factual conclusions as distinguished from the presentation of legal conclusions in respect to such facts and figures.

(d) The commissioner or his or her representative may require an individual appearing on behalf of a natural person or corporation to produce satisfactory evidence that he or she is properly qualified and authorized to so appear pursuant to this section.

(e) Subsections (b), (c) and (d) of this section shall not be construed as being applicable to proceedings before the office of judges pursuant to the provisions of article five of this chapter.

(f) At the direction of a treating or evaluating psychiatrist or clinical doctoral level psychologist, a psychiatric or psychological report concerning a claimant who is receiving treatment or is being evaluated for psychiatric or psychological problems may be withheld from the claimant. In that event, a summary of the report shall be compiled by the reporting psychiatrist or clinical doctoral level psychologist which summary shall be provided to the claimant upon his or her request. Any representative or attorney of the claimant must agree to provide such a claimant with only the summary before the full report shall be provided to the representative or attorney for his or her use in prepar-
§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; false testimony or certification; criminal penalties.

Any person, firm or corporation which is required by the provisions of this chapter to subscribe to the workers' compensation fund, and which knowingly fails to subscribe thereto, or which knowingly and willfully fails to make any report or perform any other act or duty required by the commissioner within the time specified by the commissioner, shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars and not more than ten thousand dollars. Any person or firm, or the officer of any corporation, who knowingly makes a false report or statement under oath, affidavit or certification respecting any information required by the commissioner, or who shall knowingly testify falsely in any proceeding before the commissioner or the office of judges, shall be considered guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars and not more than ten thousand dollars or confined in the penitentiary for not more than three years, or both.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1c. Extraterritorial coverage; approval and change of agreements.

§23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.

§23-2-4. Classification of industries; accounts; rate of premiums; prior notice of rate changes; exceptions.

§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.
§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

§23-2-5b. Legislative purpose; application for settlement; reinstatement; amount of settlement; when settlement void; notification of rights.

§23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.

§23-2-5d. Uncollectible receivables; write-offs.

§23-2-15. Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor.

§23-2-17. Employer right to hearing; content of petition; appeal.

§23-2-1c. Extraterritorial coverage; approval and change of agreements.

(a) Whenever, with respect to an employee of an employer who is a subscriber in good standing to the workers' compensation fund or an employer who has elected to pay compensation directly, as provided in section nine of this article, there is a possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is performed or is to be performed in a state or states other than this state, the employer and the employee may agree to be bound by the laws of this state or by the laws of such other state in which all or some portion of the work of the employee is to be performed: Provided, That the commissioner shall have the authority to review and accept or reject any such agreement. Any such review shall be conducted in keeping with the commissioner's fiduciary obligations to the workers' compensation fund which may include, among other things, the nexus of the employer and the employee to the state: Provided, however, That nothing in this section shall be construed so as to require such an agreement in those instances where subdivision (3), subsection (b), section one of this article or subdivision (1), subsection (a), section one-a of this article are applicable. Such agreement shall be in writing and filed with the commissioner within ten days after execution thereof.
but shall not become effective until approved by the
commissioner and shall, thereafter, remain in effect
until terminated or modified by agreement of the
parties similarly filed or by order of the commissioner.
If the parties agree to be bound by the laws of this state,
an employee injured within the terms and provisions of
this chapter shall be entitled to benefits under this
chapter regardless of the situs of the injury or exposure
to occupational pneumoconiosis or other occupational
disease, and the rights of the employee and his or her
dependents under the laws of this state shall be the
exclusive remedy against the employer on account of
injury, disease or death in the course of and as a result
of the employment.

(b) If the parties agree to be bound by the laws of
another state and the employer has complied with the
laws of that state, the rights of the employee and his or
her dependents under the laws of that state shall be the
exclusive remedy against the employer on account of
injury, disease or death in the course of and as a result
of the employment without regard to the situs of the
injury or exposure to occupational pneumoconiosis or
other occupational disease.

(c) If the employee is a resident of a state other than
this state and is subject to the terms and provisions of
the workers’ compensation law or similar laws of a state
other than this state, such employee and his dependents
shall not be entitled to the benefits payable under this
chapter on account of injury, disease or death in the
course of and as a result of employment temporarily
within this state, and the rights of such employee and
his dependents under the laws of such other state shall
be the exclusive remedy against the employer on
account of such injury, disease or death.

(d) If any employee or his or her dependents be
awarded workers’ compensation benefits or recover
damages from the employer under the laws of another
state for an injury received in the course of and
resulting from the employment, the amount so awarded
or recovered, whether paid or to be paid in future
installments, shall be credited against the amount of any
§23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.

(a) For the exclusive purposes of this section, the term “employer” as defined in section one of this article shall include any primary contractor who regularly subcontracts with other employers for the performance of any work arising from or as a result of the primary contractor’s own contract: Provided, That a subcontractor shall not include one providing goods rather than services. In the event that such a subcontracting employer defaults on its obligations to make payments to the commissioner, then such primary contractor shall be liable for such payments. Notwithstanding the foregoing, nothing contained in this section shall extend or except to such primary contractor or subcontractors the provisions of sections six, six-a or eight of this article. This section is applicable only with regards to subcontractors with whom the primary contractor has a contract. It is not applicable to the primary contractor with regard to sub-subcontractors. However, a subcontractor for the purposes of a contract with the primary contractor can itself become a primary contractor with regard to other employers with whom it subcontracts.

(b) A primary contractor may avoid initial liability under subsection (a) of this section if it obtains from the commissioner, prior to the initial performance of any work by the subcontractor’s employees, a certificate that the subcontractor is in good standing with the workers’ compensation fund.

(1) Failure to obtain the certificate of good standing prior to the initial performance of any work by the subcontractor shall result in the primary contractor being equally liable with the subcontractor for all delinquent and defaulted premiums, premium deposits, interest and other penalties arising during the life of the contract or due to work performed in furtherance of the
contract: *Provided*, That the commissioner shall be entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commissioner may impose other penalties on the primary contractor or on the subcontractor, or both.

(2) In order to continue avoiding liability under this section, the primary contractor shall request that the commissioner of the bureau of employment programs inform the primary contractor of any subsequent default by the subcontractor. In the event that the subcontractor does default, the commissioner shall then notify the primary contractor of the default by placing a notice in the first class United States mail, postage prepaid, and addressed to the primary contractor at the address furnished to the commissioner by the primary contractor. Such mailing shall be good and sufficient notice to the primary contractor of the subcontractor's default. However, the primary contractor shall not become liable under this section until the first day of the calendar quarter following the calendar quarter in which the notice is given and then such liability shall only be for that following calendar quarter and thereafter and only if the subcontract has not been terminated: *Provided*, That the commissioner shall be entitled to collect only once for the amount of premiums, premium deposits and interest due to the default, but the commissioner may impose other penalties on the primary contractor or on the subcontractor, or both.

(c) In any situation where a subcontractor defaults with regard to its payment obligations under this chapter or fails to provide a certificate of good standing as provided for in this section, such default or failure shall be good and sufficient cause for a primary contractor to hold the subcontractor responsible and to seek reimbursement or indemnification for any amounts paid on behalf of the subcontractor to avoid or cure a workers' compensation default, plus related costs including reasonable attorneys' fees, and to terminate its subcontract with the subcontractor notwithstanding any provision to the contrary in the contract.

(d) The provisions of this section are applicable only
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76 to those contracts entered into or extended on or after
77 the first day of January, one thousand nine hundred
78 ninety-four.

79 (e) The commissioner may take any action authorized
80 by section five-a of this article in furtherance of his or
81 her efforts to collect amounts due from the primary
82 contractor under this section.

§23-2-4. Classification of industries; accounts; rate of
premums; prior notice of rate changes; exceptions.

1 The commissioner shall distribute into groups or
2 classes the employments subject to this chapter, in
3 accordance with the nature of the business and the
4 degree of hazard incident thereto. And the commis-
5 sioner shall have power, in like manner, to reclassify
6 such industries into groups or classes at any time, and
7 to create additional groups or classes. The commissioner
8 may make necessary expenditures to obtain statistical
9 and other information to establish the classes provided
10 for in this section.

11 The commissioner shall keep an accurate account of
12 all money or moneys paid or credited to the compensa-
13 tion fund, and of the liability incurred and disburse-
14 ments made against same; and an accurate account of
15 all money or moneys received from each individual
16 subscriber, and of the liability incurred and disburse-
17 ments made on account of injuries and death of the
18 employees of each subscriber, and of the receipts and
19 incurred liability of each group or class.

20 In compensable fatal and total permanent disability
21 cases, other than occupational pneumoconiosis, the
22 amount charged against the employer's account shall be
23 such sum as is estimated to be the average incurred loss
24 of such cases to the fund. The amount charged against
25 the employer's account in compensable occupational
26 pneumoconiosis claims for total permanent disability or
27 for death shall be such sum as is estimated to be the
28 average incurred loss of such occupational pneumoconi-
29 osis cases to the fund.
It shall be the duty of the commissioner and the compensation programs performance council to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workers' compensation fund and the creation and maintenance of a reasonable surplus in each group after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this chapter. A readjustment of rates shall be made yearly on the first day of July, or at any time the same may be necessary. At such times as the commissioner elects to readjust the base rates for the various industrial classifications, the commissioner shall file a schedule of the readjusted base rates for each industrial class with the office of the secretary of state for publication in the state register pursuant to article two, chapter twenty-nine-a of this code. Such schedule shall be so filed at least thirty days prior to the first day of the quarter to which an adjustment of rates is to be applicable. At such times as the commissioner elects to readjust the individual merit rates for the subscribers to the fund, the commissioner shall provide notice of such merit rate adjustments to the affected employers at least thirty days prior to the first day of the quarter to which an adjustment of rates is to be applicable. The commissioner shall not retroactively increase or decrease rates except in instances of fraud, mistake or reliance upon incorrect information furnished by the employer. The determination of the lowest possible rates of premiums within the meaning hereof and of the existence of any surplus or deficit in the fund shall be predicated solely upon the experience and statistical data compiled from the records and files in the commissioner's office under this and prior workers' compensation laws of this state for the period from the first day of June, one thousand nine hundred thirteen, to the nearest practicable date prior to such adjustment: Provided, That any expected future return, in the nature of interest or income from invested funds, shall be predicated upon the average realization from investments to the credit of the compensation fund for the two years next preceding. Any reserves set up for future
liabilities and any commutation of benefits shall likewise be predicated solely upon prior experience under this and preceding workers' compensation laws and upon expected realization from investments determined by the respective past periods, as aforesaid.

The commissioner and the compensation programs performance council may fix a rate of premiums applicable alike to all subscribers forming a group or class, and such rates shall be determined from the record of such group or class shown upon the books of the commissioner: Provided, That if any group has a sufficient number of employers with considerable difference in their degrees of hazard, the commissioner may fix a rate for each subscriber of such group, such rate to be based upon the subscriber's record on the books of the commissioner for a period not to exceed three years ending the thirty-first day of December of the year preceding the year in which the rate is to be effective; and the liability part of such record shall include such cases as have been acted upon by the commissioner during such three-year period, irrespective of the date the injury was received; and any subscriber in a group so rated, whose record for such period cannot be obtained, shall be given a rate based upon the subscriber's record for any part of such period as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any group to which this individual method of rating is applied, and to add to the rate determined from the subscriber's record such amount as is necessary to liquidate any deficit in the schedule as to create a reasonable surplus.

It shall be the duty of the commissioner, when the commissioner changes any rate, to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be the commissioner's duty to furnish to each employer yearly, or more often if requested by the employer, a statement giving the name of each of the employer's employees who were paid for injury and the amounts so paid during the period covered by the statement.
§23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

(a) For the purpose of creating a workers' compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect. At the time each employer subscribes to the fund, the application required by the commissioner shall be filed and a premium deposit equal to the first quarter's estimated premium payment shall be remitted. The minimum quarterly premium to be paid by any employer shall be ten dollars.

(1) Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the total earnings of all employees during the preceding quarter.

(2) At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter. The report shall be on the form or forms prescribed by the commissioner, and shall contain all information required by the commissioner.

(3) After subscribing to the fund, each employer shall remit with each payroll report and premium payment an amount calculated to be sufficient to maintain a premium deposit equal to the previous quarter's premium payment: Provided, That the commissioner may reduce the amount of the premium deposit required from seasonal employers for those quarters during which employment is significantly reduced. The premium deposit shall be credited to the employer's account on the books of the commissioner and used to pay premiums and any other sums due the fund when an employer becomes delinquent.
(4) All premiums and premium deposits required to be paid by this chapter shall be paid by the employers to the commissioner, who shall maintain record of all sums so received. On and after the first day of October, one thousand nine hundred ninety-one, any such sum mailed to the commissioner shall be deemed to be received on the date the envelope transmitting it is postmarked by the United States postal service. All sums received by the commissioner shall be deposited in the state treasury to the credit of the workers' compensation division in the manner now prescribed by law.

(5) The commissioner may encourage employer efforts to create and maintain safe workplaces, to encourage loss prevention programs, and to encourage employer provided wellness programs, through the normal operation of the experience rating formula, seminars and other public presentations, the development of model safety programs and other initiatives as may be determined by the commissioner.

(b) Failure of an employer to timely pay premium, to timely file a payroll report, or to maintain an adequate premium deposit, shall cause the employer's account to become delinquent. No employer will be declared delinquent or be assessed any penalty therefore if the commissioner determines that such delinquency has been caused by delays in the administration of the fund. The commissioner shall, in writing, within sixty days of the end of each quarter notify all delinquent employers of their failure to timely pay premiums, to timely file a payroll report, or to maintain an adequate premium deposit. The notification shall demand the filing of the delinquent payroll report and payment of delinquent premiums, and/or payment of an amount sufficient to maintain the premium deposit, before the end of the third month following the end of the preceding quarter. The notification shall also require payment of interest on the delinquent premium payment and/or premium deposit pursuant to section thirteen of this article.

(c) Whenever the commissioner notifies an employer of the delinquent status of his or her account, the
notification shall explain the legal consequence of subsequent default by employers required to subscribe to the fund, and the effects of termination of any electing employer's account.

(d) Failure by the employer, who is required to subscribe to the fund and who fails to resolve his or her delinquency within the prescribed period, shall place the account in default and shall deprive such defaulting employer of the benefits and protection afforded by this chapter, including section six of this article, and he or she shall be liable as provided in section eight of this article. The defaulting employer's liability under said section shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs. The commissioner shall notify the defaulting employer of the method by which the employer may be reinstated with the fund. The commissioner shall also notify the employees of such employer by written notice as hereinafter provided for in this section.

(e) Failure by any employer, who voluntarily elects to subscribe, to resolve his or her delinquency within the prescribed period shall automatically terminate the election of such employer to pay into the workers' compensation fund and shall deprive such delinquent employer of the benefits and protection afforded by this chapter, including section six of this article, and he or she shall be liable as provided in section eight of this article. The defaulting employer's liability under said section shall be retroactive to twelve o'clock p.m., of the last day of the month following the end of the quarter for which the delinquency occurs.

(f) (1) Except as provided for in subdivision (3) of this subsection, any employer who is required to subscribe to the fund and who is in default on the effective date of this section or who subsequently defaults, and any employer who has elected to subscribe to the fund and whose account is terminated prior to the effective date of this section or whose account is subsequently terminated, shall be restored immediately to the benefits and protection of this chapter only upon the filing of all
delinquent payroll and other reports required by the commissioner and payment into the fund of all unpaid premiums, an adequate premium deposit, and accrued interest. Interest shall be calculated as provided for by section thirteen of this article. In addition, for every defaulted or terminated employer whose default or termination lasts for two consecutive quarters or who has defaulted or been terminated for two quarters out of the preceding eight consecutive quarters, then when any such employer's application for reinstatement is filed or upon any such employer's restoration to the benefits and protection of this chapter, for the next eight quarters, including the quarter in which such restoration occurs, or when any such employer's application for reinstatement is filed, the employer shall pay premiums to the commissioner at a penalty rate. The applicable penalty premium rate shall be determined by first calculating the employer's premium under the provisions of section four of this article, but including any applicable experience modification, and then multiplying that premium by one hundred ten percent.

The commissioner shall not have the authority to waive either accrued interest or the imposition of the penalty premium rate. Any employer whose default or termination does not last for two consecutive quarters or who has not been in default two quarters out of the preceding eight consecutive quarters shall not have a penalty premium rate imposed. The provisions of section seventeen of this article apply to any action or decision of the commissioner under this section. For purposes of section four of this article, the extra ten percent of premium constituting the penalty shall not be used in determining any entitlement to experience modification of the employer's premium rate for future years.

(2) The commissioner shall have the authority to restore a defaulted or terminated employer under a reinstatement agreement. Such reinstatement agreement shall require the payment in full of all premiums, premium deposits, past accrued interest and future interest calculated pursuant to the provisions of section thirteen of this article. The reinstatement agreement
shall not permit any modification or waiver of the penalty premium rate provided for in subdivision (1) of this subsection. Notwithstanding the filing of a reinstatement application or the entering into of a reinstatement agreement, the commissioner is authorized to file a lien against the employer as provided for by section five-a of this article. In addition, entry into a repayment agreement is discretionary with the commissioner. Such discretion shall be exercised in keeping with the commissioner's fiduciary obligations to the workers' compensation fund. Should the commissioner decline to enter into a repayment agreement and should the employer not comply with the provisions of subdivision (1) of this subsection, then the commissioner may proceed with any of the collection efforts provided for by section five-a of this article or as otherwise provided for by this code. Applications for reinstatement shall:

(A) Be made upon forms prescribed by the commissioner; (B) include a report of the gross payroll of the employer during the entire period of delinquency and default, which payroll information shall be certified by the employer or its authorized agent; and (C) include a payment equal to one half of one percent of the gross payroll during the period of delinquency and default but not to exceed the amount of the entire liability due and owing for the period of delinquency and default. An employer who applies for reinstatement shall be entitled to the benefits and protection of this chapter on the day the application is received by the commissioner:

Provided, That if the commissioner reinstates an employer subject to the terms of a repayment agreement, the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with the repayment agreement or to timely file current premiums within the month following the end of the quarter for which the report and payment are due, or to otherwise maintain its account in good standing or, if the repayment agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of the repayment period shall cause the reinstatement application or the repayment agreement,
or both, to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(3) Any employer who fails to maintain his or her account in good standing with regard to subsequent premiums and premium deposits prior to the final resolution of an application for reinstatement as provided for in subdivision (1) of this subsection shall cause the reinstatement application to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(4) Following any failure of an employer to comply with the provisions of a repayment agreement, the commissioner may then make and continue with any of the collection efforts provided for by this chapter or elsewhere in this code even if the employer files another reinstatement application.

(g) No employee of an employer required by this chapter to subscribe to the workers' compensation fund shall be denied benefits provided by this chapter because the employer failed to subscribe or because the employer's account is either delinquent or in default.

(h) (1) The provisions of this section shall not deprive any individual of any cause of action which has accrued as a result of an injury or death which occurred during any period of delinquency not resolved in accordance with the provisions of this article, or subsequent failure to comply with the terms of the repayment agreement.

(2) Upon withdrawal from the fund or termination of election of any employer, he or she shall be refunded the balance due him or her of his or her deposit, after deducting all amounts owed by him or her to the workers' compensation fund, and the commissioner shall notify the employees of such employer of said termination in such manner as he or she may deem best and sufficient.
(3) Notice to employees in this section provided for shall be given by posting written notice that the employer is defaulted under the compensation law of West Virginia, and in the case of employers required by this chapter to subscribe and pay premiums to the fund, that the defaulted employer is liable to his or her employees for injury or death, both in workers' compensation benefits and in damages at common law or by statute; and in the case of employers not required by this chapter to subscribe and pay premiums to the fund, but voluntarily electing to do so as herein provided, that neither the employer nor the employees of such employer are protected by said laws as to any injury or death sustained after the date specified in said notice. Such notice shall be in the form prescribed by the commissioner and shall be posted in a conspicuous place at the chief works of the employer, as the same appear in records of the commissioner. If said chief works of the employer cannot be found or identified, then said notices shall be posted at the front door of the courthouse of the county in which said chief works are located, according to the records in the commissioner's office. Any person who shall, prior to the reinstatement of said employer, as hereinbefore provided for, or prior to sixty days after the posting of said notice, whichever shall first occur, remove, deface, or render illegible said notice, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed five hundred dollars, and said notice shall state this provision upon its face. The commissioner may require any sheriff, deputy sheriff, constable or other official of the state of West Virginia, who may be authorized to serve civil process, to post such notice and to make return thereof of the fact of such posting to the commissioner, and any failure of such officer to post any notice within ten days after he or she shall have received the same from the commissioner, without just cause or excuse, shall constitute a willful failure or refusal to perform a duty required of him or her by law within the meaning of section twenty-eight, article five, chapter sixty-one of this code. Any person actually injured by reason of such failure shall have an action against said
official, and upon any official bond he or she may have given, for such damages as such person may actually have incurred, but not to exceed, in the case of any surety upon said bond, the amount of the penalty of said bond. Any official posting said notice as herein required shall be entitled to the same fee as is now or may hereafter be provided for the service of process in suits instituted in courts of record in the state of West Virginia, which fee shall be paid by the commissioner out of any funds at his or her disposal, but shall be charged by him or her against the account of the employer to whose delinquency such notice relates.

§23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers; insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

(a) The commissioner in the name of the state may commence a civil action against an employer who, after due notice, defaults in any payment required by this chapter. If judgment is against the employer, such employer shall pay the costs of the action. Civil action under this section shall be given preference on the calendar of the court over all other civil actions. Upon prevailing in any such civil action, the commissioner shall be entitled to recover his or her attorneys' fees and costs from the employer.

(b) In addition to the foregoing provisions of this section, any payment, interest and penalty thereon due and unpaid under this chapter shall be a personal obligation of the employer immediately due and owing to the commissioner and shall, in addition thereto, be a lien enforceable against all the property of the employer: Provided, That no such lien shall be enforceable as against a purchaser (including a lien creditor) of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section
Provided, however, That such lien may be enforced as other judgment liens are enforced through the provisions of chapter thirty-eight of this code and the same shall be deemed by the circuit court to be a judgment lien for this purpose.

(c) In addition to all other civil remedies prescribed herein, the commissioner may in the name of the state, after giving appropriate notice as required by due process, restrain upon any personal property, including intangible property, of any employer delinquent for any payment, interest and penalty thereon. If the commissioner has good reason to believe that such property or a substantial portion thereof is about to be removed from the county in which it is situated, upon giving appropriate notice, either before or after the seizure, as is proper in the circumstances, he or she may likewise restrain in the name of the state before such delinquency occurs. For such purpose, the commissioner may require the services of a sheriff of any county in the state in levying such distress in the county in which the sheriff is an officer and in which such personal property is situated. A sheriff so collecting any payment, interest and penalty thereon shall be entitled to such compensation as is provided by law for his or her services in the levy and enforcement of executions. Upon prevailing in any distraint action, the commissioner shall be entitled to recover his or her attorneys' fees and costs of action from the employer.

(d) In case a business subject to the payments, interest and penalties thereon imposed under this chapter shall be operated in connection with a receivership or insolvency proceeding in any state court in this state, the court under whose direction such business is operated shall, by the entry of a proper order or decree in the cause, make provisions, so far as the assets in administration will permit, for the regular payment of such payments, interest and penalties as the same become due.

(e) The secretary of state of this state shall withhold the issuance of any certificate of dissolution or with-
62 drawal in the case of any corporation organized under
63 the laws of this state or organized under the laws of any
64 other state and admitted to do business in this state,
65 until notified by the commissioner that all payments,
66 interest and penalties thereon against any such corpo-
67 ration which is an employer under this chapter have
68 been paid or that provision satisfactory to the commis-
69 sioner has been made for payment.

70 (f) In any case when an employer required to sub-
71 scribe to the fund defaults in payments of premium,
72 premium deposits, or interest thereon, for as many as
73 two calendar quarters, which quarters need not be
74 consecutive, and remains in default after due notice, and
75 the commissioner has been unable to collect such
76 payments by any of the other civil remedies prescribed
77 herein, the commissioner may bring action in the circuit
78 court of Kanawha county to enjoin such employer from
79 continuing to carry on the business in which such
80 liability was incurred: Provided, That the commissioner
81 may as an alternative to this action require such
82 delinquent employer to file a bond in the form pres-
83 cribed by the commissioner with satisfactory surety in
84 an amount not less than fifty percent more than the
85 payments, interest and penalties due.

§23-2-5b. Legislative purpose; application for settlement;
reinstatement; amount of settlement; when
settlement void; notification of rights.

1 The Legislature hereby declares that it is the purpose
2 of this section to provide any employer who may, as of
3 the effective date of this section, be in default in any
4 payment due under the provisions in this article an
5 opportunity to settle the amount of the default in
6 accordance with the provisions hereinafter set forth. For
7 purposes of this section, the term "default" shall apply
8 to any employer who has failed to subscribe or pay
9 premiums to the workers' compensation fund in accor-
10 dance with the provisions of this chapter.

11 (a) On or before the first day of February, one
12 thousand nine hundred ninety-four, any employer who
13 may qualify under this section shall apply to the
commissioner for a settlement of the amount of default. Such application shall: (1) Be made on a form prescribed by the commissioner; (2) include the gross payroll of the employer during the entire period of delinquency and default, which payroll information shall be certified by the employer or its authorized agent; and (3) include a payment equal to one half of one percent of the gross payroll during the period of delinquency and default, but not to exceed the amount of the entire liability due and owing for the period of delinquency and default.

(b) Notwithstanding other provisions of this chapter to the contrary, upon timely receipt of the application prescribed in subdivision (a) of this section, the employer shall be entitled to the benefits and protections of this chapter: Provided, That such entitlement shall not affect any cause of action which has accrued against the employer as a result of an injury sustained during any period of default prior to the date of the application: Provided, however, That the subsequent failure of the employer to make scheduled payments or to pay accrued or future interest in accordance with any repayment agreement or to timely file current premiums within the month following the end of the quarter for which the report and payment are due, or to otherwise maintain its account in good standing or, if a repayment agreement does not require earlier restoration of the premium deposit, to restore the premium deposit to the required amount by the end of any repayment period shall cause the application or any repayment agreement, or both, to be null, void and of no effect, and the employer shall be denied the benefits and protection of this chapter effective from the date that such employer's account originally became delinquent.

(c) After the commissioner shall have received the application of an employer as prescribed herein, the commissioner and the employer or its authorized agent shall agree, in writing, on or before the first day of July, one thousand nine hundred ninety-four, to settle the default in an amount which shall include all delinquent premium payments, plus interest, compounded monthly, at the rate of nine percent per annum. The commis-
sioner may authorize payment of the amount set forth in the agreement on a payment schedule, which period shall not exceed three years from the date of the execution of the agreement. The agreement shall set forth that the employer shall be in default if any payment shall not be received by the commissioner within fifteen days of the due date thereof.

(d) If the employer shall fail to pay timely current premiums in accordance with the provisions of this chapter or if the employer shall default upon any payment set forth under the terms of the agreement, such application or agreement, or both, shall be null, void and of no effect and the commissioner shall have the authority to proceed in accordance with the provisions of this chapter. Current premiums shall be timely paid when they are paid within the month following the end of the quarter for which the reported payment is due.

(e) The commissioner shall notify in writing, by the first day of January, one thousand nine hundred ninety-four, all employers, who are in default as indicated by the records of the commissioner, of the employer's right to apply for a settlement in accordance with the provisions of this section. The commissioner may also take additional steps, as deemed appropriate, to notify other employers of the rights set forth herein. The written notice of the commissioner shall include the form required for application and the commissioner shall make such form available to other employers.

§23-2-5c. Statute of limitations; effective date for new payments; previous payments due not affected.

For payments due after the effective date of this section, every action or process to collect any premium, premium deposit, interest or penalty due from an employer pursuant to this article by the commissioner shall be brought or issued within five years next after the date on which the employer is required by the section imposing the premium, premium deposit, interest or penalty to file a report and pay the amount
due thereunder. The limitation provided by this section shall likewise apply to enforcement of the lien, if any, securing the payment of such premium, premium deposit, interest or penalty, but shall not apply in event of fraud or in event the employer wholly fails to file the report required by the section imposing the premium, premium deposit, interest or penalty. For payments that were due prior to the effective date of this section, there shall continue to be no limitation on when actions or processes may be brought or issued.

§23-2-5d. Uncollectible receivables; write-offs.

The commissioner, with the approval of the attorney general, may write-off any uncollected receivable due under the provisions of this article which the commissioner and the attorney general deem to be uncollectible.

§23-2-15. Liabilities of successor employer; waiver of payment by commissioner; assignment of predecessor employer's premium rate to successor.

(a) Notwithstanding any provisions of section five-a of this article to the contrary, in the event that a new employer acquires by sale or other transfer or assumes all or substantially all of a predecessor employer's actual business, business assets, customers, clients, contracts, operations, stock of goods, equipment or substantially all of its employees, then any liens for payments owed to the commissioner for premiums, premium deposits, interest or claims losses by the predecessor employer or any liens held by the commissioner against the predecessor employer's property shall be extended to the assets acquired as the result of the sale or transfer by the new employer and shall be enforceable against such assets by the commissioner to the same extent as provided for the enforcement of liens against the predecessor employer pursuant to said section. As used in this section, the term "assets" is defined as provided in section fourteen of this article. The foregoing provisions are expressly intended to impose upon such new employers the duty of obtaining, prior to the date of such acquisition, verification from the commissioner
that the predecessor employer's account with the
commissioner is in good standing.

(b) At any time prior to or following the acquisition
described in subsection (a) of this section, the buyer or
other recipient may file a certified petition with the
commissioner requesting that the commissioner waive
the payment by the buyer or other recipient of premi-
ums, premium deposits, interest and imposition of the
modified rate of premiums attributable to the predeces-
sor employer, or any combination thereof. The commis-
sioner shall review the petition by considering the six
factors set forth below:

(1) The exact nature of the default;

(2) The amount owed to the commissioner;

(3) The solvency of the fund;

(4) The financial condition of the buyer or other
recipient;

(5) The equities exhibited towards the fund by the
buyer or other recipient during the acquisition process;

and

(6) The potential economic impact upon the state and
the specific geographic area in which the buyer or other
recipient is to be or is located, if the acquisition were
not to occur.

Unless requested by a party or by the commissioner,
no hearing need be held on the petition. However, any
decision made by the commissioner on the petition shall
be in writing and shall include appropriate findings of
fact and conclusions of law. Such decision shall be
effective ten days following notice to the public of the
decision unless an objection is filed in the manner herein
provided. Such notice shall be given by the commission-
er's publication of a Class I legal advertisement which
complies with the provisions of article three, chapter
fifty-nine of this code. The publication shall include a
summary of the decision and a statement advising that
any person objecting to the decision must file, within ten
days after publication of the notice, a verified response
with the commissioner setting forth the objection and
the basis therefor. The publication area shall be
Kanawha County, West Virginia. If any such objection
is filed, the commissioner shall hold an administrative
hearing, conducted pursuant to article five, chapter
twenty-nine-a of this code, within fifteen days of
receiving the response unless the buyer or other
recipient consents to a later hearing. Nothing in this
subsection shall be construed to be applicable to the
seller or other transferor or to affect in any way a
proceeding under sections five and five-a of this article.

(c) In the factual situations set forth in subsection (a)
of this section, if the predecessor's modified rate of
premium, as calculated in accordance with section four
of this article, is greater than the manual rate of
premium, as calculated in accordance with said section,
for other employers in the same class or group, then the
new employer shall also assume the predecessor employ-
er's modified rates for the payment of premiums as
determined under sections four and five of this article
until sufficient time has elapsed for the new employer's
experience record to be combined with the experience
record of the predecessor employer.

§23-2-17. Employer right to hearing; content of petition;
appeal.

Notwithstanding any provision in this chapter to the
contrary and notwithstanding any provision in section
five, article five, chapter twenty-nine-a of this code to
the contrary, in any situation where an employer objects
to a decision or action of the commissioner made under
the provisions of this article, then such employer shall
be entitled to file a petition demanding a hearing upon
such decision or action which petition must be filed
within thirty days of the employer's receipt of notice of
the disputed commissioner's decision or action or, in the
absence of such receipt, within sixty days of the date of
the commissioner's making such disputed decision or
taking such disputed action, such time limitations being
hereby declared to be a condition of the right to litigate
such decision or action and hence jurisdictional.
The employer's petition shall clearly identify the decision or action disputed and the bases upon which the employer disputes the decision or action. Upon receipt of such a petition, the commissioner shall schedule a hearing which shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. An appeal from a final decision of the commissioner shall be taken in accord with the provisions of articles five and six of said chapter: Provided, That all such appeals shall be taken to the circuit court of Kanawha county.

ARTICLE 2B. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.

§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.

§23-2B-1. Occupational safety and health activities; voluntary compliance; consultative services.

In order to carry out the purposes of this chapter and to encourage voluntary compliance with occupational safety and health laws, regulations and standards and to promote more effective workplace health and safety programs, the commissioner acting in conjunction with the performance council created pursuant to section one, article three, chapter twenty-one-a of this code, shall:

(a) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(1) Research, conferences, lectures and the use of public communications media;

(2) The collection and dissemination of accident and disease statistics; and

(3) The publication and distribution of training and accident prevention materials, including audio and visual aids;

(b) Provide consultative services for employers on
safety and health matters and prescribe procedures which will permit any employer to request a special inspection or investigation, focused on specific problems or hazards in the place of employment of the employer or to request assistance in developing a plan to correct such problems or hazards, which will not directly result in a citation and civil penalty; and

(c) Place emphasis, in the research, education and consultation program, on development of a model for providing services to groups of small employers in particular industries and their employees and for all employers whose experience modification factor for rate-setting purposes is in excess of the criteria established by the compensation programs performance council.

§23-2B-2. Mandatory programs; safety committees; requirements; rules; exceptions.

(a) Based upon and to the extent authorized by criteria established by the compensation programs performance council, the commissioner is authorized to conduct special inspections or investigations focused on specific problems or hazards in the workplace with or without the agreement of the employer. The commissioner shall issue a report on his or her findings and shall furnish a copy of the report to the employer and to any bargaining unit representing the employees of the employer. The commissioner may share information obtained or developed pursuant to this article with other governmental agencies.

(b) For any employer whose experience modification factor exceeds the criteria established by the compensation programs performance council, the commissioner may require the employer to establish a safety committee composed of representatives of the employer and the employees of the employer.

(c) In carrying out the provisions of this article, the commissioner and the compensation programs performance council shall promulgate rules which shall include, but are not limited to, the following provisions:
(1) Prescribing the membership of the committees, training, frequency of meetings, record keeping and compensation of employee representatives on safety committees; and

(2) Prescribing the duties and functions of safety committees which include, but are not limited to:

(A) Establishing procedures for workplace safety inspections; and for investigating job-related accidents, illnesses and deaths; and

(B) Evaluating accident and illness prevention programs.

(d) An employer that is a member of a multi-employer group operating under a collective bargaining agreement that contains provisions regulating the formation and operation of a safety committee that meets or exceeds the minimum requirements of this section shall be considered to have met the requirements of this section.

(e) It is not the purpose of this article to either supercede the federal Occupational Health and Safety Act program, federal Mine Safety and Health Act program or to create a state counterpart to this program.

§23-2B-3. Premium rate credits; qualified loss management program; loss management firms; penalties; rules.

(a) The commissioner, in conjunction with the compensation programs performance council, is authorized to establish by rule a premium credit program for certain employers. The program shall be applicable solely to regular subscribers to the workers' compensation fund and not to self-insurers. Participation in any premium credit program shall be voluntary and no employer shall be required to participate.

(b) The program shall apply a prospective credit to the premium rate of a subscribing employer who participates in a qualified loss management program. The prospective credit shall be given for a period of up
to three years, provided that the employer remains in
the program for a corresponding period of time.

(c) The rule shall specify the requirements of a
qualified loss management program and shall include a
requirement that a recognized loss management firm
participate in the program. A loss management firm
shall be recognized if it has demonstrated an ability to
significantly reduce workers' compensation losses for its
client employers by implementing a loss control man-
agement program. The amount of credit against
premium rates that may be allowed by the commis-
sioner shall vary from firm to firm and shall be
primarily determined by the loss reduction success
experienced by all of the subscribing employers of the
sponsoring loss management firm over a period of time
to be determined by the commissioner.

(d) A credit shall be applied to the employer's
premium rate for up to three years. The amount of the
credit applied to the first year is based on the credit
factor assigned to the loss management firm on the date
the employer subscribes to the program. The amount of
the credit applied to the second and third years shall be
based on the credit factor assigned to the loss manage-
ment firm and in effect on each first day of July of the
pertinent year: Provided, That the applicable credit is
halved in the third year.

(e) The employer may terminate participation in the
program upon three years of continuous participation in
the program without penalty. Sooner termination may
result in a penalty being applied to the employer's
premium rate.

(f) An employer who has subscribed to an existing
program of a qualified loss management firm prior to
the effective date of this section shall be subject to a
reduction in credit as follows:

(1) Participation for one year or less shall result in
credit for the full three years;

(2) Participation for more than one year but less than
two years shall result in a credit for two years;
(3) Participation for two years or more but less than three years shall result in a credit for one year; and

(4) Participation for three years or more shall result in no credit.

(g) This section shall not become effective until the commissioner, in conjunction with the compensation programs performance council, promulgates an appropriate rule to implement the section's provisions.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1e. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated.

§23-4-1f. Certain psychiatric injuries and diseases not compensable.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.

§23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties; restitution.

§23-4-3c. Suspension or termination of providers of health care.

§23-4-6. Classification of and criteria for disability benefits.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

§23-4-19. Wrongfully seeking compensation; criminal penalties; restitution; termination of compensation.

§23-4-22. Permanent disability evaluations; limitations; notice.

§23-4-23. Permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.
§23-4-25. Permanent total disability benefits reduction of disability benefits for wages earned by claimant.

§23-4-le. Temporary total disability benefits not to be paid for periods of penitentiary or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while incarcerated.

(a) Notwithstanding any provision of this code to the contrary, no person shall be jurisdictionally entitled to temporary total disability benefits for that period of time in excess of three days during which such person is incarcerated in a penitentiary or jail: Provided, That incarceration shall not affect the claimant's eligibility for payment of expenses: Provided, however, That this subsection is applicable only to injuries and diseases incurred prior to any period of incarceration. Upon release from confinement, the payment of benefits for the remaining period of temporary total disability shall be made if justified by the evidence and authorized by order of the commissioner.

(b) Notwithstanding any provision of this code to the contrary, no person incarcerated in a penitentiary or jail who suffers injury or a disease in the course of and resulting from his or her work during such period of incarceration which work is imposed by the administration of the penitentiary or jail and is not suffered during such person's usual employment with his or her usual employer when not incarcerated shall receive benefits under the provisions of this chapter for such injury or disease.

§23-4-1f. Certain psychiatric injuries and diseases not compensable.

For the purposes of this chapter, no alleged injury or disease shall be recognized as a compensable injury or disease which was solely caused by nonphysical means and which did not result in any physical injury or disease to the person claiming benefits. It is the purpose of this section to clarify that so-called mental-mental claims are not compensable under this chapter.
§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care programs; payments; interlocutory orders.

(a) The commissioner shall establish and alter from time to time as he or she may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to chiropractic physicians, medical physicians, osteopathic physicians, podiatrists, optometrists, vocational rehabilitation specialists, pharmacists, ophthalmologists and others practicing medicine and surgery, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment or services to injured employees under this chapter. The commissioner also, on the first day of each regular session and also from time to time, as the commissioner may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature. The promulgation of the schedule is not subject to the legislative rule-making review procedures established in sections nine through sixteen, article three, chapter twenty-nine-a of this code.

The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(1) Such sums for medicines, medical, surgical, dental and hospital treatment or services, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required. The commissioner shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by
the health care advisory panel pursuant to section three-
b of this article: Provided, That nothing herein shall
prevent the implementation of guidelines applicable to
a particular type of treatment or service or to a
particular type of injury before guidelines have been
developed for other types of treatment or services or
injuries: Provided, however, That any guidelines for
utilization review which are developed in addition to the
guidelines provided for in said section may be utilized
by the commissioner until superseded by guidelines
developed by the health care advisory panel pursuant to
said section. Each health care provider who seeks to
provide services or treatment which are not within any
such guideline shall submit to the commissioner specific
justification for the need for such additional services in
the particular case and the commissioner shall have the
justification reviewed by a health care professional
before authorizing any such additional services. The
commissioner is authorized to enter into preferred
provider agreements.

(2) Payment for such medicine, medical, surgical,
dental and hospital treatment or services, crutches,
artificial limbs and such other and additional approved
mechanical appliances and devices authorized under
this subdivision may be made to the injured employee
or to the person, firm or corporation who or which has
rendered such treatment or furnished any of the items
specified above, or who has advanced payment for same,
as the commissioner may deem proper, but no such
payments or disbursements shall be made or awarded
by the commissioner unless duly verified statements on
forms prescribed by the commissioner shall be filed
with the commissioner within two years after the
cessation of such treatment or the delivery of such
appliances: Provided, That no payment hereunder shall
be made unless such verified statement shows no charge
for or with respect to such treatment or for or with
respect to any of the items specified above has been or
will be made against the injured employee or any other
person, firm or corporation, and when an employee
covered under the provisions of this chapter is injured
in the course of and as a result of his or her employment
and is accepted for medical, surgical, dental or hospital treatment or services or any mechanical appliances and devices, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

(b) No chiropractic physician, medical physician, osteopathic physician, podiatrist or others practicing medicine or surgery (collectively and individually referred to hereinafter as "practitioner" or "practitioners") shall refer his or her patients to the practitioner himself or herself or to a supplier of mechanical appliances or devices owned in whole or in part by the practitioner, the practitioner's partnership or professional corporation, or a member of the practitioner's immediate family for the purchase or rental of any mechanical appliances or devices which the practitioner has prescribed or recommended to such patient except upon the terms prescribed by this section. Examples of mechanical appliances or devices are described as follows, but these examples are described for illustrative purposes only and are not intended to limit the range of items included by this phrase: Hearing aids; crutches; artificial limbs; oxygen concentrators; and TENS units. For the purposes of this subsection, the term "practitioner" shall include natural persons, partnerships and professional corporations.

(1) In order to avoid the bar of this subdivision, a practitioner shall first disclose to his or her patient the ownership interest of the practitioner, or of the practitioner's partnership or professional corporation, or of a member of the practitioner's immediate family in the entity which would sell or rent the mechanical appliance or device to the patient. If the practitioner would sell or rent the mechanical appliance or device as part of his or her practice and not as a separate legal entity, the practitioner shall disclose this fact to the patient. These
disclosures must be delivered in writing to the patient.

(2) The commissioner may include in any rules promulgated to implement this section a requirement that the written notice disclose to the patient that he or she is free to use any lawful supplier of the mechanical appliance or device prescribed or recommended and that other suppliers may offer the mechanical appliance or device for less cost but of equal or better quality elsewhere and that the patient is encouraged to comparison shop. The commissioner's rule may also provide for a differing level of reimbursement to the supplier if the supplier is the practitioner himself or herself or if the supplier is owned in whole or in part by the practitioner, the practitioner's partnership or professional corporation or a member of the practitioner's immediate family as compared to the reimbursement of a supplier who is wholly independent from the practitioner.

(3) Failure by a practitioner to comply with the provisions of this subsection shall cause the practitioner to forfeit his, her or its right to reimbursement for the services rendered by the practitioner to the patient and, if any such services have previously been reimbursed, the commissioner shall either seek recovery of such funds by any lawful means or by deducting such amounts from future payments to the practitioner on account of services rendered to the same patient or to other claimants of the workers' compensation fund. In addition, failure by a practitioner to comply with the provisions of this subsection shall also result in the denial of payment to the supplier of the mechanical appliance or device if that supplier is one which is owned in whole or in part by the practitioner, the practitioner's partnership or professional corporation, or a member of the practitioner's immediate family. If such supplier has already been reimbursed for the cost of the pertinent mechanical appliance or device, then the commissioner shall either seek recovery of such funds by any lawful means or by deducting such amounts from future payments to the supplier on account of goods delivered to the same patient or to other claimants of the workers' compensation fund.
(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to the employer's employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars or by imprisonment not exceeding one year, or both: Provided, That the foregoing provisions of this subsection shall not be deemed to prohibit an employer from participating in a preferred provider organization or program or a health maintenance organization or other medical cost containment relationship with the providers of medical, hospital or other health care: Provided, however, That nothing in this section shall be deemed to restrict the right of a claimant to select a health care provider for treatment of a compensable injury or disease.

(d) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

(e) The commissioner shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or
which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The fund or self-insured employer shall pay for these devices, when needed, notwithstanding any time limits provided by law.

(f) No payment shall be made to a health care provider who is suspended or terminated under the terms of section three-c of this article except as provided in subsection (c) of said section.

(g) The commissioner is authorized to engage in and contract for medical cost containment programs, medical case management programs and utilization review programs. Payments for these programs shall be made from the supercededas reserve of the surplus fund. Any order issued pursuant to any such program shall be interlocutory in nature until an objecting party has exhausted all review processes provided for by the commissioner.

(h) Notwithstanding the foregoing, the commissioner may establish fee schedules, make payments and take other actions required or allowed pursuant to article twenty-nine-d, chapter sixteen of this code.

§23-4-3a. Wrongfully seeking payment for services or supplies; criminal penalties; restitution.

(a) If any person who is a health care provider shall:

(1) Knowingly, and with intent to defraud, secure or attempt to secure payment from the workers' compensation fund or a self-insured employer for services or supplies when such person is not entitled to such payment or is entitled to some lesser amount of payment; or

(2) Knowingly make any charge or charges against any injured employee or any other person, firm or corporation which would result in a total charge for the treatment or service rendered in excess of the maximum amount set forth therefor in the commissioner's schedule of maximum reasonable amounts to be paid for such
(b) Any person who is a health care provider who fails, in violation of subsection (e), section three-c of this article, to post a notice, in the form required by the commissioner, in the provider's public waiting area that the provider cannot accept any patient whose treatment or other services or supplies would ordinarily be paid for from the workers' compensation fund unless such patient consents, in writing, prior to the provision of such treatment or other services or supplies, to make payment for that treatment or other services or supplies himself or herself, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars.

(c) Any person who is a health care provider, who is suspended or terminated under section three-c of this article and, who intentionally attempts to collect any sum of money from an injured employee who was not, prior to the provision of any treatment or other services or supplies, provided with the notice required by subsection (c) of said section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

(d) For the purposes of this section, the term "person who is a health care provider" shall mean any person who has rendered, or who represents that he has rendered, any treatment to an injured employee under this chapter, or any person who has supplied, or who represents that he has supplied, any medication or any
crutches, artificial limbs and other mechanical appliances and devices for such injured employee. The term shall include, but not be limited to, persons practicing medicine and surgery, podiatry, dentistry, nursing, pharmacy, optometry, osteopathic medicine and surgery, chiropractic, physical therapy, psychology, radiologic technology, occupational therapy or vocational rehabilitation, and shall also include hospitals, professional corporations and other corporations, firms and business entities.

(e) Any person convicted under the provisions of this section shall, from and after such conviction, be barred from providing future services or supplies to injured employees under this chapter and shall cease to receive payment for such services or supplies.

§23-4-3c. Suspension or termination of providers of health care.

(a) The commissioner may suspend for up to one year or terminate the right of any health care provider, including a provider of rehabilitation services within the meaning of section nine of this article, to obtain payment for services rendered to injured employees:

(1) If the commissioner finds that the health care provider is regularly providing excessive, medically unreasonable or unethical care to injured employees;

(2) If the commissioner finds that a health care provider is attempting to make any charge or charges against the injured employee or any other person, firm or corporation which would result in a total charge for any treatment rendered in excess of the maximum amount set by the commissioner, in violation of section three of this article;

(3) If the commissioner determines that the health care provider has had his or her license to practice suspended or terminated by the appropriate authority in this state or in another state; or

(4) If the commissioner determines that the health care provider has been convicted of any crime in relation to his or her practice.
The commissioner shall consult with medical experts, including the health care advisory panel established pursuant to section three-b of this article, for purposes of determining whether a health care provider should be suspended or terminated pursuant to this section.

(b) Upon the commissioner determining that there is probable cause to believe that a health care provider should be suspended or terminated pursuant to this section, the commissioner shall provide such health care provider with written notice which shall state the nature of the charges against the health care provider and the time and place at which such health care provider shall appear to show cause why the health care provider's right to receive payment under this chapter should not be suspended or terminated, at which time and place such health care provider shall be afforded an opportunity to review the commissioner's evidence and to cross-examine the commissioner's witnesses and also afforded the opportunity to present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. The hearing may be conducted by the commissioner or a hearing officer appointed by the commissioner. The commissioner or hearing officer shall have the power to subpoena witnesses, papers, records, documents and other data and things in connection with the proceeding hereunder and to administer oaths or affirmations in any such hearing. If, after reviewing the record of such hearing, the commissioner determines that the right of such health care provider to obtain payment under this article should be suspended for a specified period of time or should be terminated, the commissioner shall issue a final order suspending or terminating the right of such health care provider to obtain payment for services under this article. Any health care provider so suspended or terminated shall be notified in writing and the notice shall specify the reasons for the action so taken. Any appeal by the health care provider shall be brought in the circuit court of Kanawha county or in the county in which the provider's principal place of business is located. The scope of the court's review of
such an appeal shall be as provided in section four of said article. The provider may be suspended or terminated, based upon the final order of the commissioner, pending final disposition of any appeal. Such final order may be stayed by the circuit court after hearing, but shall not be stayed in or as a result of any ex parte proceeding. If the health care provider does not appeal the final order of the commissioner within thirty days, it shall be final.

(c) No payment shall be made to a health care provider or to an injured employee for services provided by a health care provider after the effective date of a commissioner's final order terminating or suspending the health care provider: Provided, That nothing herein shall prohibit payment by the commissioner or self-insured employer to a suspended or terminated health care provider for medical services rendered where the medical services were rendered to an injured employee in an emergency situation. The suspended or terminated provider is prohibited from making any charge or charges for any services so provided against the injured employee unless the injured employee, before any services are rendered, is given notice by the provider in writing that the provider does not participate in the workers' compensation program and that the injured employee will be solely responsible for all payments to the provider, and unless the injured employee also signs a written consent, before any services are rendered, to make payment directly and to waive any right to reimbursement from the commissioner or the self-insured employer. The written consent and waiver signed by the injured employee shall be filed by the provider with the commissioner and shall be made a part of the claim file.

(d) The commissioner shall notify each claimant, whose duly authorized treating physician or other health care provider has been suspended or terminated pursuant to this section, of the suspension or termination of the provider's rights to obtain payment under this chapter and shall assist the claimant in arranging for
(e) Each suspended or terminated provider shall post in the provider’s public waiting area or areas a written notice, in the form required by the commissioner, of the suspension or termination of the provider’s rights to obtain payment under this chapter.

(f) A suspended or terminated provider may apply for reinstatement at the end of the term of suspension or, if terminated, after one year from the effective date of termination.

(g) The commissioner shall promulgate rules for the purpose of implementing this section.

§23-4-6. Classification of and criteria for disability benefits.

Where compensation is due an employee under the provisions of this chapter for personal injury, the compensation shall be as provided in the following schedule:

(a) The expressions “average weekly wage earnings, wherever earned, of the injured employee, at the date of injury” and “average weekly wage in West Virginia”, as used in this chapter, shall have the meaning and shall be computed as set forth in section fourteen of this article except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(b) If the injury causes temporary total disability, the employee shall receive during the continuance thereof weekly benefits as follows: A maximum weekly benefit to be computed on the basis of seventy percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after the first day of July, one thousand nine hundred sixty-nine, forty-five percent; on or after the first day of July, one thousand nine hundred seventy-one, fifty-five
percent; on or after the first day of July, one thousand
nine hundred seventy-three, sixty percent; on or after
the first day of July, one thousand nine hundred seventy-
four, eighty percent; on or after the first day of July,
one thousand nine hundred seventy-five, one hundred
percent.

The minimum weekly benefits paid hereunder shall
not be less than twenty-six dollars per week for injuries
occurring on or after the first day of July, one thousand
nine hundred sixty-nine; not less than thirty-five dollars
per week for injuries occurring on or after the first day
of July, one thousand nine hundred seventy-one; not less
than forty dollars per week for injuries occurring on or
after the first day of July, one thousand nine hundred
seventy-three; not less than forty-five dollars per week
for injuries occurring on or after the first day of July,
one thousand nine hundred seventy-four; and for injuries
occurring on or after the first day of July, one thousand
nine hundred seventy-six, thirty-three and one-third
percent of the average weekly wage in West Virginia,
except as provided in section six-d of this article.

(c) Subdivision (b) of this section shall be limited as
follows: Aggregate award for a single injury causing
temporary disability shall be for a period not exceeding
two hundred eight weeks.

(d) If the injury causes permanent total disability,
benefits shall be payable during the remainder of life
at the maximum or minimum weekly benefits as
provided in subdivision (b) of this section for temporary
total disability. A permanent disability of eighty-five
percent or more shall entitle the employee to a rebut-
table presumption of a permanent total disability for the
purpose of this section. Under no circumstances shall
the commissioner grant an additional permanent
disability award to a claimant receiving a permanent
total disability award, or to a claimant who has
previously been granted permanent disability awards
totaling eighty-five percent or more and has been
granted a permanent total disability award: Provided,
That if any claimant thereafter sustains another
compensable injury and has permanent partial disabil-
ity resulting therefrom, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries, and the cost of any increase in the permanent total disability benefit rate shall be paid from the second injury reserve created by section one, article three of this chapter. In any claim in which a claimant aggregates permanent partial disability awards in the amount of eighty-five percent or more after the effective date of this subsection, the claimant shall be entitled to a permanent total disability award unless the evidence establishes that the claimant is not permanently and totally disabled pursuant to subdivision (n) of this section.

(e) If the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined, at the following maximum or minimum benefit rates: Seventy percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed the percentage of the average weekly wage in West Virginia, as follows: On or after the first day of July, one thousand nine hundred sixty-nine, forty-five percent; on or after the first day of July, one thousand nine hundred seventy, fifty percent; on or after the first day of July, one thousand nine hundred seventy-one, fifty-five percent; on or after the first day of July, one thousand nine hundred seventy-three, sixty percent; on or after the first day of July, one thousand nine hundred seventy-five, sixty-six and two-thirds percent.

The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be
The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of a foot shall be considered a thirty-five percent disability.

The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.
The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.

The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For
the partial loss of vision in one, or both eyes, the
percentages of disability shall be determined by the
commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one
ear shall be considered a twenty-two and one-half
percent disability. The total and irrecoverable loss of
hearing of both ears shall be considered a fifty-five
percent disability.

For the partial loss of hearing in one, or both ears,
the percentage of disability shall be determined by the
commissioner, using as a basis the total loss of hearing
in both ears.

Should a claimant sustain a compensable injury
which results in the total loss by severance of any of the
bodily members named in this subdivision, die from
sickness or noncompensable injury before the commis-
sioner makes the proper award for such injury, the
commissioner shall make such award to claimant's
dependents as defined in this chapter, if any; such
payment to be made in the same installments that would
have been paid to claimant if living: Provided, That no
payment shall be made to any surviving spouse of such
claimant after his or her remarriage, and that this
liability shall not accrue to the estate of such claimant
and shall not be subject to any debts of, or charges
against, such estate.

(g) Should a claimant to whom has been made a
permanent partial award of from one percent to eighty-
four percent, both inclusive, die from sickness or
noncompensable injury, the unpaid balance of such
award shall be paid to claimant's dependents as defined
in this chapter, if any; such payment to be made in the
same installments that would have been paid to clai-
ment if living: Provided, That no payment shall be made
to any surviving spouse of such claimant after his or her
remarriage, and that this liability shall not accrue to the
estate of such claimant and shall not be subject to any
debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the
occupational pneumoconiosis board shall have the force and effect of an award.

(i) The award for permanent disabilities intermediate to those fixed by the foregoing schedule and permanent disability of from one percent to eighty-four percent shall be the same proportion and shall be computed and allowed by the commissioner.

(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) or (e) of this section. Where there has been an injury to a member as distinguished from total loss by severance of that member, the commissioner in determining the percentage of disability may be guided by, but shall not be limited to, the disabilities enumerated in subdivision (f) of this section.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right thereto shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of such injured employee if there be such dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.
Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case and award made in accordance with the provisions of subdivision (d) or (e).

(n) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. In addition, the vocational standards adopted pursuant to subsection (m) of section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.

§23-4-8c. Occupational pneumoconiosis board—Reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The occupational pneumoconiosis board, as soon as practicable, after it has completed its investigation, shall make its written report, to the commissioner, of its findings and conclusions on every medical question in controversy and the commissioner shall send one copy thereof to the employee or claimant and one copy to the employer, and the board shall also return to and file with the commissioner all the evidence as well as all statements under oath, if any, of the persons who appear before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of ten years during the fifteen years immediately preceding the date
of his or her last exposure to such hazard and that such
claimant or deceased employee has sustained a chronic
respiratory disability, then it shall be presumed that
such claimant is suffering or such deceased employee
was suffering at the time of his or her death from
occupational pneumoconiosis which arose out of and in
the course of his or her employment. This presumption
shall not be conclusive.

(c) The findings and conclusions of the board shall set
forth, among other things, the following:

(1) Whether or not the claimant or the deceased
employee has contracted occupational pneumoconiosis
and, if so, the percentage of permanent disability
resulting therefrom.

(2) Whether or not the exposure in the employment
was sufficient to have caused the claimant's or deceased
employee's occupational pneumoconiosis or to have
perceptibly aggravated an existing occupational pneu-
moconiosis, or other occupational disease.

(3) What, if any, physician appeared before the board
on behalf of the claimant or employer, and what, if any,
medical evidence was produced by or on behalf of the
claimant or employer.

(d) If either party objects to the whole or any part of
such findings and conclusions of the board, such party
shall file with the commissioner or, on or after the first
day of July, one thousand nine hundred ninety-one, with
the office of judges, within thirty days from receipt of
such copy to such party, unless for good cause shown,
the commissioner or chief administrative law judge
extends such time, such party's objections thereto in
writing, specifying the particular statements of the
board's findings and conclusions to which such party
objects. The filing of an objection within the time
specified is hereby declared to be a condition of the right
to litigate such findings and hence jurisdictional. After
the time has expired for the filing of objections to the
findings and conclusions of the board, the commissioner
or administrative law judge shall proceed to act as
provided in this chapter. If after the time has expired
for the filing of objections to the findings and conclusions of the board no objections have been filed, the report of a majority of the board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions therein stated. If objection has been filed to the findings and conclusions of the board, notice thereof shall be given to the board, and the members thereof joining in such findings and conclusions shall appear at the time fixed by the commissioner or office of judges for the hearing to submit to examination and cross-examination in respect to such findings and conclusions. At such hearing, evidence to support or controvert the findings and conclusions of the board shall be limited to examination and cross-examination of the members of the board, and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, then such claimant is barred for a period of three years from the date of the occupational pneumoconiosis board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be deemed to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of ninety days. Any previously filed, but unruled upon, claim shall be consolidated with the claim in which the board's decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant's claim to be forever barred by the provisions of section fifteen of this article.
§23-4-16. Commissioner's jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the commissioner over each case shall be continuing and he may from time to time, after due notice to the employer, make such modifications or changes with respect to former findings or orders as may be justified: Provided, That no further award may be made in fatal cases arising after the seventh day of March, one thousand nine hundred twenty-nine, except within two years after the death of the employee, or in case of nonfatal injuries, on and after the seventh day of March, one thousand nine hundred twenty-nine, except within five years after payments for temporary disability shall have ceased or not more than two times within five years after the commissioner shall have made the last payment in the original award or any subsequent increase thereto in any permanent disability case: Provided, however, That no such modification or change may be made in any case in which no award has been made, except within five years after the date of injury: Provided further, That a further award may be made for medical benefits only at any time. In any case in which an injured employee shall make application for a further adjustment of his claim, if such application be in writing and filed within the applicable time limit as prescribed herein, the commissioner shall pass upon and determine the merits of such application within thirty days after the filing thereof.

(b) If such application is based on a report of any medical examination made of the claimant and submitted by the claimant to the commissioner in support of his application, and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of such examination. Such reimbursement shall be made by the commissioner to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof.
being furnished the commissioner by the claimant, but
shall in no case exceed the sum fixed pursuant to the
commissioner's schedule of maximum reasonable fees
established under the provisions of section three of this
article.

(c) The commissioner shall have continuing power and
jurisdiction over claims in which permanent total
disability awards have been made after the effective
date of this section.

(1) The commissioner shall continuously monitor
permanent total disability awards and may from time
to time, after due notice to the claimant, reopen a claim
for reevaluation of the continuing nature of the disabili-
ty and possible modification of the award: Provided,
That such reopenings shall not be done sooner than
every two years: Provided, however, That any individual
claimant shall only be reevaluated a total of two times
after which he or she may not be again reevaluated
under the provisions of this subsection. The commis-
sioner may reopen a claim for reevaluation when, in the
commissioner's sole discretion, he or she concludes that
there exists good cause to believe that the claimant no
longer meets the eligibility requirements under subdi-
vision (n), section six of this article. The eligibility
requirements, including any vocational standards, shall
be applied as those requirements are stated at the time
of a claim's reopening. This section shall not be
applicable to any claim in which the final decision on
the eligibility of the claimant to a permanent total
disability award was made more than ten years prior
to the date of proposed reevaluation.

(2) Upon reopening a claim under this subsection, the
commissioner may take evidence, have the claimant
evaluated, make findings of fact and conclusions of law
and shall vacate, modify or affirm the original perma-
tent total disability award as the record requires. The
claimant's former employer shall not be a party to the
reevaluation, but shall be notified of the reevaluation
and may submit such information to the commissioner
as the employer may elect. In the event the claimant
retains his or her award following the reevaluation, then
the claimant's reasonable attorneys' fees incurred in
defending the award shall be paid by the workers'
compensation division from the supercedeas reserve of
the surplus fund. In addition, the workers' compensation
division shall reimburse a prevailing claimant for his or
her costs in obtaining one evaluation on each issue
during the course of the reevaluation with such reim-
bursement being made from the supercedeas reserve of
the surplus fund. The compensation programs perfor-
mance council shall adopt criteria for the determination
of reasonable attorneys' fees.

(3) This subsection shall not be applied to awards
made under the provisions of subdivision (m) of section
six of this article. The claimant may seek review of the
commissioner's final order as otherwise provided for in
article five of this chapter for review of orders granting
or denying permanent disability awards.

§23-4-19. Wrongfully seeking compensation; criminal
penalties; restitution; termination of
compensation.

Any person who shall knowingly and with fraudulent
intent secure or attempt to secure larger compensation,
or compensation for a longer term than he or she is
entitled to, from the workers' compensation fund or
from a self-insured employer, or knowingly and with
like intent secure or attempt to secure compensation
from such fund or self-insured employer when he or she
is not entitled thereto, or shall knowingly and with like
intent aid and abet anyone in the commission of the
offenses herein set forth, shall be guilty of a felony, and,
upon conviction thereof, shall be fined not exceeding five
thousand dollars, or imprisoned not exceeding two
years, or both, and in addition to any other penalty
imposed, the court shall order any person convicted
under this section to make full restitution of all moneys
paid by the commissioner or self-insured employer as
the result of the violation of this section. If the person
so convicted is receiving compensation from such fund
or self-insured employer, he or she shall, from and after
such conviction, cease to receive such compensation as
a result of that alleged injury or disease.
§23-4-22. Permanent disability evaluations; limitations; notice.

Notwithstanding any provision in this chapter to the contrary, any claim which was closed for the receipt of temporary total disability benefits or which was closed on a no lost time basis and which closure was more than five years prior to the effective date of this section shall not be considered to still be open or the subject for an evaluation of the claimant for permanent disability merely because such evaluation has not heretofore been conducted and a decision on permanent disability has not been made: Provided, That if a request for an evaluation was made in such a claim prior to the twenty-ninth day of March, one thousand nine hundred ninety-three, the commissioner shall have such evaluation performed. In every such instance, such a claim shall be a case in which no award has been made for the purposes of section sixteen of this article. In every claim closed after the effective date of this section, the commissioner shall give notice to the parties of the claimant's right to a permanent disability evaluation.

§23-4-23. Permanent total disability benefits; reduction of disability benefits; social security benefits; applications; release of information; credit or reduction of benefits; application of section; severability.

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under subdivision (d), (m) or (n), section six of this article or under section eight-c of this article. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. This section is not applicable to the receipt of medical benefits or the payment therefor.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which old-age insurance benefit payments under the
Social Security Act, 42 U.S.C. 401 and 402, or payments under a self-insurance plan, a wage continuation plan or a disability insurance policy provided by an employer, are also received or being received by the beneficiary, then such applicable benefits shall be reduced by these amounts:

(1) Fifty percent of the amount of full old-age insurance benefits received or being received under the Social Security Act: Provided, That if the claimant is receiving reduced old-age retirement benefits, then ten percent of the amount of old-age social security insurance benefits, had such benefits not been reduced, shall be deducted from the applicable benefits: Provided, however, That social security disability benefits shall not be deducted from the applicable benefits when such disability benefits are later changed to old-age insurance benefits upon the claimant's attaining the age specified for such conversion by the social security administration;

(2) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by an employer if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy; or

(3) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy: Provided, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in subdivisions (b) and (d), section six of this article.

(c) The commissioner shall notify a claimant or self-insured employer of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification shall
be promptly mailed by the commissioner or self-insured employer to the claimant after the date on which by reason of age the claimant may be entitled to social security benefits. A self-insured employer shall file a copy of any such notice of possible eligibility with the commissioner within ten days of its mailing to the claimant.

(1) Within thirty days after the receipt of the notification of possible eligibility, the claimant shall:

(A) Make application for social security benefits;

(B) Provide the commissioner or a self-insured employer with proof of that application; and

(C) Provide the commissioner or self-insured employer with an authorization for release of information which shall be utilized by the commissioner or self-insured employer to obtain necessary benefit entitlement and amount information from the social security administration. The authorization for release of information shall be effective for one year.

(2) Failure of the claimant to provide the proof of application or authorization for release of information shall allow the commissioner or self-insured employer with the approval of the commissioner to discontinue the payment of applicable benefits until the proof of application and the authorization for release of information is provided. Compensation benefits withheld shall be reimbursed to the claimant upon the providing of the required proof of application or the authorization for release of information, or both.

(d) If the commissioner or the self-insured employer is required to submit a new authorization for release of information to the social security administration in order to receive information necessary to comply with this section, the claimant shall provide the new authorization for release of information within thirty days of a request by the commissioner or self-insured employer. Failure of the claimant to provide the new authorization for release of information shall allow the commissioner or self-insured employer with the approval of the
commissioner to discontinue the payment of applicable benefits until the authorization for release of information is provided. Compensation benefits withheld shall be reimbursed to the claimant upon the providing of the authorization for release of information.

(e) Within thirty days after either the date of first payment of benefits or after the date of application for any benefit under subsection (b) of this section, whichever is later, the claimant shall provide the commissioner or self-insured employer with a properly executed authorization for release of information which shall be utilized by the commissioner or self-insured employer to obtain necessary benefit entitlement and amount information from the appropriate source. The authorization for release of information shall be effective for one year. Failure of the claimant to provide a properly executed authorization for release of information shall allow the commissioner or self-insured employer with the approval of the commissioner to discontinue the payment of applicable benefits until the authorization for release of information is provided. Compensation benefits withheld shall be reimbursed to the claimant upon the providing of the authorization for release of information. If the commissioner or the self-insured employer is required to submit a new authorization for release of information to the appropriate source in order to receive information necessary to comply with this section, the claimant shall provide the new authorization for release of information within thirty days of a request by the commissioner or self-insured employer. Failure of the claimant to provide the new authorization for release of information shall allow the commissioner or self-insured employer with the approval of the commissioner to discontinue the payment of applicable benefits until the authorization for release of information is provided. Compensation benefits withheld shall be reimbursed to the claimant upon the providing of the authorization for release of information.

(f) Any benefit payments under the Social Security Act, or any fund, policy or program as specified under subsection (b) of this section which the claimant receives
after the effective date of this section and during a period in which the claimant also receives unreduced workers’ compensation benefits shall be considered to create an overpayment of benefits for that period. The commissioner or self-insured employer shall calculate the amount of the overpayment and send a notice of overpayment and a request for reimbursement to the claimant. Failure by the claimant to reimburse the commissioner or self-insured employer within thirty days after the mailing date of the notice of request for reimbursement shall allow the commissioner or the self-insured employer, with the approval of the commissioner, to discontinue fifty percent of future benefits payments. The benefit payments withheld shall be credited against the amount of the overpayment. Payment of the appropriate benefit shall resume when the total amount of the overpayment has been withheld.

Any self-insured employer taking a credit or making a reduction as provided for in this subsection shall immediately report to the commissioner the amount of the credit or reduction and, as requested by the commissioner, furnish to the commissioner satisfactory proof of the basis for a credit or reduction.

(g) Nothing in this section shall be considered to compel a claimant to apply for early federal social security old-age benefits or to apply for other early or reduced benefits.

(h) This section applies to awards of permanent total disability made after the effective date of this section.

(i) The commissioner and the compensation programs performance council shall promulgate the appropriate rules for the interpretation, processing and enforcement of this section.

(j) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or such applications of the section as are not unconstitutional or in such violation.
§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

Notwithstanding any provision of this chapter to the contrary, from and after the effective date of this section the following provisions shall be in effect.

(a) Except as stated below, no claimant shall be awarded permanent total disability benefits arising under subdivision (d) or (n), section six or of section eight-c of this article who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. 401 and 402. Any such claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection shall not be applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant shall not be permitted to produce additional evidence of permanent total disability before the commissioner, the office of judges, the appeal board or the supreme court of appeals nor shall such a claim be remanded for the production of such evidence.

(b) For the purposes of subdivision (d), section six of this article, the award of permanent partial disability benefits under the provisions of section six-b of this article or under that portion of section six-a of this article which awards twenty weeks of benefits to a claimant who has occupational pneumoconiosis but without measurable pulmonary impairment therefrom shall not be counted towards the eighty-five percent needed to gain the rebuttable presumption of permanent total disability when such claimant has terminated active employment and is receiving federal nondisability
pension or retirement benefits, including old-age benefits under the Social Security Act. This subsection shall not affect any other awards of permanent partial disability benefits and their use in achieving the rebuttable eighty-five percent presumption.

(c) The office of judges shall not have jurisdiction to initially hear and decide any claim pertaining in whole or in part to subdivision (d) or (n), section six of this article. Any claim for permanent total disability benefits arising under said subdivisions shall first be presented to the commissioner as part of the initial claim filing or by way of an application for modification or adjustment pursuant to section sixteen of this article and section one-a, article five of this chapter. The office of judges may consider such a claim only after the commissioner has entered an appropriate order.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

(a) After the effective date of this section, a reduction in the amount of benefits as specified in subsection (b) of this section shall be made whenever benefits are being paid for a permanent total disability award regardless of when such benefits were awarded. This section is not applicable to the receipt of medical benefits or the payment therefor, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependant persons, or to the receipt of benefits pursuant to the provisions of subsection (e), section ten of this article. Prior to the application of this section to any claimant, the commissioner shall give the claimant notice of the effect of this section upon a claimant’s award if and when such claimant later earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time period in which the claimant has earned wages as a result of his or her employment, the following reduction in applicable benefits shall be made. The claimant’s applicable monthly benefits and monthly net wages received from the current employment shall be added together. If such total exceeds by more than one hundred and twenty
24 percent of the amount of the claimant's monthly net
25 wages earned during his or her last employment prior
26 to the award of permanent total disability benefits, then
27 such excess shall be reduced by one dollar for each two
28 dollars that the claimant's monthly net wages exceed the
29 one hundred and twenty percent level: Provided, That
30 in no event shall applicable benefits be reduced below
31 the minimum weekly benefits as provided for in
32 subdivisions (b) and (d), section six of this article.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commissioner of decision; procedures on claims; objections and hearing; mediation.

§23-5-1b. Refusal to reopen claim; notice; objection.

§23-5-1h. Hearings on objections to commissioner's decisions by office of administrative law judges.

§23-5-6. Article applies to claims arising under §23-2-9.

§23-5-1. Notice by commissioner of decision; procedures on claims; objections and hearing; mediation.

(a) The commissioner shall have full power and authority to hear and determine all questions within his or her jurisdiction. In matters arising under articles three and four of this chapter, the commissioner or a designated deputy shall promptly review and investigate all claims. The parties to a claim shall file such information in support of their respective positions as they deem proper. In addition, the commissioner or a designated deputy is authorized to develop such additional information as he or she deems to be necessary in the interests of fairness to the parties and in keeping with the commissioner's fiduciary obligations to the fund. With regard to any issue which is ready for a decision, the commissioner or designated deputy shall explain the basis of his or her decisions.

(b) Except with regard to interlocutory matters, upon making any decision, upon the making or refusing to make any award, or upon the making of any modification or change with respect to former findings or orders, as provided by section sixteen, article four of this chapter, the commissioner shall give notice, in writing, to the employer, employee, claimant, as the case may be, of his or her action, which notice shall state the time allowed for filing an objection to such finding, and such action of the commissioner shall be final unless the
employer, employee, claimant or dependant shall, within thirty days after the receipt of such notice, object in writing, to such finding, and unless an objection is filed within such thirty-day period, such finding or action shall be forever final, such time limitation being hereby declared to be a condition of the right to litigate such finding or action and hence jurisdictional. Any such objection shall be filed with the office of judges with a copy served upon the commissioner and other parties in accordance with the procedures set forth in sections one-g and one-h of this article.

(c) Where a finding or determination of the commissioner is protested only by the employer, and the employer does not prevail in its protest and, in the event the claimant is required to attend a hearing by subpoena or agreement of counsel or at the express direction of the commissioner, then such claimant in addition to reasonable traveling and other expenses shall be reimbursed for loss of wages incurred by the claimant in attending such hearing.

(d) Once an objection has been filed with the office of judges, the parties to the objection shall be offered an opportunity for mediation of the disputed issue by the commissioner. If all of the parties to the objection agree to mediation, the commissioner shall designate a deputy who was not involved in the original decision to act as mediator: Provided, That on issues related solely to the medical necessity of proposed medical treatment or diagnostic services, the commissioner shall offer the parties to the objection a selection of names of medical providers in the appropriate specialty. The parties shall then either agree upon a medical provider who shall act as mediator or, in the absence of an agreement, the commissioner shall select a medical provider who shall act as mediator. In cases where issues of medical necessity are intertwined with nonmedical treatment or nondiagnostic issues, both a medical provider and a designated deputy shall act as comediators and shall consider their respective issues. Neither shall be empowered to overturn the decision of the other.

Upon entering into mediation, the parties shall inform the office of judges of that action and the office of judges shall stay further action on the objection.
The mediator shall solicit the positions of the parties and shall review such additional information as the parties or the commissioner shall furnish. The mediator shall then issue a decision in writing with the necessary findings of fact and conclusions of law to support that decision. If any party disagrees with the decision, that party may note its objection to the office of judges, the commissioner and the other parties, and the office of judges shall lift the stay on the original protest. The decision and any information introduced during the attempted mediation shall be subject to consideration by the office of judges in making its decision on the objection. Upon acceptance by the parties of the result of the mediation, the office of judges shall dismiss the objection with prejudice.

The mediator shall conduct the mediation in an informal manner and without regard to the formal rules of evidence and procedure. Once the parties agree to mediation, then the agreement cannot be withdrawn.

(e) The panel of medical providers who shall serve as mediators shall be selected and approved by the compensation programs performance council. A medical provider serving as a mediator shall have the same protections from liability as does the commissioner with regard to his or her decisions including coverage by the board of risk management which shall be provided by the workers' compensation division.

§23-5-1b. Refusal to reopen claim; notice; objection.

If, however, in any case in which application for further adjustment of a claim is filed under the next preceding section, it shall appear to the commissioner that such application fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not theretofore considered by the commissioner in his or her former findings, and which would entitle such claimant to greater benefits than the claimant has already received, the commissioner shall, within a reasonable time, notify the claimant and the employer that such application fails to establish a prima facie cause for reopening the claim. Such notice shall be in writing stating the reasons for
denial and the time allowed for objection to such
decision of the commissioner. The claimant may, within
thirty days after receipt of such notice, object in writing
to such finding and unless the objection is filed within
such thirty-day period, no such objection shall be
allowed, such time limitation being hereby declared to
be a condition of the right to such objection and hence
jurisdictional. Upon receipt of an objection, the commis-
sioner or office of judges shall afford the claimant an
evidentiary hearing as provided in section one or one-
h of this article.

§23-5-1h. Hearings on objections to commissioner’s
decisions by office of administrative law judges.

On or after the first day of July, one thousand nine
hundred ninety-one, objections to a commissioner’s
decision made pursuant to the provisions of section one
of this article shall be filed with the office of judges.
Upon receipt of an objection, the office of judges shall,
within fifteen days from receipt thereof, set a time and
place for the hearing of evidence and shall notify the
commissioner of the filing of the objection. Hearings
may be conducted at the county seat of the county
wherein the injury occurred, or at any other place which
may be agreed upon by the interested parties, and in
the event the interested parties cannot agree, and it
appears in the opinion of the chief administrative law
judge or the chief administrative law judge’s authorized
representative that the ends of justice require the taking
of evidence elsewhere, then at such place as the chief
administrative law judge or such authorized represent-
ative may direct, having due regard for the convenience
of witnesses. The employer, the claimant and the
commissioner shall be notified of such hearing at least
ten days in advance, and the hearing shall be held
within thirty days after the filing of the objection unless
such hearing be postponed by agreement of the parties
or by the chief administrative law judge or such
authorized representative for good cause. The commis-
sioner shall be a party to any proceeding under this
article which involves a claim chargeable against the
workers' compensation fund, the disabled workers' relief
fund or such other fund as may then be under the
commissioner's management and control.

The office of judges shall keep full and complete
records of all proceedings concerning a disputed claim.
All testimony upon a disputed claim shall be recorded
but need not be transcribed unless the claim is appealed
or in such other circumstances as, in the opinion of the
chief administrative law judge, may require such
transcription. Upon receipt of notice of the filing of an
objection, the commissioner shall forthwith forward to
the chief administrative law judge all records, or copies
of such records, in the commissioner's office which
relate to the matter objected to. All such records or
copies thereof and any evidence taken at hearings
conducted by the office of judges shall constitute the
record upon which the matter shall be decided. The
office of judges shall not be bound by the usual common
law or statutory rules of evidence. At any time within
thirty days after hearing, if the chief administrative law
judge or the chief administrative law judge's authorized
representative is of the opinion that the facts have not
been adequately developed at such hearing, he or she
may order supplemental hearings or obtain such
additional evidence as he or she deems warranted upon
due notice to the parties.

All hearings shall be conducted as determined by the
chief administrative law judge pursuant to the rules of
practice and procedure promulgated pursuant to section
one-g of this article. Upon consideration of the entire
record, the chief administrative law judge or an
administrative law judge within the office of judges
shall, within thirty days after final hearing, render a
decision affirming, reversing or modifying the commis-
sioner's action. Said decision shall contain findings of
fact and conclusions of law and shall be mailed to all
interested parties.

§23-5-6. Article applies to claims arising under §23-2-9.

The provisions of this article shall also apply to all
claims arising under section nine, article two of this
chapter.
CHAPTER 172
(H. B. 2600—By Delegates Kiss and Ryan)

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

AN ACT to establish the Beckley-Raleigh County Humane Authority, to provide the authority with powers to operate and to establish the appointment and composition of membership.

Be it enacted by the Legislature of West Virginia:

BECKLEY-RALEIGH COUNTY HUMANE AUTHORITY.

§1. Beckley-Raleigh County Humane Authority created; powers and duties.

There is hereby created the Beckley-Raleigh County Humane Authority. The authority shall provide for the employment of humane officers and other employees to investigate all complaints regarding the cruel or inhumane treatment of animals within the city of Beckley and Raleigh County. The authority shall have and exercise all powers, duties and responsibilities authorized and required by article ten, chapter seven of this code, and by section ten, article fifteen, chapter seven and section eleven, article fifteen, chapter seven of this code.

§2. Membership of authority.

The Beckley-Raleigh County Humane Authority shall consist of seven members. Two members shall be appointed by the county commission of Raleigh County; two members shall be appointed by the city of Beckley; and three members shall be appointed by the Raleigh-County Humane Society.
CHAPTER 173
(H. B. 2504—By Delegates Manuel and Doyle)

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

AN ACT to authorize the county commission of Jefferson County to convey a parcel of county-owned land to the Jefferson County Fairgrounds; reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to convey land to the Jefferson County Fairgrounds.

The Legislature hereby recognizes that an adequate site is necessary for the citizens of Jefferson County to conduct a county fair to enable youth and adults to exhibit livestock, horticultural products, agricultural products and home economic skills. Accordingly, the Legislature hereby finds and declares that transfers of any property, real or personal, made by county commissions to any person, organization or corporation for the furtherance of such activities promotes the cultural and educational welfare of the public and, therefore, is a public purpose.

The county commission of Jefferson County is hereby authorized and empowered to transfer and convey unto the Jefferson County Fairgrounds all that certain parcel of land situated within Middleway District of Jefferson County, West Virginia, more particularly bounded and described as:

DESCRIPTION OF MERGER PARCEL FOR JEFFERSON COUNTY FAIRGROUNDS

A tract or parcel of land located in Middleway District, Jefferson County, West Virginia; said tract or parcel situated on the north side of West Virginia
secondary route 15 and more particularly bound and
described according to a survey and plat prepared by
Appalachian Surveys, Inc., said plat attached hereto and
made a part of this description.

Beginning at an unmarked point (210) in the center
of West Virginia Route 15, said point a common
corner with the Jefferson County Commission and
the Jefferson County Fair Association; thence with
the center of West Virginia Secondary Route 15 for
a new line with Jefferson County NW 51-18-36
418.56 feet to an unmarked point (212), a new
corner with the Jefferson County Commission in
the center of West Virginia Secondary Route 15,
said point being SW 28-41-56 22.77 feet from a set
5/8-inch rebar with ID cap; thence for two (2) new
lines with the Jefferson County Commission NE 28-
41-56 1463.39 feet to a set 5/8-inch rebar with ID
cap (211); thence SE 65-00-00 422.94 feet to a
previously set 5/8-inch rebar (203) a corner with
the Jefferson County Fair Association; thence for
two (2) lines with the Jefferson County Fair
Association SW 30-34-53 300.00 feet to an un-
marked point (202); thence SW 28-41-56 1263.45
feet to the point of beginning, containing 14.352
acres.

Being a part of the same tract or parcel of land conveyed
from Minnor Hurst and Sarah E. Hurst, husband and
wife, to the "Overseers of the Poor for the County of
Jefferson" by deed dated December 26, 1857, and
recorded in the Office of the Clerk of the Jefferson
County Commission in Deed Book 38 at page 24.

Any proper conveyance made by the county commis-
sion of Jefferson County transferring ownership of the
above described parcel to the Jefferson County Fair
Association shall contain a provision that ownership of
such property shall revert to the county commission
should the land cease to be used for the purpose of
conducting a county fair.
AN ACT to extend the time for the governing body of the board of education of Jefferson County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election to consider an amendment to clarify an excess levy for schools, from the third Tuesday of April until the third Tuesday in May, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

BOARD OF EDUCATION OF JEFFERSON COUNTY MEETING AS LEVYING BODY EXTENDED FOR ELECTION ON THE QUESTION CONSIDERING AN AMENDMENT TO AN EXCESS LEVY.

§1. Extending the time for the board of education of Jefferson County to meet as levying body for election to consider an excess levy amendment.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the board of education of Jefferson County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levying rate and certifying its actions to the state tax commissioner from the third Tuesday in April until the third Tuesday in May, one thousand nine hundred ninety-three, for the purpose of submitting to the voters of Jefferson County, West Virginia, an amendment to an existing excess levy, said excess levy having been passed by the voters of Jefferson County on the third day of November, one thousand nine hundred ninety-two, so as to clarify that the board of education of Jefferson County may levy such excess levy for less than the maximum rate authorized by the voters of Jefferson County on the third day of November, one thousand nine hundred ninety-two.
AN ACT to amend and reenact section three, chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred seventy-five, relating to increasing the number of members on the Marshall county activities development authority from seven to nine members.

Be it enacted by the Legislature of West Virginia:

That section three, chapter two hundred sixteen, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be amended and reenacted to read as follows:

§3. Management and control vested in board; appointment and terms of members; vacancies; removal of members; meetings; quorum.

The management and control of the authority, its property, operations, business and affairs shall be lodged in a board of nine persons who shall be known as "members of the authority", each of whom shall be appointed for a term of three years, except that as to the first seven appointed to the first board appointed. The terms of two members shall expire on the first day of July next ensuing, the terms of the next two members shall expire on the first day of July two years thereafter, and the terms of three members shall expire on the first day of July three years thereafter: Provided, That each of the two additional members shall be appointed for a term that coincides with the terms of the other members of the authority so that the terms of three members shall expire on the first day of July of each year. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. Vacancies on the board shall be filled by appointment by the county commission for the unexpired term of the member whose office shall be vacant.
Each member of the board shall be a citizen of the United States and a resident of Marshall county: Provided, That at least two members of the board shall be members of the Marshall county 4-H leader's organization and at least one member of the board shall be a member of a Marshall county home demonstration club.

The county commission may at any time remove any member of the board by an order duly entered of record and may appoint a successor.

The board shall elect from its membership a president and a secretary who shall serve at the will and pleasure of the board. The majority of the board shall constitute a quorum and meetings shall be held at the call of the president or upon request of two members at such time and place as designated in such call or request.

CHAPTER 176
(H. B. 2783—By Delegates Beach, Manuel and Oliverio)

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

AN ACT authorizing the City of Morgantown, Monongalia County, West Virginia, to hire persons residing outside the State of West Virginia, but who live within ten miles of the city limits.

Be it enacted by the Legislature of West Virginia:

CITY OF MORGANTOWN

§1. City of Morgantown, Monongalia County, West Virginia, authorized to hire nonresidents as police officers.

Notwithstanding any provisions of section twelve, article fourteen, chapter eight and section eleven, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the City of Morgantown, Monongalia County, is hereby authorized to employ persons not bona fide
residents of this state, to perform any police duty of any
sort therein, or to aid or assist in the execution of the
laws of this state: Provided, That any person hired by
the City of Morgantown, pursuant to this act, shall live
within ten miles of the Morgantown city limits.

CHAPTER 177
(S. B. 19—By Senator Chernenko)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section two, chapter one
hundred seventy-nine, acts of the Legislature, regular
session, one thousand nine hundred eighty-five, relating
to changing the residency requirements for membership
on the city of Wheeling centre market commission and
providing that citizens in Wheeling or Ohio county are
eligible for appointment to the commission.

Be it enacted by the Legislature of West Virginia:

That section two, chapter one hundred seventy-nine, acts of
the Legislature, regular session, one thousand nine hundred
eighty-five, be amended and reenacted to read as follows:

CENTRE MARKET COMMISSION.

§2. Centre commission may be created; board of direc-
tors; appointment; powers and duties generally;
officer; bylaws, rules and regulations.

The governing body of the city of Wheeling is hereby
authorized to create a centre market commission by
ordinance, the same to be a body corporate and politic
which shall have a board of directors as its governing
body. The commission may be created for a time certain
or until terminated by like ordinance of such governing
body. The board consists of five persons appointed by the
city council, the members shall be citizens of Wheeling
or Ohio county and shall serve without compensation.
They shall be appointed for a period of four years and
may hold no political office, municipal, county or state.
The city council shall, on or after the effective date of
this act, appoint five members, one for two years, two
designated by the city council. Their respective succes-
years excepting that any person appointed to fill a
vacancy occurring before the expiration of a term shall
serve only for the unexpired term. Any commissioner is
eligible for reappointment. However, any vacancy
created either by the expiration of a term, or otherwise,
shall be filled by the appointing body. Upon the
appointment of the commission, the members thereof
shall elect from among their number a chairman and
a secretary-treasurer who shall hold office for one year
and be eligible for reelection. Annually thereafter the
commission shall organize by the election of a secretary-
treasurer and such other officers from its own number
as it may deem advisable. Members of the commission
may be removed from office in the same manner as
provided for the removal of county officers under article
six, chapter six of the code of West Virginia, one
thousand nine hundred thirty-one, as amended.

CHAPTER 178

(Com. Sub. for H. B. 2456—By Delegates McKinley and L. White)

[Passed April 10, 1993: in effect from passage. Approved by the Governor.]
CITY OF WHEELING, OHIO COUNTY, VILLAGE OF BETHLEHEM,
OHIO COUNTY, CITY OF BENWOOD, MARSHALL COUNTY, AND
CITY OF MCMECHEN, MARSHALL COUNTY, MEETING AS
LEVYING BODIES EXTENDED FOR ELECTION ON THE QUES-
TION OF CONTINUING THE ADDITIONAL LEVY FOR THE
OHIO VALLEY REGIONAL TRANSPORTATION AUTHORITY.

§1. Extending time for the City of Wheeling, the Village
of Bethlehem, the City of Benwood and the City of
McMecben to meet as levying bodies for election
on the question of continuing the additional levy
for the Ohio Valley Regional Transportation
Authority.

Notwithstanding the provisions of article eight,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, to the
contrary, the City of Wheeling, Ohio County, the Village
of Bethlehem, Ohio County, the City of Benwood,
Marshall County, and the City of McMecben, Marshall
County, are hereby authorized to extend the time for
each of these governing bodies to meet as levying bodies,
setting the levy rate and certifying their actions to the
state tax commissioner from the third Tuesday in April,
until the last Thursday in May, one thousand nine
hundred ninety-four, for the purpose of submitting to
the voters of each jurisdiction the question of continuing
an additional levy for the Ohio Valley Regional Trans-
portation Authority.

CHAPTER 179
(S. B. 55—By Senators Whitlow, Anderson, Woolon,
Bailey, Wagner and Chafin)

[Passed April 3, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the Shawnee Parkway authority;
functions; members; appointment; powers and duties;
officers; bylaws; rules and regulations; compensation;
authority as corporate body; support, maintenance and
operation; and severability.

Be it enacted by the Legislature of West Virginia:
§1. Parkway authority created; functions.

1 There is hereby created a Shawnee Parkway authority, to promote and advance the construction of a scenic parkway through parts of McDowell, Mercer, Mingo, Raleigh, Summers and Wyoming counties and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the Shawnee Parkway for the benefit of West Virginians.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

(a) The authority consists of twelve voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, one thousand nine hundred ninety-three.

(b) Each of the county commissions of the counties of McDowell, Mercer, Mingo, Raleigh, Summers and Wyoming shall appoint two voting members to the commission. The terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of one year and one member shall be appointed for a term of two years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or designee, the secretary of commerce, labor and environmental resources or designee and the executive director of the West Virginia development office or designee. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired
portion thereof. All members are eligible for reappointment.

(e) There shall be an annual meeting of the authority on the third Monday in July in each year and a bi-monthly meeting on a day and at a time as the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any seven members of the authority and may be held only after all members are given notice of the meeting in writing. Seven voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws, rules and regulations as may be necessary for its operation and management. The authority has all, but only, those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The preparation of a plan or plans for the Shawnee Parkway;

(2) The promotion, advancement and support of the construction of a scenic parkway along the general courses of Flattop Mountain and Indian Ridge areas of McDowell, Mercer, Mingo, Raleigh, Summers and Wyoming counties;

(3) The promotion of economic development and tourism along the Shawnee Parkway;

(4) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(5) Otherwise acting in an advisory capacity with regard to any aspects of the Shawnee Parkway at the request of or without the request of any governmental entity or private person or entity.

The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the parkway.

Each voting member of the authority may be reim-
bursed for travel expenses by the governing bodies which appointed the members in an amount to be fixed by the governing body.

§3. Body corporate.

The authority hereby created shall be a public corporation and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and may have and use a corporate seal.

§4. Support, maintenance and operation.

The county commissions of the counties of McDowell, Mercer, Mingo, Raleigh, Summers and Wyoming may provide for the support, maintenance and operation of the Shawnee Parkway authority and other related activities under the jurisdiction of the authority hereby created.

§5. Severability.

If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

CHAPTER 180

(H. B. 2701—By Delegates Kiss, Ryan, McGraw, Pulliam and Reed)

[Passed April 2, 1993; in effect from passage. Became law without signature of the Governor.]

AN ACT to authorize students who are eligible to attend the new Summers County high school to vote for the school mascot and colors.

Be it enacted by the Legislature of West Virginia:

NEW SUMMERS COUNTY HIGH SCHOOL.

§1. Eligible students to vote for school mascot and school colors at new Summers County high school.

The students eligible to attend the new Summers County high school are entitled to vote for their choice,
without restriction, of a school mascot and school colors. The county board of education shall prepare ballots for this election or vote, determine the procedure for election and conduct the election no later than one year before the scheduled opening of the new high school. The choice of mascot and school colors shall be determined by a simple majority and no student may be permitted to cast more than one ballot.

CHAPTER 181
(H. B. 2651—By Delegate Willison)

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

AN ACT to extend the time for the governing body of the City of Sistersville, in Tyler County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said municipality an election to consider an excess levy for a library, streets, parks and pool, emergency squad and fire department, from the third Tuesday of April until the third Tuesday in May, one thousand nine hundred ninety-three.

Be it enacted by the Legislature of West Virginia:

GOVERNING BODY OF THE CITY OF SISTERSVILLE, MEETING AS LEVYING BODY EXTENDED TO CONSIDER AN EXCESS LEVY.

§1. Extending time for governing body of the City of Sistersville to meet as levying body for election to consider an excess levy.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the governing body of the City of Sistersville, in Tyler County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from the third Tuesday in April until the third Tuesday in May, one thousand nine hundred ninety-three, for the purpose of submitting to the voters of the City of Sistersville the consideration of an excess levy for a library, streets, parks and pool, emergency squad and fire department.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 3
(By Delegate Gallagher)
[Adopted March 19, 1993]

Urging the President and the Congress to select a route between the cities of Morgantown, West Virginia, and Pittsburgh, Pennsylvania, for the federal magnetic elevated train system pilot project and to power the pilot project by electricity produced from coal.

WHEREAS, The need to improve the nation's transportation system for the next century, the need to create jobs, the need to reduce reliance on foreign oil for energy and the need to improve the nation's infrastructure require investment in projects which hold promise of success; and

WHEREAS, Morgantown, West Virginia, has had a long standing and successful elevated train system located on the West Virginia University campus; and

WHEREAS, Pittsburgh, Pennsylvania, is a modern metropolitan center strategically located in a thriving coal-producing area of this nation; and

WHEREAS, The research facilities at West Virginia University and recent innovations and improvements in coal mining and coal burning technology will provide an excellent environment for the pilot study and will assure sufficient clean energy supplies to operate a magnetic elevated train system well into the future; and

WHEREAS, Clean coal technology will benefit the entire nation by increasing employment, by decreasing reliance on foreign oil, by providing upstart byproducts that can be used in a multitude of ways by the United States Department of Defense, the United States Department of Transportation and the United States Department of Energy, as well as many other segments of federal and state governments; and

WHEREAS, Undertaking the pilot project in an area which
includes rural, mountainous and metropolitan terrain strategically situated between large centers of population in the midwest and the east coast offers the best opportunity to expand the pilot project to a modern transportation system worthy of the world's most innovative and powerful nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the President and the Congress of the United States are hereby urged to select a route between Morgantown, West Virginia, and Pittsburgh, Pennsylvania, for the federal magnetic elevated train system pilot project; and, be it

Further Resolved, That this project be powered by electricity produced from coal or natural gas or a combination thereof; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to send a copy of this resolution to the President, the leadership of both houses of the Congress and West Virginia's delegation in Congress.

HOUSE CONCURRENT RESOLUTION 5

(By Delegates Browning, Prezioso, Campbell, Lindsey, Smith, Ashley and Wallace)

[Adopted March 31, 1993]

Amending Joint Rules of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That the Joint Rules of the Senate and House of Delegates be amended by adding thereto a new rule, designated Joint Rule No. 29, to read as follows:

Joint Committee on Pensions and Retirement

29. (a) A joint standing committee of the Senate and House of Delegates, named the Joint Committee on Pensions and Retirement, shall continually study and investigate public retirement systems. All pension and retirement related legislation introduced in the Legislature shall be referred to the committee in addition to any other reference the presiding officer may designate. Upon reference of any pension or
retirement related legislation, the committee shall forward such legislation to the actuary of the Consolidated Public Retirement Board or other actuary or actuarial firm who shall return an actuarial letter or note to the committee prior to the committee’s consideration of such legislation.

(b) The committee shall consist of seven members of the Senate to be appointed by the President of the Senate and seven members of the House of Delegates to be appointed by the Speaker of the House of Delegates. If possible, no more than five of the seven members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party.

(c) The committee shall make a continuing study and investigation of retirement benefit plans applicable to nonfederal government employees in this state. The powers and duties of the committee include, but are not limited to, the following:

(1) Studying retirement benefit plans applicable to nonfederal government employees in the state of West Virginia, including, without limitation, federal plans available to such employees;

(2) Making recommendations within the scope of the study with particular attention to financing of the various pension funds and financing of accrued liabilities;

(3) Considering all aspects of pension planning and operation, and making recommendations designed to establish and maintain sound pension policy as to all funds;

(4) Filing a report to each regular session of the Legislature concerning activities conducted between sessions;

(5) Analyzing each item of proposed pension and retirement legislation, including amendments thereto, with particular reference to analysis as to cost, actuarial soundness, and adherence to sound pension policy, and reporting of its findings in regard thereto to the Legislature; and

(6) Maintaining reference materials concerning pension and retirement matters, including, without limitation, information as to laws and systems in other states.

(d) The committee shall hold meetings at such times and
places as it may designate. The President of the Senate shall appoint a cochair of the committee from the Senate members and the Speaker of the House of Delegates shall appoint a cochair of the committee from the House of Delegates members. When the Legislature is not in session, the committee shall meet and conduct its business as a joint committee.

When the Legislature is in session, in addition to joint meetings, the members of either house may meet separately from members of the other house to conduct committee business concerning pension and retirement related legislation introduced or originated in that house. When the members meet separately, they may function as other committees of that house. As far as practicable, relevant information, including actuarial letters or notes, gathered by members meeting separately from the other house shall be sent to the cochair of the other house if it is considering the same or similar legislation.

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COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 9
(By Delegate McKinley, et al)
[Adopted April 10, 1993]

Requesting the State Board of Education and the Division of Corrections to undertake a study to develop a plan to require public school cafeterias and state prison cafeterias to provide unused, cooked food to community agencies providing food for persons in need.

WHEREAS, Many homeless, destitute and needy people are without sufficient food to meet minimum requirements for daily living; and

WHEREAS, Public school cafeterias and prison cafeterias prepare a large number of meals each day; and

WHEREAS, Many of these meals are not eaten and the unused food is wasted; and

WHEREAS, Nearby community agencies are trying to feed homeless, destitute and needy people on a daily basis with limited supplies of food; therefore, be it
Resolved by the Legislature of West Virginia:

That the State Board of Education and the Division of Corrections are hereby requested to undertake a study to develop a plan for requiring public school cafeterias and state prison cafeterias to provide unused, cooked food to community agencies providing food to persons in need by October 1, 1993; and, be it

Further Resolved, That the State Board of Education and the Division of Corrections are requested to report their findings, conclusions and recommendations to the Speaker of the House of Delegates and the President of the Senate on the first day of the 1994 regular session of the Legislature; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby requested to forward a copy of this resolution to the State Board of Education and the Division of Corrections.

SENATE CONCURRENT RESOLUTION 5

(By Senators Helmick, Sharpe, Ross, Burdette, Mr. President, Holliday, Brackenrich, Whitlow, Manchin and Minard)

[Adopted February 24, 1993]

Commemorating the passing of the Honorable E. Hansford McCourt, of Webster County, former member of the House of Delegates, former member of the Senate, former Senate President and distinguished West Virginian.

WHEREAS, The Honorable E. Hansford McCourt of Webster County, West Virginia, was born in Webster Springs, the son of William L. and Maggie J. (Lough) McCourt; and

WHEREAS, The Honorable E. Hansford McCourt was educated in the public schools of West Virginia and was a graduate of Wesleyan College with a B.S. degree; and

WHEREAS, The Honorable E. Hansford McCourt was married October 19, 1936, to his beloved Georgie Frances McCourt, with whom he shared the joy of having two children, William McCourt of Huntington, West Virginia, and Maggie Jane Spangler of Ranson, West Virginia; and

WHEREAS, The Honorable E. Hansford McCourt served his nation with pride after enlisting in the United States Army
in 1942, and was discharged in 1945, having attained the rank of Lieutenant; and

Whereas, The Honorable E. Hansford McCourt was elected to the West Virginia House of Delegates from Webster County in 1953, and was elected to the West Virginia Senate in 1956, being reelected in 1960, 1964 and 1968. In 1971 the Honorable E. Hansford McCourt was elected president of the Senate, where he continued to serve until his retirement from public service in 1972; and

Whereas, Sadly, the Honorable E. Hansford McCourt died on Monday, August 3, 1992, just a few hours after the death of his beloved wife, Georgie, to whom he had been married for fifty-six years; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature would be remiss if it did not pay tribute to such a distinguished West Virginian as the Honorable E. Hansford “Hans” McCourt, whose years of dedicated public service to the State of West Virginia left a myriad of worthwhile projects, conceived and executed by him for the betterment of all of its citizens; and, be it

Further Resolved, That the Legislature expresses its sincere sadness at the passing of the Honorable E. Hansford McCourt and his beloved wife, Georgie, whose lives came to an end within hours of each other after fifty-six years of marriage; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Mr. William McCourt of Huntington, West Virginia, and Maggie Jane Spangler of Ranson, West Virginia.

SENATE CONCURRENT RESOLUTION 28
(Originating in the Senate Committee on Rules)
(Adopted April 10, 1993)

Providing for the extension of the first regular session of the Seventy-first Legislature of West Virginia.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:
RESOLUTIONS

That the first regular session of the Seventy-first Legislature is hereby extended pursuant to section twenty-two, article VI of the Constitution of the State of West Virginia, for a period not to exceed two weeks for consideration of the budget, budget bills, Engrossed Committee Substitute for House Bill No. 2100, Engrossed Committee Substitute for House Bill No. 2774, Engrossed Senate Bill No. 542 and Engrossed Senate Bill No. 290. Further, that said session is hereby extended for reconsideration of any bills vetoed or disapproved by the governor and any budget bill vetoed, disapproved, reduced or increased by the governor as to any item or part or as to the entire bill; and, be it

Further Resolved, That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on the tenth day of April, one thousand nine hundred ninety-three, such adjournment shall be until 12:01 a.m. on the eleventh day of April, one thousand nine hundred ninety-three, pursuant to section twenty-two, article VI of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the committee on rules of both houses, in which event such adjournment shall be until the date and time of reconvening specified by said committees.

SENATE CONCURRENT RESOLUTION 32
(By Senator Burdette, Mr. President)
[Adopted April 15, 1993]

Commemorating the public service of the Honorable Earl M. Vickers, former member of the West Virginia House of Delegates and the present director of Legislative Services.

WHEREAS, The Honorable Earl M. Vickers of Montgomery, Fayette County, West Virginia, was born April 30, 1923, the son of Charles and Helen (Montgomery) Vickers; and

WHEREAS, The Honorable Earl M. Vickers was educated in public schools of Montgomery. He attended the West Virginia Institute of Technology, the University of Richmond and Washington and Lee University, where he received an LLB degree; and
WHEREAS, The Honorable Earl M. Vickers was married June 28, 1947, to Betty (Beach) Vickers, with whom he has shared the joy of having four children: Henry, Montgomery, Frank and Helen Ann; and

WHEREAS, The Honorable Earl M. Vickers was elected to the West Virginia House of Delegates from Fayette County in 1960, 1962 and 1964, and served as Majority Leader of the House in 1965; and

WHEREAS, In July, 1965, the Honorable Earl M. Vickers resigned from the House of Delegates to assume the duties as director of a newly created office of Legislative Services, created by the Joint Committee on Government and Finance, a statutory authority of the West Virginia Legislature; and

WHEREAS, For almost three decades the legislative expertise of the Honorable Earl M. Vickers has been a prominent force in the operation of the West Virginia Legislature by his efficient administration of the office of Legislative Services, which includes central bill drafting, one of the most crucial operations of the legislative process that includes actually structuring an idea into legislation to be considered by the Legislature. His position as director also made him a statutory member of the governing council of the West Virginia Law Institute, whose purpose is to promote and encourage the clarification and simplification of West Virginia law; and

WHEREAS, The Honorable Earl M. Vickers has announced that he will retire from public service on April 16, 1993, bringing to an end a long and dedicated career to the West Virginia Legislature and the State of West Virginia in which he has served with distinction; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby gratefully acknowledges the long and dedicated public service of the Honorable Earl M. Vickers, whose prominence in and dedication to the West Virginia legislative process has spanned nearly three decades, and whose legal and legislative expertise has made the West Virginia Legislature a model in the nation; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Honorable Earl M. Vickers, attorney, former legislator, the first director
of the office of Legislative Services and distinguished West Virginian.

HOUSE RESOLUTION 12
(By Mr. Speaker, Mr. Chambers, and Delegates Martin, P. White and Burk)
[Adopted March 4, 1993]
Creating a Select Committee on Health Care Policies.

Resolved by the Legislature of West Virginia:

That for the life of the 71st Legislature there is hereby created a Select Committee on Health Care Policies of the House of Delegates, consisting of twenty-five members, said members to be appointed by the Speaker. Notwithstanding the provisions of any House rule to the contrary, this committee shall have jurisdiction of legislative proposals affecting or defining health care reforms, health care programs and related subjects as the Speaker may deem appropriate; and, be it

Further Resolved, That the rules of the House of Delegates governing Standing committees shall govern the actions and proceedings of this committee insofar as applicable.

SENATE RESOLUTION 40
(By Senators Anderson and Whitlow)
[Adopted April 24, 1993]
Commemorating the life and public service of the Honorable James Clyde Dillon, Jr., former member of the Senate, former Clerk of the Senate, former chairman of the state democratic executive committee and distinguished West Virginian.

Whereas, The Honorable J. C. Dillon, Jr., was born December 30, 1916, in Summers County, West Virginia, the son of James Clyde Dillon and Grace (Leftwich) Dillon; and

Whereas, The Honorable J. C. Dillon, Jr., was a United States Army veteran of World War II, a respected businessman in Hinton, Summers County, West Virginia, and a former executive secretary of the state road commission; and
WHEREAS, The Honorable J. C. Dillon, Jr., was married January 21, 1939, to the late Margaret Gilbert of Hinton, with whom he shared the joy of having one son, James Gilbert Dillon; and

WHEREAS, The Honorable J. C. Dillon, Jr., was elected to the tenth senatorial district in 1970, and reelected in 1974; and

WHEREAS, During his tenure in the Senate, the Honorable J. C. Dillon, Jr., served as chairman of the Committee on Transportation. He also served as a member of the committees on Agriculture, Confirmations, Finance, Labor, Local Government and Natural Resources and Education, where he served as vice chairman; and

WHEREAS, The Honorable J. C. Dillon, Jr., resigned as a member of the Senate in 1975 and was elected on January 8, 1975, as the seventeenth Clerk of the Senate and was reelected in 1977 and 1979. He resigned as Clerk of the Senate December 31, 1979; and

WHEREAS, The Honorable J. C. Dillon, Jr., devoted much of his life to politics, serving in a myriad of politically powerful positions, including: chairman of the Summers County democratic executive committee; state chairman for the "Hubert H. Humphrey for President" campaign during the 1972 primary and was a delegate-at-large to the 1972 democratic national convention. At the height of his political career, the Honorable J. C. Dillon, Jr., was elected chairman of the West Virginia state democratic executive committee, a powerful and highly respected position; and

WHEREAS, The dedication, wisdom and political expertise of the Honorable J. C. Dillon, Jr., has a direct influence on the political careers of many past and present officeholders in both state and federal government; and

WHEREAS, The Honorable J. C. Dillon, Jr., passed away on April 12, 1993, in the county that launched his political career, his beloved Summers County; therefore, be it

Resolved by the Senate:

That the Senate hereby expresses its sincere sadness at the passing of the Honorable J. C. Dillon, Jr., former member of the Senate; former Clerk of the Senate; and former chairman
of the democratic state executive committee, whose wisdom and influence in politics and government has had a lasting impact on the lives of all who knew and respected him; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the son of the Honorable J. C. Dillon, Jr., James Gilbert Dillon; his daughter-in-law, Donna Dillon; his granddaughter Margaret Dillon; and his brother, Rev. Fred Dillon.
LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1993

CHAPTER 1

(Com. Sub. for H. B. 105—By Mr. Speaker, Mr. Chambers)

[Passed May 27, 1993; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.
II. Appropriations.
III. Administration.

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

TITLE I—GENERAL PROVISIONS.

1 Section 1. General policy.—The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred ninety-four.

Sec. 2. Definitions.—For the purpose of this bill:
“Governor” shall mean the governor of the state of West Virginia.

“Code” shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year one thousand nine hundred ninety-four” shall mean the period from July first, one thousand nine hundred ninety-three, through June thirtieth, one thousand nine hundred ninety-four.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in section two, article two, chapter twelve of the code or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter five-a of the code.

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

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.
From appropriations made to the spending units of state government, upon approval of the governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

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

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

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

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

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

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

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

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

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman, or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to personal services and employee benefits to other lines within the same account and no funds from other lines shall be transferred to the personal services line: And provided further, That if the Legislature by subsequent
enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly approp­riated to such agency, board or function in order to implement such consolidation. No funds may be trans­ferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legisla­ture from transfer, except that the use of the appropri­ations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

Funds of the state of West Virginia not heretofore classified as to purpose and existing within the funds of the treasury shall be determined by the governor and transferred to a special account for the purpose of expenditure as part of the general fund of the state.

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropri­ations set out in this bill.

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Division of General Services—Acct. No. 2130
Division of Purchasing—Acct. No. 2120
Education and State Employees Grievance Board—Acct. No. 6015
Ethics Commission—Acct. No. 6180
Public Defender Services—Acct. No. 5900
Public Employees Insurance Agency—Acct. No. 6150
Public Employees Retirement System—Acct. No. 6140

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Coal Mine Safety and Technical Review Committee—Acct. No. 4750
Department of Commerce, Labor and Environmental Resources—Office of the Secretary—Acct. No. 5321
Division of Environmental Protection—Acct. No. 4775
Division of Forestry—Acct. No. 4650
Division of Labor—Acct. No. 4500
Division of Miners' Health, Safety and Training—Acct. No. 4780
Division of Natural Resources—Acct. No. 5650
Division of Tourism and Parks—Acct. No. 4625
Geological and Economic Survey—Acct. No. 5200
Interstate Commission on Potomac River Basin—Acct. No. 4730
Ohio River Valley Water Sanitation Commission—Acct. No. 4740
Water Resources Board—Acct. No. 5640
West Virginia Development Office—Acct. No. 1210

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State Department of Education—Acct. No. 2860
State Department of Education—Aid for Exceptional Children—Acct. No. 2960
State Department of Education—School Lunch Program—Acct. No. 2870
State Department of Education—State Aid to Schools—Acct. No. 2950
State FFA-FHA Camp and Conference Center—Acct. No. 3360
West Virginia Schools for the Deaf and the Blind—Acct. No. 3330

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Control Account—Acct. No. 2785
Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Acct. No. 2800
Board of Trustees of the University System of West Virginia—Control Account—Acct. No. 2795
Board of Trustees of the University System of West Virginia—University of West Virginia Health Sciences Account—Acct. No. 2855
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TITLE II—APPROPRIATIONS.

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SECTION 3. Appropriations from other funds.
SECTION 4. Appropriations from lottery net profits.
SECTION 5. Appropriations of federal funds.
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SECTION 12. Specific funds and collection accounts.

SECTION 13. Appropriations for refunding erroneous payment.


SECTION 15. Appropriations for local governments.

SECTION 16. Total appropriations.

SECTION 17. General school fund.

1 Section 1. Appropriations from general revenue.—From the state fund, general revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-four.

**LEGISLATIVE**

1—Senate

"Former" Account No. 1010

"WVFIMS" Account No.

Fund 0165 FY 1994 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Compensation of Members (R) .... 003</td>
<td>$277,000</td>
</tr>
<tr>
<td>2 Compensation and Per Diem of Officers and Employees (R) .. 005</td>
<td>1,232,000</td>
</tr>
<tr>
<td>4 Employee Benefits (R) ............ 010</td>
<td>284,760</td>
</tr>
<tr>
<td>5 Current Expenses and Contingent Fund (R) ............ 021</td>
<td>561,000</td>
</tr>
<tr>
<td>7 Repairs and Alterations (R) ...... 064</td>
<td>30,000</td>
</tr>
<tr>
<td>8 Computer Supplies (R) ............. 101</td>
<td>15,000</td>
</tr>
<tr>
<td>9 Printing Blue Book (R) .......... 103</td>
<td>150,000</td>
</tr>
<tr>
<td>10 Expenses of Members (R) .......... 399</td>
<td>295,000</td>
</tr>
<tr>
<td>11 Total ..........................</td>
<td>$2,844,760</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 1992-93 are to remain in full force and effect and are hereby reappropriated to June 30, 1994. Any balances so reappropriated may be transferred and credited to the 1993-94 accounts.

Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the senate, with the approval of the president, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the senate offices, the requisitions for the same to be accompanied by bills to be filed with the auditor.

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

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

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

2—House of Delegates

"Former" Account No. 1020
"WVFIMS" Account No.

Fund 0170 FY 1994 Org 2200

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R)</td>
<td>003</td>
<td>$871,524</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td>005</td>
<td>$521,162</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund (R)</td>
<td>021</td>
<td>$1,495,427</td>
</tr>
<tr>
<td>Expenses of Members (R)</td>
<td>399</td>
<td>$614,810</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,502,923</strong></td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1992-93 are to remain in full force and effect and are hereby reappropriated to June 30, 1994. Any balances so reappropriated may be transferred and credited to the 1993-94 accounts.

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between items of that total appropriation in order to protect or increase the efficiency of the service.

The clerk of the house of delegates, with the approval of the speaker, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the house of delegates, for any bills for supplies and services that may
have been incurred by the house of delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the house of delegates' offices, the requisitions for the same to be accompanied by bills to be filed with the auditor.

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the Legislature, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees Fund or Current Expenses and Contingent Fund of the house of delegates.

For duties imposed by law and by the house of delegates, including salary allowed by law as keeper of the rolls, the clerk of the house of delegates shall be paid a monthly salary as provided in the house resolution, unless increased between sessions under the authority of the speaker, with the approval of the house committee on rules, and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

3—Joint Expenses
(WV Code Chapter 4)
"Former" Account No. 1030
"WVFIMS" Account No.
Fund 0175 FY 1994 Org 2300
The appropriation for Joint Expenses for the fiscal year 1992-93 is to remain in full force and effect and is hereby reappropriated to June 30, 1994. Any balances so reappropriated may be transferred and credited to the 1993-94 accounts.

Upon the written request of the clerk of the senate, with the approval of the president of the senate, and the clerk of the house of delegates, with the approval of the speaker of the house of delegates, and a copy to the legislative auditor, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

**JUDICIAL**

4—Supreme Court—General Judicial

"Former" Account No. 1110

"WVFIMS" Account No.

Fund 0180 FY 1994 Org 2400

1 Personal Services (R) .............. 001 $ 23,685,989
2 Annual Increment (R) .............. 004 226,000
3 Social Security Matching (R) .... 011 1,818,863
4 Public Employees' Insurance
   Matching (R) .................... 012 2,675,713
5 Public Employees' Retirement Matching (R) .... 016 2,002,883
6 Other Expenses (R) ................. 029 3,100,000
Any unexpended balances remaining in this appropriation at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94. Any balances so reappropriated may be transferred and credited to the 1993-94 accounts.

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

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

**EXECUTIVE**

5—Governor's Office

(WV Code Chapter 5)

"Former" Account No. 1200

"WVFIMS" Account No.

Fund 0101 FY 1994 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>002</td>
<td>Salary of Governor</td>
<td>$72,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>001</td>
<td>Personal Services</td>
<td>$1,356,523</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>004</td>
<td>Annual Increment</td>
<td>$10,224</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>010</td>
<td>Employee Benefits</td>
<td>$300,000</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>123</td>
<td>National Governors' Association</td>
<td>$63,580</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>124</td>
<td>Southern States Energy Board</td>
<td>$28,732</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>099</td>
<td>Unclassified</td>
<td>$588,000</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>Total</td>
<td>$2,419,059</td>
<td></td>
</tr>
</tbody>
</table>
6—Governor’s Office—Custodial Fund
(WV Code Chapter 5)
“Former” Account No. 1230
“WVFIMS” Account No.
Fund 0102 FY 1994 Org 0100

1 Unclassified—Total ............... 096 $ 349,047

2 To be used for current general expenses, including
   compensation of employees, household maintenance, cost
   of official functions and additional household expenses
   occasioned by such official functions.

7—Governor’s Office—
Civil Contingent Fund
(WV Code Chapter 5)
“Former” Account No. 1240
“WVFIMS” Account No.
Fund 0105 FY 1994 Org 0100

1 Civil Contingent Fund—Total (R) 114 $ 900,000

2 Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year
   1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

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

10 The above appropriation is intended to provide
   contingency funding for accidental, unanticipated,
   emergency, or unplanned events which may occur
   during the fiscal year and is not to be expended for the
   normal day-to-day operations of the governor’s office.
8—Governor’s Office—
Center for Professional Development
(WV Code Chapter 18A)
“Former” Account No. 1245
“WVFIMS” Account No.
Fund 0103 FY 1994 Org 0100
1 Any unexpended balance remaining in the appropriation for Center for Professional Development (account no. 1245-10) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94 and redesignated as Department of Education and the Arts -Office of the Secretary -Center for Professional Development (account no. 5332-10).

9—Governor’s Office—
Infrastructure Improvements
(WV Code Chapter 5)
“Former” Account No. 1250
“WVFIMS” Account No.
Fund 0106 FY 1994 Org 0100
1 Unclassified—Total .................. 096 $ 5,000,000
2 The unclassified line item above is to be expended to fund grants and loans for water, sewage, and soil conservation projects.

10—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)
“Former” Account No. 1255
“WVFIMS” Account No.
Fund 0104 FY 1994 Org 0100
1 Governor’s Cabinet on Children and Families—Total (R) ........ 116 $ 395,600
Any unexpended balance remaining in the appropriation for Governor's Cabinet on Children and Families (account no. 1255-09) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

11—Auditor's Office—
General Administration
(WV Code Chapter 12)
“Former” Account No. 1500
“WVFIMS” Account No.
Fund 0116 FY 1994 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>$46,800</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,569,038</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$30,124</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$515,819</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$533,933</td>
</tr>
<tr>
<td>6</td>
<td>Office Automation</td>
<td>117</td>
<td>$750,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$3,445,714</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (account no. 1500-12) at the close of fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-1994.

12—Auditor's Office—
Family Law Master Administration Fund
(WV Code Chapter 48A)
“Former” Account No. 1510
“WVFIMS” Account No.
Fund 0116 FY 1994 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>190</td>
<td>$450,000</td>
</tr>
</tbody>
</table>

The above appropriation shall be expended for the administrative expenses of the family law masters.
4 program, excluding personal services and employee benefits.

13—Treasurer’s Office—
(WV Code Chapter 12)
“Former” Account No. 1600
“WVFIMS” Account No.
Fund 0126 FY 1994 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Treasurer</td>
<td>002</td>
<td>$50,400</td>
</tr>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>457,610</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>6,876</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>149,676</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>211,678</td>
</tr>
<tr>
<td>Abandoned Property Program</td>
<td>118</td>
<td>311,208</td>
</tr>
<tr>
<td>Check Encoder</td>
<td>441</td>
<td>125,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,312,448</strong></td>
</tr>
</tbody>
</table>

14—Attorney General
(WV Code Chapters 5, 14, 46 and 47)
“Former” Account No. 2400
“WVFIMS” Account No.
Fund 0150 FY 1994 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Attorney General</td>
<td>002</td>
<td>$50,400</td>
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<tr>
<td>Personal Services</td>
<td>001</td>
<td>1,927,640</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>12,384</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>561,278</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>574,143</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,125,845</strong></td>
</tr>
</tbody>
</table>

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending unit’s specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the attorney general: Provided, however, That
if the spending unit and the attorney general are unable
to agree on the amount and terms of the reimbursement,
the spending unit and the attorney general shall submit
their proposed reimbursement rates and terms to the
joint committee on government and finance for final
determination.

15—Secretary of State
(WV Code Chapters 3, 5 and 59)
“Former” Account No. 2500
“WVFIMS” Account No.
Fund 0155 FY 1994 Org 1600

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>43,200</td>
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<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>456,391</td>
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<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,112</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>155,021</td>
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<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>262,376</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>922,100</td>
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</table>

16—State Elections Commission
(WV Code Chapter 3)
“Former” Account No. 2600
“WVFIMS” Account No.
Fund 0160 FY 1994 Org 1601

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>10,616</td>
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</table>

17—Department of Agriculture
(WV Code Chapter 19)
“Former” Account No. 5100
“WVFIMS” Account No.
Fund 0131 FY 1994 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>002</td>
<td>46,800</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>2,036,382</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,992</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>778,078</td>
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<td>Appropriations</td>
<td></td>
<td></td>
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<tr>
<td>---</td>
<td>----------------------------------------------------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>642,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Gypsy Moth Program</td>
<td>119</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>750,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$ 4,288,252</td>
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</table>

18—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$ 357,700</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,940</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>107,808</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>284,758</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 756,206</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (account no. 5121-18) and soil conservation projects (account no. 5120-20) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

19—Department of Agriculture—

Marketing and Development Division

(Matching Fund)

(WV Code Chapter 19)

“Former” Account No. 5130

“WVFIMS” Account No.

Fund 0134 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$ 397,477</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,192</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>151,328</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>185,162</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 740,159</td>
</tr>
</tbody>
</table>
6 Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

20—Department of Agriculture—Meat Inspection
(WV Code Chapter 19)

“Former” Account No. 5140
“WVFIMS” Account No.
Fund 0135 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>5,490</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>119,025</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>63,370</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>508,464</strong></td>
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</tbody>
</table>

6 Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

21—Department of Agriculture—Agricultural Awards
(WV Code Chapter 19)

“Former” Account No. 5150
“WVFIMS” Account No.
Fund 0136 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>121</td>
<td>66,066</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>181,598</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>247,664</strong></td>
</tr>
</tbody>
</table>

DEPARTMENT OF ADMINISTRATION

22—Department of Administration—Office of the Secretary
(WV Code Chapter 5F)
“Former” Account No. 2105  
“WVFIMS” Account No.  
Fund 0186 FY 1994 Org 0201  

1. Unclassified—Total .......................... 096 $ 251,739  

23—Division of Finance  
(WV Code Chapter 5A)  
“Former” Account No. 2110  
“WVFIMS” Account No.  
Fund 0203 FY 1994 Org 0209  

1. Personal Services ......................... 001 $518,526  
2. Annual Increment .......................... 004 6,290  
3. Employee Benefits ....................... 010 141,255  
4. Unclassified ............................... 099 530,872  
5. GAAP Project (R) ......................... 125 1,500,000  
6. Total ..................................... $2,696,943  

7. Any unexpended balance remaining in the appropriation for GAAP Project (account no. 2110-41) at the close of fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.  

24—Division of Purchasing  
(WV Code Chapter 5A)  
“Former” Account No. 2120  
“WVFIMS” Account No.  
Fund 0210 FY 1994 Org 0213  

1. Personal Services ......................... 001 $560,362  
2. Annual Increment .......................... 004 7,754  
3. Employee Benefits ....................... 010 149,638  
4. Unclassified ............................... 099 73,116  
5. Total ..................................... $790,870  

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

25—Division of General Services
(WV Code Chapter 5A)
“Former” Account No. 2130
“WVFIMS” Account No.
Fund 0230 FY 1994 Org 0223

<table>
<thead>
<tr>
<th>Item</th>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$489,484</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>12,168</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>199,384</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>699,359</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fire Service Fee</td>
<td>126</td>
<td>13,440</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capitol Building Preservation</td>
<td>503</td>
<td>500,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,913,835</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

26—Committee for the Purchase of Commodities and Services from the Handicapped
(WV Code Chapter 5A)
“Former” Account No. 2140
“WVFIMS” Account No.
Fund 0233 FY 1994 Org 0224

<table>
<thead>
<tr>
<th>Item</th>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$4,656</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

27—Board of Risk and Insurance Management
(WV Code Chapter 29)
“Former” Account No. 2250
“WVFIMS” Account No.
Fund 0217 FY 1994 Org 0218

<table>
<thead>
<tr>
<th>Item</th>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$4,054,116</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

28—Commission on Uniform State Laws
(WV Code Chapter 29)
“Former” Account No. 2450
“WVFIMS” Account No.
Fund 0214 FY 1994 Org 0217

1 Unclassified—Total .................. 096 $ 19,400

To pay expenses of members of the commission on
uniform state laws.

29—Public Defender Services
(WV Code Chapter 29)
“Former” Account No. 5900
“WVFIMS” Account No.
Fund 0226 FY 1994 Org 0221

1 Personal Services ..................... 001 $ 227,547
2 Annual Increment ..................... 004 2,628
3 Employee Benefits .................... 010 73,384
4 Unclassified (R) ......................... 099 99,026
5 Appointed Counsel Fees and
Public Defender
6 Corporations (R) ...................... 127 11,735,905
8 Total .................................. $ 12,138,490
Any unexpended balances remaining in the appropriations for Unclassified (account no. 5900-18) and Appointed Counsel Fees and Public Defender Corporations (account no. 5900-41) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

30—Education and State Employees

Grievance Board

(WV Code Chapter 18)

"Former" Account No. 6015

"WVFIMS" Account No.

Fund 0220 FY 1994 Org 0219

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>FY 1994 Org</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>Personal Services</td>
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<td>$410,454</td>
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</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$4,068</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$115,727</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$108,266</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$638,515</td>
<td></td>
</tr>
</tbody>
</table>

31—Public Employees Retirement System

(WV Code Chapter 5)

"Former" Account No. 6140

"WVFIMS" Account No.

Fund 0195 FY 1994 Org 0205

The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.
32—Public Employees Insurance Agency
(WV Code Chapter 5)
"Former" Account No. 6150
"WVFIMS" Account No.
Fund 0200 FY 1994 Org 0225

1 Supplemental for
2 Retirees' Premiums—Total .... 129 $ 970,000

3 The division of highways, division of motor vehicles,
4 bureau of employment programs, public service com-
5 mission and other departments or divisions operating
6 from special revenue funds and/or federal funds shall
7 pay their proportionate share of the public employees
8 health insurance cost for their respective divisions.
9 When specific appropriations are not made, such
10 payments may be made from the balances in the various
11 special revenue funds in excess of specific appropria-
12 tions.

33—Ethics Commission
(WV Code Chapter 6B)
"Former" Account No. 6180
"WVFIMS" Account No.
Fund 0223 FY 1994 Org 0220

1 Personal Services ............... 001 $ 159,215
2 Annual Increment ............... 004 432
3 Employee Benefits .............. 010 38,285
4 Unclassified ................... 099 156,741
5 Total ............................ $ 354,673

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

34—West Virginia
Development Office
(WV Code Chapter 5B)

"Former" Account No. 1210

"WVFIMS" Account No.

Fund 0256 FY 1994 Org 0307

<table>
<thead>
<tr>
<th>Category</th>
<th>Account</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>$2,020,612</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>22,936</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
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<td>1,647,960</td>
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<tr>
<td>Partnership Grants (R)</td>
<td>131</td>
<td></td>
<td>1,536,200</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>132</td>
<td></td>
<td>200,000</td>
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<tr>
<td>Local Economic Development</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partnerships (R)</td>
<td>133</td>
<td></td>
<td>1,300,000</td>
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<tr>
<td>Guaranteed Work Force Grant (R)</td>
<td>242</td>
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<td>1,900,000</td>
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<tr>
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<td>$9,184,427</td>
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</table>

Any unexpended balances remaining in the appropriations for Partnership Grants (account no. 1210-15), Competitive Grants (account no. 1210-16), Guaranteed Work Force Grant (account no. 1210-21) and Local Economic Development Partnerships (account no. 1210-25) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

The above appropriation local economic development partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities created under the plan developed by the council for community and economic development under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon criteria developed under the provisions of section three, article two, chapter five-b of the code and based upon a formula whereby funding assistance may not exceed twenty-five thousand dollars per county served by a regional economic development corporation or authority.
### Ch. 1] Appropriations

#### 35—Division of Labor

(WV Code Chapters 21 and 47)

**“Former” Account No. 4500**

**“WVFIMS” Account No.**

Fund 0260 FY 1994 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>12,363</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>323,964</td>
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<td>Unclassified</td>
<td>099</td>
<td>186,849</td>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,355,859</strong></td>
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</tbody>
</table>

#### 36—Division of Tourism and Parks

(WV Code Chapter 5B)

**“Former” Account No. 4625**

**“WVFIMS” Account No.**

Fund 0246 FY 1994 Org 0304

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
<td>004</td>
<td>78,387</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>1,558,536</td>
</tr>
<tr>
<td>Unclassified</td>
<td>096</td>
<td>-0-</td>
</tr>
<tr>
<td>Film Development Office</td>
<td>498</td>
<td>75,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$5,796,099</strong></td>
</tr>
</tbody>
</table>

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the division of tourism and parks, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

#### 37—Division of Forestry

(WV Code Chapter 19)

**“Former” Account No. 4650**

**“WVFIMS” Account No.**

Fund 0250 FY 1994 Org 0305
1 Personal Services .................. 001 $ 1,931,629
2 Annual Increment .................. 004 39,006
3 Employee Benefits ................ 010 744,956
4 Unclassified ....................... 099 47,023
5 Total .............................. $ 2,762,614

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

38—Board of Coal Mine

Health and Safety
(WV Code Chapter 22)
“Former” Account No. 4720
“WVFIMS” Account No.
Fund 0280 FY 1994 Org 0319

1 Personal Services .................. 001 $ 50,077
2 Employee Benefits ................ 010 15,424
3 Unclassified ....................... 099 10,496
4 Total .............................. $ 75,997

39—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)
“Former” Account No. 4730
“WVFIMS” Account No.
Fund 0263 FY 1994 Org 0313

1 West Virginia’s Contribution to the Interstate Commission on Potomac River Basin—
3
4 Total .............................. 134 $ 36,045

40—Ohio River Valley Water Sanitation Commission
Ch. 1) APPROPRIATIONS

(WV Code Chapter 29)
"Former" Account No. 4740
"WVFIMS” Account No.
Fund 0264 FY 1994 Org 0313

1 West Virginia’s Contribution
2 to the Ohio River Valley Water
3 Sanitation Commission—
4 Total ................................... 135 $ 98,280

41—Coal Mine Safety and
Technical Review Committee

(WV Code Chapter 22)
"Former” Account No. 4750
"WVFIMS” Account No.
Fund 0285 FY 1994 Org 0320

1 Personal Services ................. 001 $ 7,400
2 Employee Benefits ................. 010 4,298
3 Unclassified .................. 099 71,303
4 Total ................................... $ 83,001

42—Division of Environmental Protection

(WV Code Chapter 22)
"Former” Account No. 4775
"WVFIMS” Account No.
Fund 0273 FY 1994 Org 0313

1 Personal Services .................. 001 $ 3,959,234
2 Annual Increment .................. 004 55,260
3 Employee Benefits ................. 010 1,326,837
4 Unclassified .................. 099 715,883
5 Black Fly Control ................. 137 216,000
6 Total ................................... $ 6,273,214
43—Division of Miners’ Health, Safety and Training
(WV Code Chapter 22)
“Former” Account No. 4780
“WVFIMS” Account No.
Fund 0277 FY 1994 Org 0314

<table>
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<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$28,980</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,035,235</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$201,722</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$4,304,554</td>
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</table>

44—Geological and Economic Survey
(WV Code Chapter 29)
“Former” Account No. 5200
“WVFIMS” Account No.
Fund 0253 FY 1994 Org 0306

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$1,121,756</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>$20,680</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$345,193</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$50,000</td>
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<tr>
<td>5</td>
<td>Roof Repairs—Capital Outlay</td>
<td>446</td>
<td>$37,500</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$1,575,129</td>
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</tbody>
</table>

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

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

(WV Code Chapter 5F)

"Former" Account No. 5321

"WVFIMS" Account No.

Fund 0236 FY 1994 Org 0301

<table>
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<tr>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
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<td>$335,929</td>
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<tr>
<td>2</td>
<td>ARC Assessment</td>
<td>136</td>
<td>$40,000</td>
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<td>3</td>
<td>Total</td>
<td></td>
<td>$375,929</td>
</tr>
</tbody>
</table>

#### 46—Water Resources Board

(WV Code Chapter 20)

"Former" Account No. 5640

"WVFIMS" Account No.

Fund 0270 FY 1994 Org 0311

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$60,152</td>
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<td>Annual Increment</td>
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<td>$900</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$18,690</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$32,030</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$111,772</td>
</tr>
</tbody>
</table>

#### 47—Division of Natural Resources

(WV Code Chapter 20)

"Former" Account No. 5650

"WVFIMS" Account No.

Fund 0265 FY 1994 Org 0310

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$479,304</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$6,408</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$158,716</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$8,290</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$652,718</td>
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</tbody>
</table>
DEPARTMENT OF EDUCATION
48—State Department of Education
(WV Code Chapters 18 and 18A)
“Former” Account No. 2860
“WVFIMS” Account No.
Fund 0313 FY 1994 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>3</td>
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<td>010</td>
<td>633,368</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,404,342</td>
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<td>5</td>
<td>WV Education Information</td>
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<tr>
<td>6</td>
<td>System (WVEIS)</td>
<td>138</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>34/1000 Waiver</td>
<td>139</td>
<td>300,000</td>
</tr>
<tr>
<td>8</td>
<td>Increased Enrollment</td>
<td>140</td>
<td>800,000</td>
</tr>
<tr>
<td>9</td>
<td>Coordinator-Educational</td>
<td></td>
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<tr>
<td>10</td>
<td>Medical Services</td>
<td>141</td>
<td>58,536</td>
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<tr>
<td>11</td>
<td>Computer Basic Skills (R)</td>
<td>145</td>
<td>3,500,000</td>
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<tr>
<td>12</td>
<td>Principals’ Academy</td>
<td>455</td>
<td>100,000</td>
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<tr>
<td>13</td>
<td>Competitive Grants</td>
<td>130</td>
<td>100,000</td>
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<tr>
<td>14</td>
<td>Microcomputer Network</td>
<td>506</td>
<td>150,000</td>
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<tr>
<td>15</td>
<td>WV Work Heritage Project</td>
<td>507</td>
<td>50,000</td>
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<tr>
<td>16</td>
<td>Governor’s Honors Academy</td>
<td>478</td>
<td>30,000</td>
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<tr>
<td>17</td>
<td>COGS Writing Project</td>
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<td>20,000</td>
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<tr>
<td>18</td>
<td>Total</td>
<td></td>
<td>$16,060,081</td>
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</table>

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

Any unexpended balance remaining in the appropriation for Computer Basic Skills (account no. 2860-41) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

49—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)
“Former” Account No. 2870
“WVFIMS” Account No.
## Appropriations

### Fund 0303 FY 1994 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tr>
<td>1</td>
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<td>2,109</td>
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<td>3</td>
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<tr>
<td>5</td>
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</tbody>
</table>

### 50—State Board of Education—Vocational Division

(WV Code Chapters 18 and 18A)

"Former" Account No. 2890

"WVFIMS" Account No.

### Fund 0390 FY 1994 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$668,000</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>9,693</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>178,255</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>542,704</td>
</tr>
<tr>
<td>5</td>
<td>Wood Products—Forestry Vocational</td>
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<td></td>
</tr>
<tr>
<td>6</td>
<td>Program (R)</td>
<td>146</td>
<td>63,024</td>
</tr>
<tr>
<td>7</td>
<td>Albert Yanni Vocational</td>
<td></td>
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<tr>
<td>8</td>
<td>Program</td>
<td>147</td>
<td>139,300</td>
</tr>
<tr>
<td>9</td>
<td>Vocational Aid</td>
<td>148</td>
<td>10,171,729</td>
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<tr>
<td>10</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>1,449,723</td>
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<tr>
<td>11</td>
<td>Equipment Replacement</td>
<td>150</td>
<td>1,019,750</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$14,242,178</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Wood Products—Forestry Vocational Program (account no. 2890-47) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

From the vocational aid line item above, one hundred thousand dollars is to be expended to purchase hepatitis B vaccines to provide immunizations in vocational education programs.
### 51—State Department of Education—

#### State Aid to Schools

(WV Code Chapters 18 and 18A)

“Former” Account No. 2950  
“WVFIMS” Account No.

Fund 0317 FY 1994 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional Educators</td>
<td>151</td>
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</tr>
<tr>
<td>2</td>
<td>Service Personnel</td>
<td>152</td>
<td>190,442,382</td>
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<tr>
<td>3</td>
<td>Fixed Charges</td>
<td>153</td>
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<td>4</td>
<td>Transportation</td>
<td>154</td>
<td>25,724,251</td>
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<td>5</td>
<td>Administration</td>
<td>155</td>
<td>6,750,000</td>
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<td>6</td>
<td>Other Current Expenses</td>
<td>022</td>
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<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
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<td>32,520,994</td>
</tr>
<tr>
<td>8</td>
<td>Table</td>
<td>099</td>
<td>-0-</td>
</tr>
<tr>
<td>9</td>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,040,612,064</td>
</tr>
<tr>
<td>10</td>
<td>Less Local Share</td>
<td>332</td>
<td>(200,429,864)</td>
</tr>
<tr>
<td>11</td>
<td>Total Basic State Aid</td>
<td></td>
<td>840,182,200</td>
</tr>
<tr>
<td>12</td>
<td>Public Employees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Insurance Match</td>
<td>012</td>
<td>112,027,065</td>
</tr>
<tr>
<td>14</td>
<td>School Building Authority</td>
<td>453</td>
<td>35,440,493</td>
</tr>
<tr>
<td>15</td>
<td>Teachers' Retirement System</td>
<td>019</td>
<td>154,908,752</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
<td></td>
<td>1,142,558,510</td>
</tr>
</tbody>
</table>

### 52—State Department of Education—

#### Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

“Former” Account No. 2960  
“WVFIMS” Account No.

Fund 0314 FY 1994 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
<td>159</td>
<td>$7,336,561</td>
</tr>
<tr>
<td>2</td>
<td>Special Education—Institutions</td>
<td>160</td>
<td>2,297,128</td>
</tr>
<tr>
<td>3</td>
<td>Education of Institutionalized Juveniles</td>
<td>161</td>
<td>3,007,244</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$12,640,933</td>
</tr>
</tbody>
</table>
### 53—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

"Former" Account No. 3330

"WVFIMS" Account No.

**Fund 0320 FY 1994 Org 0403**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$4,937,219</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>4,788</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>1,477,055</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>1,009,120</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$7,428,182</strong></td>
</tr>
</tbody>
</table>

### 54—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

"Former" Account No. 3360

"WVFIMS" Account No.

**Fund 0306 FY 1994 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$127,331</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>3,193</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>46,147</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>157,196</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$333,867</strong></td>
</tr>
</tbody>
</table>

### 55—State Board of Rehabilitation—Division of Rehabilitation Services

(WV Code Chapter 18)

"Former" Account No. 4405

"WVFIMS" Account No.

**Fund 0310 FY 1994 Org 0932**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>$</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>
### 1550 Appropriations

| 1   | Personal Services               | 001 | $3,693,088 |
| 2   | Annual Increment                | 004 | 88,879     |
| 3   | Employee Benefits               | 010 | 1,207,612  |
| 4   | Unclassified                    | 099 | 49,782     |
| 5   | Case Services                   | 162 | 2,859,763  |
| 6   | Workshop Development            | 163 | 1,449,000  |
| 7   | Total                           |     | $9,348,124 |

#### DEPARTMENT OF EDUCATION AND THE ARTS

**56—Board of Directors of the State College System**

Control Account

(WV Code Chapter 18B)

"Former" Account No. 2785

"WVFIMS" Account No.

Fund 0330 FY 1994 Org 0481

| 1   | Unclassified                    | 099 | $77,058,231 |
| 2   | Micro Computer Labs for Teacher Education | 171 | 344,800 |
| 4   | Total                           |     | $77,403,031 |

**57—Board of Trustees of the University System of West Virginia**

Control Account

(WV Code Chapter 18B)

"Former" Account No. 2795

"WVFIMS" Account No.

Fund 0327 FY 1994 Org 0461

| 1   | Unclassified                    | 099 | 142,154,211 |
| 2   | Marshall University-            |     |             |
| 3   | Southern WV Community          |     |             |
58—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System (WV Code Chapters 18B and 18C)

"Former" Account No. 2800
"WVFIMS" Account No. Fund 0333 FY 1994 Org 0452

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$868,084</td>
</tr>
<tr>
<td>2</td>
<td>Higher Education Grant</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Program (R)</td>
<td>$3,757,050</td>
</tr>
<tr>
<td>4</td>
<td>Tuition Contract Program</td>
<td>$599,940</td>
</tr>
<tr>
<td>5</td>
<td>Minority Doctoral Fellowship</td>
<td>$90,000</td>
</tr>
<tr>
<td>6</td>
<td>Underwood-Smith Scholarship Program—Student Awards</td>
<td>$570,000</td>
</tr>
<tr>
<td>7</td>
<td>West Virginia Humanities Council</td>
<td>$90,000</td>
</tr>
<tr>
<td>8</td>
<td>WVNET</td>
<td>$2,088,776</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$8,063,850</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Higher Education Grant Program (account no. 2800-07) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

Any unexpended balance remaining in the appropriation for Marshall University—Southern WV Community College 2+2 Program (account no. 2800-24) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

Any unexpended balance remaining in the appropriation for Micro Computer Labs for Teacher Education...
(account no. 2800-25) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

59—Board of Trustees of the University System of West Virginia

University of West Virginia
Health Sciences Account
(WV Code Chapter 18B)
“Former” Account No. 2855
“WVFIMS” Account No.

<table>
<thead>
<tr>
<th>Fund 0323 FY 1994 Org 0478</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified</td>
<td>$ 096 0</td>
</tr>
<tr>
<td>2  School of Osteopathic Medicine</td>
<td>172 5,452,654</td>
</tr>
<tr>
<td>3  Marshall Medical School</td>
<td>173 9,755,954</td>
</tr>
<tr>
<td>4  WVU—School of Health Sciences</td>
<td>174 34,762,257</td>
</tr>
<tr>
<td>5  WVU—School of Health</td>
<td></td>
</tr>
<tr>
<td>6  Sciences—Charleston Division</td>
<td>175 3,427,935</td>
</tr>
<tr>
<td>7  WVU Charleston Division—</td>
<td></td>
</tr>
<tr>
<td>8  Poison Control Hot Line</td>
<td>510 250,000</td>
</tr>
<tr>
<td>9  Health Sciences</td>
<td></td>
</tr>
<tr>
<td>10 Scholarship Fund</td>
<td>176 148,500</td>
</tr>
<tr>
<td>11 Primary Health Education</td>
<td></td>
</tr>
<tr>
<td>12 Program Support (R)</td>
<td>177 3,960,000</td>
</tr>
<tr>
<td>13 Rural Health Initiative</td>
<td></td>
</tr>
<tr>
<td>14 Site Support (R)</td>
<td>295 1,980,000</td>
</tr>
<tr>
<td>15 Total</td>
<td>$ 59,737,300</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (account no. 2855-56) and Rural Health Initiative Site Support (account no. 2855-58) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

60—Educational Broadcasting Authority
(WV Code Chapter 10)
### “Former” Account No. 2910

“WVFIMS” Account No.

**Fund 0300 FY 1994 Org 0439**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,999,090</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$46,108</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$880,282</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,283,466</td>
</tr>
</tbody>
</table>

| Total                                     |      | $5,158,946 |

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

### 61—Library Commission

(WV Code Chapter 10)

“Former” Account No. 3500

“WVFIMS” Account No.

**Fund 0296 FY 1994 Org 0433**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$966,602</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$24,984</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$336,332</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$225,212</td>
</tr>
<tr>
<td>Books and Films</td>
<td>179</td>
<td>$150,000</td>
</tr>
<tr>
<td>Services to State Institutions</td>
<td>180</td>
<td>$156,310</td>
</tr>
<tr>
<td>Services to Blind</td>
<td>181</td>
<td>$42,729</td>
</tr>
<tr>
<td>and Handicapped</td>
<td>181</td>
<td>$42,729</td>
</tr>
<tr>
<td>Grants to Public Libraries</td>
<td>182</td>
<td>$5,709,779</td>
</tr>
</tbody>
</table>

| Total                                     |      | $7,611,948 |

### 62—Division of Culture and History

(WV Code Chapter 29)

“Former” Account No. 3510

“WVFIMS” Account No.

**Fund 0293 FY 1994 Org 0432**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,370,605</td>
</tr>
</tbody>
</table>

|
The Unclassified appropriation includes funding for the Arts Funds, Department Programming Funds, Grants, Fairs and Festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of chapter five-a and article three, chapter twelve of the code.

All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the Arts Fund and Historical Preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

63—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

"Former" Account No. 5332

"WVFIMS" Account No.

Fund 0294 FY 1994 Org 0431

Any unexpended balances remaining in the appropriation for Unclassified (account no. 5332-23) and Rural Health Initiative Site Support (account no. 5332-24) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.
### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

#### 64—Division of Health—Central Office

(WV Code Chapter 16)

“Former” Account No. 4000

“WVFIMS” Account No.

Fund 6407 FY 1994 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$5,389,480</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>85,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,077,398</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>3,603,807</td>
</tr>
<tr>
<td>5</td>
<td>Paramedic Training</td>
<td>490</td>
<td>30,000</td>
</tr>
<tr>
<td>6</td>
<td>Corporate Nonprofit Community</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Health Centers—F.M.H.A.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Mortgage Finance</td>
<td>184</td>
<td>150,269</td>
</tr>
<tr>
<td>9</td>
<td>Appalachian States Low Level</td>
<td>185</td>
<td>58,300</td>
</tr>
<tr>
<td>10</td>
<td>Safe Drinking Water Program</td>
<td>187</td>
<td>440,000</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td></td>
<td>$11,834,254</td>
</tr>
</tbody>
</table>

#### 65—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 4050

“WVFIMS” Account No.

Fund 6403 FY 1994 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$14,258,716</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>352,280</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>5,808,870</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>11,952,578</td>
</tr>
<tr>
<td>5</td>
<td>OSCAR and RAPIDS</td>
<td>188</td>
<td>3,445,282</td>
</tr>
<tr>
<td>6</td>
<td>Medical Services</td>
<td>189</td>
<td>146,100,000</td>
</tr>
<tr>
<td>7</td>
<td>Women’s Commission</td>
<td>191</td>
<td>51,365</td>
</tr>
<tr>
<td>8</td>
<td>Commission on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Hearing Impaired</td>
<td>192</td>
<td>41,280</td>
</tr>
</tbody>
</table>
Notwithstanding the provisions of section two, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than ten percent of the funds appropriated to one line may be transferred to other lines: Provided, however, That no funds from other lines shall be transferred to the personal services line item.

66—Commission on Aging
(WV Code Chapter 29)
“Former” Account No. 4060
“WVFIMS” Account No.
Fund 0420 FY 1994 Org 0508

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>001</td>
<td>$110,795</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,947</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>010</td>
<td>51,062</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>099</td>
<td>175,868</td>
</tr>
<tr>
<td>200</td>
<td>Service Delivery Costs</td>
<td>200</td>
<td>$2,475,250</td>
</tr>
<tr>
<td>202</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>14,400</td>
</tr>
<tr>
<td>203</td>
<td>Area Agencies Administration</td>
<td>203</td>
<td>87,429</td>
</tr>
<tr>
<td>204</td>
<td>Ombudsman</td>
<td>204</td>
<td>245,325</td>
</tr>
<tr>
<td>001</td>
<td>Total</td>
<td>001</td>
<td>$3,162,076</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (account no. 4060-10) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during fiscal year 1993-94.
### 67—Consolidated Medical Service Fund

**“Former” Account No. 4190**

**“WVFIMS” Account No.**

**Fund 0525 FY 1994 Org 0506**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,639,571</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>17,949</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$14,383,743</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>-0-</td>
</tr>
<tr>
<td>Foster Grandparents</td>
<td></td>
<td>57,734</td>
</tr>
<tr>
<td>Stipends/Travel</td>
<td>205</td>
<td>26,074</td>
</tr>
<tr>
<td>Special Olympics</td>
<td>208</td>
<td>7,031,753</td>
</tr>
<tr>
<td>State Aid to Local Agencies</td>
<td>209</td>
<td>400,000</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>210</td>
<td>3,900,000</td>
</tr>
<tr>
<td>Maternal and Child Health</td>
<td></td>
<td>4,423,043</td>
</tr>
<tr>
<td>Medical Contracts and Fees</td>
<td>211</td>
<td>138,240</td>
</tr>
<tr>
<td>Preventive Revaccination</td>
<td>212</td>
<td>3,900,000</td>
</tr>
<tr>
<td>Primary Care Uncompensated</td>
<td></td>
<td>999,306</td>
</tr>
<tr>
<td>Care Fund</td>
<td>213</td>
<td>538,033</td>
</tr>
<tr>
<td>Primary Care Support</td>
<td></td>
<td>1,303,820</td>
</tr>
<tr>
<td>Program</td>
<td>215</td>
<td>280,000</td>
</tr>
<tr>
<td>Epidemiology Research</td>
<td>216</td>
<td>481,244</td>
</tr>
<tr>
<td>Grants to Counties and EMS Entities</td>
<td>217</td>
<td>11,000,000</td>
</tr>
<tr>
<td>Rural Non-Profit EMS</td>
<td></td>
<td>557,310</td>
</tr>
<tr>
<td>Equipment</td>
<td>493</td>
<td>2,018,357</td>
</tr>
<tr>
<td>Behavioral Health Program—</td>
<td></td>
<td>600,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>219</td>
<td>9,345,670</td>
</tr>
<tr>
<td>Behavioral Health Program—</td>
<td></td>
<td>52,500</td>
</tr>
<tr>
<td>Community Centers</td>
<td>220</td>
<td>11,000,000</td>
</tr>
<tr>
<td>Family Support Act</td>
<td>221</td>
<td>186,632</td>
</tr>
<tr>
<td>Early Intervention</td>
<td>223</td>
<td>557,310</td>
</tr>
<tr>
<td>In-Home Services For</td>
<td></td>
<td>600,000</td>
</tr>
<tr>
<td>Senior Citizens</td>
<td>224</td>
<td>2,018,357</td>
</tr>
<tr>
<td>Behavioral Health Medicaid</td>
<td></td>
<td>9,345,670</td>
</tr>
<tr>
<td>Match</td>
<td>492</td>
<td>52,500</td>
</tr>
<tr>
<td>Paramedic Training</td>
<td>490</td>
<td>186,632</td>
</tr>
<tr>
<td>Cancer Registry</td>
<td>225</td>
<td></td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
36 Operations .......................... 335    37,000,000
37 Total .................................. $ 96,428,979

The secretary of the department of health and human
resources, prior to the beginning of the fiscal year, shall
file with the legislative auditor and the department of
administration an expenditure schedule for each
formerly separate spending unit which has been
consolidated into the above account and which receives
a portion of the above appropriation. The secretary shall
also, within fifteen days after the close of the six-month
period of said fiscal year, file with the legislative auditor
and the department of administration an itemized
report of expenditures made during the preceding six-
month period.

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

The Behavioral Health Program—Community Cen-
ters line item within account no. 4190 has been reduced
from fiscal year 1993 recognizing that the medicaid
provider tax will provide the state match for federal
medicaid funds. When allocating funds from this line
item through contracts with providers, the department
shall take into consideration the mix of medicaid and
non-medicaid patients being served at each community
center in recognition of the fact that certain providers
will realize a greater increase in revenue from the
provider tax than other providers and in an effort to
allocate funds so that each community center may
maintain at least the current level of services.

Services funded from the Behavioral Health Pro-
gram—Community Centers Account will be maintained
at a level which will not exceed that amount approp-
riated for that line item above.

Funds identified as Behavioral Health Medicaid
Match shall be transferred by the department to be used
as the state's share of medicaid payments for behavioral
health services.
### 68—Department of Health and Human Resources—
Office of the Secretary  
(WV Code Chapter 5F)  
"Former" Account No. 5343  
"WVFIMS" Account No.  
Fund 0400 FY 1994 Org 0501

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$ 096</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 174,354</td>
</tr>
</tbody>
</table>

### 69—Human Rights Commission  
(WV Code Chapter 5)  
"Former" Account No. 5980  
"WVFIMS" Account No.  
Fund 0416 FY 1994 Org 0510

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$ 099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 808,638</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY

### 70—Office of Emergency Services  
(WV Code Chapter 15)  
"Former" Account No. 1300  
"WVFIMS" Account No.  
Fund 0443 FY 1994 Org 0606

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$ 004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$ 010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$ 099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 235,473</td>
</tr>
</tbody>
</table>
71—Board of Probation and Parole
(WV Code Chapter 62)
“Former” Account No. 3650
“WVFIMS” Account No.
Fund 0440 FY 1994 Org 0605

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$36,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>756</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>35,460</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>18,931</td>
</tr>
<tr>
<td>5</td>
<td>Salaries of Members of Board of Probation and Parole</td>
<td>227</td>
<td>84,900</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$176,047</td>
</tr>
</tbody>
</table>

72—Division of Corrections—
Central Office
(WV Code Chapters 25, 28, 29 and 62)
“Former” Account No. 3680
“WVFIMS” Account No.
Fund 0446 FY 1994 Org 0608

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$331,044</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,552</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>106,908</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>98,928</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$543,432</td>
</tr>
</tbody>
</table>

73—Division of Corrections—
Correctional Units
(WV Code Chapters 25, 28, 29 and 62)
“Former” Account No. 3770
“WVFIMS” Account No.
Fund 0450 FY 1994 Org 0608

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$14,387,160</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>247,248</td>
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</table>
Ch. 1]  

### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,475,445</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>8,327,684</td>
</tr>
<tr>
<td>Payment to Counties and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Jails</td>
<td>229</td>
<td>1,425,000</td>
</tr>
<tr>
<td>Denmar Facility</td>
<td>448</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$31,862,537</td>
</tr>
</tbody>
</table>

9. The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of administration an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. The commissioner shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment.

**74—Division of Veterans' Affairs—**

**Veterans' Home**

(WV Code Chapter 9A)

"Former" Account No. 4010

"WVFIMS" Account No.

Fund 0460 FY 1994 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$210,177</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>5,343</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>94,011</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>-0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$309,531</td>
</tr>
</tbody>
</table>

**75—Division of Veterans' Affairs**

(WV Code Chapter 9A)

"Former" Account No. 4040
1562   APPROPRIATIONS

"WVFIMS" Account No.
Fund 0456 FY 1994 Org 0613

1 Personal Services ................. 001 $  671,185
2 Annual Increment ................... 004  13,863
3 Employee Benefits .................. 010  288,528
4 Unclassified ......................... 099  74,763
5 Veterans' Field Offices ............ 228 131,726
6 Total ................................ $  1,180,065

From the unclassified line item above, sixty-six thousand dollars is to be expended for the administrative costs of implementing the veterans' bonus program.

76—Division of Veterans' Affairs—
Veterans' Bonus
(WV Code Chapter 9A)
"Former" Account No. 4041
"WVFIMS" Account No.
Fund 0457 FY 1994 Org 0613

1 Unclassified—Total ............... 096 $  2,000,000

77—Department of Military Affairs and
Public Safety—
Office of the Secretary
(WV Code Chapter 5F)
"Former" Account No. 5354
"WVFIMS" Account No.
Fund 0430 FY 1994 Org 0601

1 Unclassified—Total ............... 096 $  158,312

78—Division of Public Safety
(WV Code Chapter 15)
"Former" Account No. 5700
### Appropriations

"WVFIMS" Account No.

Fund 0453 FY 1994 Org 0612

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$15,040,045</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>91,404</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>4,729,063</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>4,344,412</td>
</tr>
<tr>
<td>5 Barracks Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and Construction</td>
<td>494</td>
<td>213,947</td>
</tr>
<tr>
<td>7 Communications Equipment</td>
<td>502</td>
<td>377,715</td>
</tr>
<tr>
<td>8 Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>9 Safety Equipment</td>
<td>495</td>
<td>100,000</td>
</tr>
<tr>
<td>10 Total</td>
<td></td>
<td>$25,896,586</td>
</tr>
</tbody>
</table>

79—Adjutant General—State Militia

(WV Code Chapter 15)

"Former" Account No. 5800

"WVFIMS" Account No.

Fund 0433 FY 1994 Org 0603

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$249,021</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,264</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>93,964</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>2,991,143</td>
</tr>
<tr>
<td>5 College Education Fund</td>
<td>232</td>
<td>698,400</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$4,038,792</td>
</tr>
</tbody>
</table>

7 The college education fund line item above shall be the total annual appropriation for awarding scholarships. The secretary of the department of military affairs and public safety shall devise a method to equitably reimburse all eligible participants on a pro-rata basis should the appropriation be insufficient to cover total annual eligible expenses.

80—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

"Former" Account No. 6010
### Appropriations

**“WVFIMS” Account No.**

**Fund 0536 FY 1994 Org 0615**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service—Total</td>
<td></td>
<td>$4,000,000</td>
</tr>
</tbody>
</table>

81—Fire Commission  
(WV Code Chapter 29)

**“Former” Account No. 6170**

**“WVFIMS” Account No.**

**Fund 0436 FY 1994 Org 0619**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$429,536</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,740</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>147,834</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>115,394</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$700,504</td>
</tr>
</tbody>
</table>

**DEPARTMENT OF TAX AND REVENUE**

82—Tax Division  
(WV Code Chapter 11)

**“Former” Account No. 1800**

**“WVFIMS” Account No.**

**Fund 0470 FY 1994 Org 0702**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$8,975,863</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>159,660</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,077,947</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,896,530</td>
</tr>
<tr>
<td>5</td>
<td>Automation Project</td>
<td>442</td>
<td>500,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$18,610,000</td>
</tr>
</tbody>
</table>

83—Division of Professional and Occupational Licenses—  
State Athletic Commission  
(WV Code Chapter 29)

**“Former” Account No. 4790**
### Appropriations

#### 84—Department of Tax and Revenue—
**Office of the Secretary**
(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 1994 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5365</td>
<td>&quot;WVFIMS&quot; Account No.</td>
<td>0933</td>
<td>$4,719</td>
</tr>
</tbody>
</table>

#### 85—Department of Transportation—
**Office of the Secretary**
(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 1994 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5376</td>
<td>&quot;WVFIMS&quot; Account No.</td>
<td>0701</td>
<td>$173,995</td>
</tr>
</tbody>
</table>

#### 86—Division of Public Transit
(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 1994 Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5380</td>
<td>&quot;WVFIMS&quot; Account No.</td>
<td>0805</td>
<td>$372,680</td>
</tr>
</tbody>
</table>
### 87—Railroad Maintenance Authority
(WV Code Chapter 29)

"Former" Account No. 5690
"WVFIMS" Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1994</th>
<th>Org 0804</th>
</tr>
</thead>
<tbody>
<tr>
<td>5690</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$341,128</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,939</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>216,715</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>67,204</td>
</tr>
<tr>
<td>5</td>
<td>Hampshire County</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Railroad Siding</td>
<td>497</td>
<td>25,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$656,986</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay (account no. 5690-23) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 88—Board of Investments
(WV Code Chapter 12)

"Former" Account No. 1900
"WVFIMS" Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1994</th>
<th>Org 0920</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
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<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,176,013</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>12,616</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>378,571</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,275,445</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$3,842,645</td>
</tr>
</tbody>
</table>

#### 89—Board of Investments—School Building Sinking Fund
(WV Code Chapter 12)

"Former" Account No. 1905
"WVFIMS" Account No.
Fund 0526 FY 1994 Org 0920

1 Debt Service—Total (R) ............ 310 $ 11,566,000

2 Any unexpended balance remaining in the appropriation for Board of Investments—School Building Sinking Fund (account no. 1905-06) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

Total TITLE II, Section 1—
General Revenue ................. $2,102,987,292

Sec. 2. Appropriations from state road fund.—
From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-four.

DEPARTMENT OF TRANSPORTATION

90—Division of Highways
(WV Code Chapters 17 and 17C)

"Former" Account No. 6700
"WVFIMS" Account No.
Fund 9017 FY 1994 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>040 $ 52,900,000</td>
</tr>
<tr>
<td>2 ARC Assessment</td>
<td>136 700,000</td>
</tr>
<tr>
<td>3 Maintenance, Expressway</td>
<td></td>
</tr>
<tr>
<td>4 Trunkline and Feeder</td>
<td>270 71,298,000</td>
</tr>
<tr>
<td>5 Maintenance, State</td>
<td></td>
</tr>
<tr>
<td>6 Local Services</td>
<td>271 101,218,000</td>
</tr>
<tr>
<td>7 Maintenance, Contract Paving</td>
<td></td>
</tr>
<tr>
<td>8 and Secondary Road</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>9</td>
<td>Maintenance</td>
</tr>
<tr>
<td>10</td>
<td>Bridge Repair and Replacement</td>
</tr>
<tr>
<td>11</td>
<td>Industrial Access Roads</td>
</tr>
<tr>
<td>12</td>
<td>Inventory Revolving</td>
</tr>
<tr>
<td>13</td>
<td>Equipment Revolving</td>
</tr>
<tr>
<td>14</td>
<td>General Operations</td>
</tr>
<tr>
<td>15</td>
<td>Interstate Construction</td>
</tr>
<tr>
<td>16</td>
<td>Other Federal Aid Programs</td>
</tr>
<tr>
<td>17</td>
<td>Appalachian Programs</td>
</tr>
<tr>
<td>18</td>
<td>Nonfederal Aid Construction</td>
</tr>
<tr>
<td>19</td>
<td>Highway Litter Control</td>
</tr>
<tr>
<td>20</td>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

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

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

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

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor.

Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.
### 91—Division of Highways—

Federal Aid Highway Matching Fund  
(WV Code Chapters 17 and 17C)  
“Former” Account No. 6705  
“WVFIMS” Account No.  
Fund 9018 FY 1994 Org 0803

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Interstate Construction</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>$75,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>$179,000,000</td>
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<tr>
<td>Total</td>
<td>$259,000,000</td>
</tr>
</tbody>
</table>

### 92—Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)  
“Former” Account No. 6710  
“WVFIMS” Account No.  
Fund 9007 FY 1994 Org 0802

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,970,396</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$44,928</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$1,062,346</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$10,435,396</td>
</tr>
<tr>
<td>Optic Scan System (R)</td>
<td>$2,010,000</td>
</tr>
<tr>
<td>Electronic Photo Operator and License System (R)</td>
<td>$250,000</td>
</tr>
<tr>
<td>Total</td>
<td>$16,773,066</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Optic Scan System (account no. 6710-38) and Electronic Photo Operator and License System (account no. 6710-39) at the close of fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Total TITLE II, Section 2—</td>
<td>$990,550,568</td>
</tr>
</tbody>
</table>
Sec. 3. Appropriations from other funds.—From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-four.

**LEGISLATIVE**

93—Crime Victims Compensation Fund—

(WV Code Chapter 14)

“Former” Account No. 8412

“WVFIMS” Account No.

Fund 1731 FY 1994 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $110,778</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004 $1,116</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 $37,742</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 $42,000</td>
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<tr>
<td>Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>Payment Fund</td>
<td>334 $1,450,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

**EXECUTIVE**

94—Auditor’s Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

“Former” Account No. 8120

“WVFIMS” Account No.

Fund 1206 FY 1994 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $44,087</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004 $720</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 $14,408</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 $11,058</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees and collections
8 as provided by law.

95—Auditor’s Office—
Securities Regulation Fund
(WV Code Chapter 32)
“Former” Account No. 8122
“WVFIMS” Account No.
Fund 1225 FY 1994 Org 1200

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
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<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$140,000</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,944</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$35,000</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$223,056</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$400,000</td>
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</tbody>
</table>

96—Department of Agriculture
(WV Code Chapter 19)
“Former” Account No. 8180
“WVFIMS” Account No.
Fund 1401 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$201,091</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$2,088</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$65,532</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$510,917</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$779,628</td>
</tr>
</tbody>
</table>

97—Department of Agriculture—
West Virginia Rural Rehabilitation Program
(WV Code Chapter 19)
“Former” Account No. 8192
“WVFIMS” Account No.
Fund 1408 FY 1994 Org 1400
1572 APPROPRIATIONS

1 Student and Farm
2 Loans—Total .................. 235 $ 400,000

98—General John McCausland Memorial Farm
(WV Code Chapter 19)
“Former” Account No. 8194
“WVFIMS” Account No.
Fund 1409 FY 1994 Org 1400

1 Personal Services .............. 001 $ 18,084
2 Annual Increment .............. 004 792
3 Employee Benefits ............ 010 10,770
4 Unclassified .................. 099 44,493
5 Total ........................ $ 74,139

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

99—Attorney General—
Anti-Trust Enforcement
(WV Code Chapter 47)
“Former” Account No. 8419
“WVFIMS” Account No.
Fund 1507 FY 1994 Org 1500

1 Personal Services .............. 001 $ 207,450
2 Annual Increment .............. 004 673
3 Employee Benefits ............ 010 58,625
4 Unclassified .................. 099 177,882
5 Total ........................ $ 444,630

100—Governor's Office—
West Virginia Health Care
Planning Commission
(WV Code Chapter 16)
### DEPARTMENT OF ADMINISTRATION

**101—Division of Purchasing—**

**Revolving Fund**

*(WV Code Chapter 5A)*

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$707,620</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>20,687</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>282,033</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>717,244</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,727,584</strong></td>
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</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of Purchasing as provided by law.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide printing, publishing, document services and for the purchase of supplies for resale to user agencies. These services include, but are not limited to, offset printing, electronic duplication/copying, microfilming, records storage and the sale of general office supplies.

### 102—Division of Information Services—

**and Communications**

*(WV Code Chapter 5A)*

**“Former” Account No. 8151**
1574 APPROPRIATIONS

“WVFIMS” Account No.

Fund 2220 FY 1994 Org 0210

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$3,679,916</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$49,543</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,107,640</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,029,680</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$5,866,779</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of information services and communications as provided by law.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.

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

103—Division of Personnel

(WV Code Chapter 29)

“Former” Account No. 8402

“WVFIMS” Account No.

Fund 2440 FY 1994 Org 0222

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,955,406</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$37,656</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$627,571</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,083,744</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,704,377</td>
</tr>
</tbody>
</table>
6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of fees collected by the
8 division of personnel.

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

104—West Virginia
Development Office
(WV Code Chapter 5B)
“Former” Account No. 8045
“WVFIMS” Account No.
Fund 3144 FY 1994 Org 0307

1 Any unexpended balance remaining in the appropriation for Energy Assistance (account no. 8045-43) at the
2 close of the fiscal year 1992-93 is hereby reappropriated
3 for expenditure during the fiscal year 1993-94.

105—Oil and Gas Conservation Commission
(WV Code Chapter 22)
“Former” Account No. 8097
“WVFIMS” Account No.
Fund 3371 FY 1994 Org 0315

1 Personal Services ...................... 001 $ 166,435
2 Annual Increment ...................... 004 648
3 Employee Benefits .................... 010 38,645
4 Unclassified .......................... 099 65,274
5 Total .................................. $ 271,002

106—Division of Labor—
Contractor Licensing Board Fund
(WV Code Chapter 21)
“Former” Account No. 8128
“WVFIMS” Account No.
107—Division of Natural Resources
(WV Code Chapter 20)
“Former” Account No. 8300
“WVFIMS” Account No.

Fund 3187 FY 1994 Org 0308

| 1 | Personal Services ...................... 001 | $ 458,268 |
| 2 | Annual Increment ...................... 004 | 4,590 |
| 3 | Employee Benefits .................... 010 | 177,016 |
| 4 | Unclassified .......................... 099 | 661,796 |
| 5 | Total ................................... | $ 1,301,670 |

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

Any unexpended balances remaining in the appropriations for Land Purchases and Buildings (account no. 8300-09), Renovation of Dams (account no. 8300-11) and Capital Improvements and Land Purchase (account no. 8300-51) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

108—Division of Environmental Protection—
Leaking Underground Storage Tanks
Administrative Fund
(WV Code Chapter 20)
“Former” Account No. 8302
109—Division of Natural Resources—
Game, Fish and Aquatic Life Fund
(WV Code Chapter 20)

"Former" Account No. 8303

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$300,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$2,448</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$115,469</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$134,030</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$551,947</td>
</tr>
</tbody>
</table>

110—Division of Natural Resources—
Nongame Fund
(WV Code Chapter 20)

"Former" Account No. 8304

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

111—Division of Natural Resources—
Planning and Development Division
(WV Code Chapter 20)

"Former" Account No. 8306

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$79,300</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$504</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$31,932</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$136,575</td>
</tr>
</tbody>
</table>
### 112—Division of Environmental Protection—Groundwater Planning

(WV Code Chapter 20)

**“Former” Account No. 8312**

**“WVFIMS” Account No.**

**Fund 3330 FY 1994 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$35,468</td>
</tr>
</tbody>
</table>

### 113—Division of Natural Resources—Recycling Assistance Fund

(WV Code Chapter 20)

**“Former” Account No. 8316**

**“WVFIMS” Account No.**

**Fund 3254 FY 1994 Org 0310**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$92,759</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,224</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>38,237</td>
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<td>4</td>
<td>Unclassified</td>
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<td>2,841,257</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,973,477</td>
</tr>
</tbody>
</table>

### 114—Division of Environmental Protection—Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

**“Former” Account No. 8323**
### Ch. 1] APPROPRIATIONS

#### “WVFIMS” Account No.

**Fund 3331 FY 1994 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</thead>
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<tr>
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<td>$212,846</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$81,804</td>
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<td>Unclassified</td>
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<td>$439,016</td>
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<tr>
<td>Total</td>
<td></td>
<td>$736,282</td>
</tr>
</tbody>
</table>

#### 115—Division of Environmental Protection—

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

“Former” Account No. 8326

“WVFIMS” Account No.

**Fund 3332 FY 1994 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$199,100</td>
</tr>
<tr>
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<td>004</td>
<td>$756</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>$1,221,200</td>
</tr>
<tr>
<td>Total</td>
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</tr>
</tbody>
</table>

#### 116—Division of Environmental Protection—

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

“Former” Account No. 8327

“WVFIMS” Account No.

**Fund 3333 FY 1994 Org 0313**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
<td>099</td>
<td>$911,493</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,517,531</td>
</tr>
</tbody>
</table>
### 117—Division of Environmental Protection

**Fees and Operating Expenses**

(WV Code Chapter 16)

"Former" Account No. 8391

"WVFIMS" Account No.

Fund 3336 FY 1994 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
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<td>612</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>271,050</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>581,500</td>
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<td>Total</td>
<td></td>
<td>$1,655,162</td>
</tr>
</tbody>
</table>

### 118—Division of Banking—

**Lending and Credit Rate Board**

(WV Code Chapter 47A)

"Former" Account No. 8393

"WVFIMS" Account No.

Fund 3040 FY 1994 Org 0303

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>10,586</td>
</tr>
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<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>10,648</td>
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<tr>
<td>4</td>
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### 119—Division of Banking

(WV Code Chapter 31A)

"Former" Account No. 8395

"WVFIMS" Account No.

Fund 3041 FY 1994 Org 0303

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$969,419</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,660</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>315,655</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>542,352</td>
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<tr>
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<td>$1,834,086</td>
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</tbody>
</table>
120—Solid Waste Management Board
(WV Code Chapter 20)
“Former” Account No. 8461
“WVFIMS” Account No.
Fund 3288 FY 1994 Org 0312

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$263,284</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,458</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>82,850</td>
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<td>Total</td>
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</table>

121—Division of Forestry—
Timberland Enforcement Operations
(WV Code Chapter 19)
“Former” Account No. 8475
“WVFIMS” Account No.
Fund 3082 FY 1994 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$105,000</td>
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</table>

122—Division of Forestry—
Woodlands and Timberlands
Stamp Fund
(WV Code Chapter 19)
“Former” Account No. 8476
“WVFIMS” Account No.
Fund 3083 FY 1994 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$304,479</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,652</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>99,355</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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</table>
123—Division of Forestry
(WV Code Chapter 19)
“Former” Account No. 8478
“WVFIMS” Account No.
Fund 3081 FY 1994 Org 0305

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
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<td>2 Annual Increment</td>
<td>004</td>
<td>1,800</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>55,651</td>
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<tr>
<td>4 Unclassified</td>
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<td>$668,484</td>
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124—Division of Environmental Protection—
Special Reclamation Fund
(WV Code Chapter 22A)
“Former” Account No. 8537
“WVFIMS” Account No.
Fund 3321 FY 1994 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
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<tr>
<td>1 Personal Services</td>
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<td>$200,000</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>3,888</td>
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<td>3 Employee Benefits</td>
<td>010</td>
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<tr>
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<td>8,768,637</td>
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</table>

125—Division of Environmental Protection—
Oil and Gas Reclamation Trust
(WV Code Chapter 22B)
“Former” Account No. 8538
“WVFIMS” Account No.
Fund 3322 FY 1994 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$450,000</td>
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</table>

126—Division of Environmental Protection—
Oil and Gas Operating Permits
(WV Code Chapter 22B)

"Former" Account No. 8539

"WVFIMS" Account No.

Fund 3323 FY 1994 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$55,866</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$412,046</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$650,000</td>
</tr>
</tbody>
</table>

127—Division of Environmental Protection—
Mines and Minerals Operations Fund

(WV Code Chapter 22)

"Former" Account No. 8540

"WVFIMS" Account No.

Fund 3324 FY 1994 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,744,290</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$11,290</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$589,880</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$750,382</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$3,095,842</td>
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</tbody>
</table>

128—Geological and Economic Survey

(WV Code Chapter 29)

"Former" Account No. 8589

"WVFIMS" Account No.

Fund 3100 FY 1994 Org 0306

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$30,000</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$2,925</td>
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<td>3</td>
<td>Unclassified</td>
<td>099</td>
<td>$167,075</td>
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<td>4</td>
<td>Total</td>
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<td>$200,000</td>
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</table>

The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.
129—Bureau of Employment Programs—
Workers' Compensation Fund
(WV Code Chapter 23)
“Former” Account No. 9000
“WVFIMS” Account No.
Fund 3440 FY 1994 Org 0322

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$10,992,542</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$164,826</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$4,193,240</td>
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<td>Unclassified</td>
<td>099</td>
<td>$11,918,796</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$27,269,404</strong></td>
</tr>
</tbody>
</table>

There is hereby authorized to be paid out of the above appropriation the amount necessary for the premiums on bonds given by the treasurer as bond custodian for the protection of the workers' compensation fund. This sum shall be transferred to the state board of insurance.

DEPARTMENT OF EDUCATION
130—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center—Special Account
(WV Code Chapter 18)
“Former” Account No. 8137
“WVFIMS” Account No.
Fund 8664 FY 1994 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$350,000</td>
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<tr>
<td>Workshop Development</td>
<td>163</td>
<td>$450,000</td>
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<tr>
<td>Workshop-Supported</td>
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<td></td>
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<tr>
<td>Employment</td>
<td>484</td>
<td>$50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$850,000</strong></td>
</tr>
</tbody>
</table>
### 131—State Department of Education—
#### FFA-FHA Conference Center
(WV Code Chapter 18)

**“Former” Account No. 8244**

**“WVFIMS” Account No.**

_Fund 3960 FY 1994 Org 0402_

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$589,986</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,076</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>225,685</td>
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<td>4</td>
<td>Unclassified</td>
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<td>487,379</td>
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</tbody>
</table>

### 132—State Department of Education—
#### School Building Authority
(WV Code Chapter 18)

**“Former” Account No. 8247**

**“WVFIMS” Account No.**

_Fund 3959 FY 1994 Org 0402_

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$350,600</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,556</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>86,928</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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<td>199,112</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$639,196</td>
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</tbody>
</table>

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

**DEPARTMENT OF EDUCATION AND THE ARTS**

### 133—State University System—
#### State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

"Former" Account No. 8830

"WVFIMS" Account No.

Fund 4007 FY 1994 Org 0461

1. Debt Service (R) .......... 040 $ 3,878,552
2. Capital Repairs and Alterations (R) ........ 251 2,600,000
3. Miscellaneous Projects (R) .......... 252 420,000
4. Computer and Telecommunications Technology .......... 438 1,077,133
5. Total ................................ $ 7,975,685

Any unexpended balances remaining in the prior years' and the 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

134—State College System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

"Former" Account No. 8835

"WVFIMS" Account No.

Fund 4289 FY 1994 Org 0481

1. Debt Service (R) .......... 040 $ 2,058,924
2. Capital Repairs and Alterations (R) ........ 251 1,915,660
3. Miscellaneous Projects (R) .......... 252 1,171,790
4. Total ................................ $ 5,146,374
Any unexpended balances remaining in the prior years' and 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

135—State College and University Systems—
State System Registration Fee—
Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)
“Former” Account No. 8845
“WVFIMS” Account No.
Fund 4033 FY 1994 Org 0453

Any unexpended balances remaining in the prior years' and 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

136—State College System—
State System Tuition Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
(WV Code Chapters 18 and 18B)
“Former” Account No. 8855
“WVFIMS” Account No.
Fund 4290 FY 1994 Org 0481

<table>
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<td></td>
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<td>$</td>
<td></td>
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<tr>
<td>Capital Improvements (New)</td>
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<td>259</td>
<td></td>
<td></td>
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<tr>
<td>Building and Campus</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Amount</td>
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</tr>
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<td>4</td>
<td>Renewal (R)</td>
<td>385</td>
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<tr>
<td>5</td>
<td>Facilities Planning</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>and Administration (R)</td>
<td>386</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>SATNET Fiber Optic System</td>
<td>457</td>
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<td>Total</td>
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</tbody>
</table>

Any unexpended balances remaining in the prior years' and 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

137—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

“Former” Account No. 8860

“WVFIMS” Account No.

Fund 4041 FY 1994 Org 0453

Any unexpended balances remaining in the prior years' and 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

138—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

(WV Code Chapters 18 and 18B)

“Former” Account No. 8865
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
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<tr>
<td>Building and Campus</td>
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<td>10,200,000</td>
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<td>Renewal (R)</td>
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</tr>
<tr>
<td>Facilities Planning and Administration (R)</td>
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<td>1,603,472</td>
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<tr>
<td>Computer and Telecommunications Technology</td>
<td>438</td>
<td></td>
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<tr>
<td>Total</td>
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</table>

Any unexpended balances remaining in the prior years' and the 1992-93 appropriations are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

139—State University System—
West Virginia University Health Sciences Center

Spending Authority
(WV Code Chapters 18 and 18B)

“Former” Account No. 9280
“WVFIMS” Account No.
Fund 4179 FY 1994 Org 0463

1 Unclassified—Total .................... 096  $ 14,974,000

140—Vice Chancellor for Health Sciences—
Health Care Reform Studies
(WV Code Chapter 18)

“Former” Account No. 9285
“WVFIMS” Account No.
Fund FY 1994 Org

1 Unclassified—Total ................ 096 $ 220,000

2 Pursuant to section two, article two, chapter twelve
3 of the code, the above funds are to be transferred from
4 account no. 8549, health care cost review authority.

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

141—Division of Health—

Hepatitis B Vaccine

(WV Code Chapter 16)

“Former” Account No. 8214

“WVFIMS” Account No.

Fund 5103 FY 1994 Org 0506

1 Personal Services ................. 001 $ 30,000
2 Employee Benefits ............... 010 9,795
3 Unclassified ....................... 099 680,000
4 Total .............................. $ 719,795

142—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

“Former” Account No. 8220

“WVFIMS” Account No.

Fund 5425 FY 1994 Org 0505

1 Personal Services ................. 001 $ 156,120
2 Annual Increment ................ 004 2,672
3 Employee Benefits .............. 010 51,630
4 Unclassified ....................... 099 103,550
5 Total .............................. $ 313,972

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the board of barbers and cosmetologists as provided by
9 law.
143—Division of Health—
Vital Statistics
(WV Code Chapter 16)
“Former” Account No. 8236
“WVFIMS” Account No.
Fund 5144 FY 1994 Org 0506

<table>
<thead>
<tr>
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<th>Description</th>
<th>Account</th>
<th>FY 1994</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>86,271</td>
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</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>82,504</td>
<td></td>
</tr>
<tr>
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<td>Total</td>
<td></td>
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</tr>
</tbody>
</table>

144—Hospital Finance Authority
(WV Code Chapter 16)
“Former” Account No. 8330
“WVFIMS” Account No.
Fund 5475 FY 1994 Org 0509

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>FY 1994</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>108</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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</tr>
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<td>5</td>
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<td></td>
<td>$129,627</td>
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</table>

6. The total amount of this appropriation shall be paid
7. from the special revenue fund out of fees and collections
8. as provided by article twenty-nine-a, chapter sixteen of
9. the code.

145—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)
### Appropriations

**“Former” Account No. 8500**

**“WVFIMS” Account No.**

Fund 5156 FY 1994 Org 0506

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Activity</th>
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</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,740,000</td>
</tr>
<tr>
<td>Institutional Facilities Operations (R)</td>
<td>335</td>
<td>$29,153,198</td>
</tr>
<tr>
<td>Medical Services Trust Fund-Transfer</td>
<td>512</td>
<td>$22,020,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$53,913,198</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94, except for account no. 8500-18 (fiscal year 1989-90) and account no. 8500-52 (fiscal year 1991-92) which shall expire on June 30, 1993.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments, community based mental health services needed for patients at Weston state hospital, and disproportionate share hospital transfers.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the item designated Institutional Facilities Operations in the consolidated medical services fund (account no. 4190).

**146—Division of Health—**

**Laboratory Services**

(WV Code Chapter 16)

**“Former” Account No. 8509**

**“WVFIMS” Account No.**

Fund 5163 FY 1994 Org 0506
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$402,768</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,004</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>131,868</td>
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<td>Unclassified</td>
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<td>449,900</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$989,540</td>
</tr>
</tbody>
</table>

**147—Division of Health—Health Facility Licensing**

(WV Code Chapter 16)

"Former" Account No. 8529

"WVFIMS" Account No.

Fund 5172 FY 1994 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$157,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>684</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
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<td>85,200</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$294,263</td>
</tr>
</tbody>
</table>

**148—Health Care Cost Review Authority**

(WV Code Chapter 16)

"Former" Account No. 8564

"WVFIMS" Account No.

Fund 5375 FY 1994 Org 0507

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
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<td>1,088,157</td>
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<td>Health Care Planning</td>
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<td>-0-</td>
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<td>6</td>
<td>Commission—Transfer</td>
<td>263</td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>Vice Chancellor for Health</td>
<td></td>
<td>-0-</td>
</tr>
<tr>
<td>8</td>
<td>Sciences Health Care</td>
<td></td>
<td>-0-</td>
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<tr>
<td>9</td>
<td>Reform Studies—Transfer</td>
<td>513</td>
<td>220,000</td>
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<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$2,565,580</td>
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</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of article
The appropriation for health care reform studies shall be transferred to the vice chancellor for health sciences—health care reform studies (account no. 9290) upon the written request of the vice chancellor for health sciences.

149—Division of Human Services—

Physician Provider Medicaid Enhancement Tax
(Special Fund)
(WV Code Chapters 9 and 11)
“Former” Account No. 9122
“WVFIMS” Account No.
Fund 5086 FY 1994 Org 0511

1 Physician Provider Medicaid Enhancement Tax—Total ...... 264 $ -0-

150—Division of Human Services—

General Medicaid Enhancement Tax
(Special Fund)
(WV Code Chapters 9 and 11)
“Former” Account No. 9123
“WVFIMS” Account No.
Fund 5085 FY 1994 Org 0511

1 General Medicaid Enhancement Tax—Total ................. 265 $ -0-

151—Division of Human Services—

Outpatient Medicaid Enhancement Tax
(Special Fund)
(WV Code Chapters 9 and 11)
### Ch. 1] APPROPRIATIONS

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Outpatient Medicaid</td>
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</tr>
<tr>
<td>2</td>
<td>Enhancement Tax—Total</td>
<td></td>
<td>266</td>
<td>$-0-</td>
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</tbody>
</table>

#### 152—Division of Human Services—
Dentist Medicaid Enhancement Tax
(Special Fund)
(WV Code Chapters 9 and 11)

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>Dentist Medicaid</td>
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<td></td>
</tr>
<tr>
<td>2</td>
<td>Enhancement Tax—Total</td>
<td></td>
<td>267</td>
<td>$-0-</td>
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</table>

#### 153—Division of Human Services—
Ambulance Medicaid Enhancement Tax
(Special Fund)
(WV Code Chapters 9 and 11)

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
<th>Notes</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Ambulance Service Provider</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Medicaid Enhancement Tax—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>268</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

#### 154—Division of Human Services—
Medicaid State Share Fund
(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Description</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
From the above appropriation, for the Division of Human Services—Medicaid State Share Fund, an amount not to exceed three hundred fifty thousand dollars shall be used for administrative purposes, of which an amount not to exceed one hundred fifty thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of tax and revenue and an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia Medical Services Fund.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

155—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

“Former” Account No. 8051

“WVFIMS” Account No.

Fund 6675 FY 1994 Org 0615

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$412,113</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,500</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>143,329</td>
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<tr>
<td>4</td>
<td>Debt Service</td>
<td>040</td>
<td>10,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>200,423</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$10,760,365</td>
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</table>

156—Division of Veterans’ Affairs—Veterans’ Home

(WV Code Chapter 19A)
### Appointments

157—Division of Public Safety—
Motor Vehicle Inspection Fund
(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$616,400</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$8,208</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$245,645</td>
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<tr>
<td>Total</td>
<td></td>
<td>$870,253</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

158—Division of Public Safety—
Barracks Construction
(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$536,004</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
<td>099</td>
<td>$184,516</td>
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<td></td>
<td>$872,447</td>
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</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$-0-</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$-0-</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$-0-</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$-0-</td>
</tr>
</tbody>
</table>
159—Division of Public Safety—
Surplus Real Property Proceeds Fund
(WV Code Chapter 15)
Account No. 8354
“WVFIMS” Account No. Fund FY 1994 Org

1 Unclassified—Total .................. $ 181,000

160—Division of Public Safety—
Drunk Driving Prevention Fund
(WV Code Chapter 15)
“Former” Account No. 8355
“WVFIMS” Account No.
Fund 6513 FY 1994 Org 0612

1 Unclassified—Total .................. 096 $ 600,000

2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of receipts collected
4 pursuant to sections nine-a and sixteen, article fifteen,
5 chapter eleven of the code and paid into a revolving fund
6 account in the state treasury.

161—State Armory Board—
General Armory Fund
(WV Code Chapter 15)
“Former” Account No. 8446
“WVFIMS” Account No.
Fund 6102 FY 1994 Org 0604

1 Unclassified—Total .................. 096 $ 310,000

162—Fire Commission—
Fire Marshal Fees
Ch. 1) APPROPRIATIONS

(WV Code Chapter 29)
“Former” Account No. 8465
“WVFIMS” Account No.
Fund 6152 FY 1994 Org 0619

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$287,660</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>3,132</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>109,405</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>230,386</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$630,583</strong></td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in account no. 8465-99 at the close of the fiscal year 1992-93 is hereby available for expenditure as part of the fiscal year 1993-94 appropriation.

DEPARTMENT OF TAX AND REVENUE

163—Insurance Commission—
Examination Revolving Fund
(WV Code Chapter 33)

“Former” Account No. 8014
“WVFIMS” Account No.
Fund 7150 FY 1994 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$251,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>1,224</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>70,565</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>177,211</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$500,000</strong></td>
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</table>

164—Insurance Commission—
Consumer Advocate
(WV Code Chapter 33)

“Former” Account No. 8015
“WVFIMS” Account No.
Fund 7151 FY 1994 Org 0704
### Appropriations

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$72,500</th>
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</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>216</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>29,046</td>
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<td>4</td>
<td>Unclassified</td>
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<td>120,993</td>
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<tr>
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<td>Total</td>
<td></td>
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</tbody>
</table>

**165—Insurance Commission**

(WV Code Chapter 33)

"Former" Account No. 8016

"WVFIMS" Account No.

Fund 7152 FY 1994 Org 0704

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,286,088</th>
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<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,904</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>461,106</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>545,096</td>
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<tr>
<td>5</td>
<td>Health Care Planning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Commission—Transfer</td>
<td>263</td>
<td>$0</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$2,307,194</td>
</tr>
</tbody>
</table>

8. The total amount of this appropriation shall be paid
9. from a special revenue fund out of collections of fees and
10. charges as provided by law.

**166—Racing Commission**

(WV Code Chapter 19)

"Former" Account No. 8080

"WVFIMS" Account No.

Fund 7300 FY 1994 Org 0707

| 1 | Medical Expenses—Total | 245 | $57,000 |

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

5. No expenditures shall be made from this account
6. except for hospitalization, medical care and/or funeral
7. expenses for persons contributing to this fund.
### 167—Racing Commission—Administration and Promotion
(WV Code Chapter 19)

"Former" Account No. 8082
"WVFIMS" Account No.

**Fund 7304 FY 1994 Org 0707**

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$51,200</td>
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<td>Annual Increment</td>
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<td>432</td>
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<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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<td>47,408</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$115,084</td>
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</tbody>
</table>

### 168—Racing Commission General Administration
(WV Code Chapter 19)

"Former" Account No. 8083
"WVFIMS" Account No.

**Fund 7305 FY 1994 Org 0707**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$977,500</td>
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<td>8,924</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>252,996</td>
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<td>4</td>
<td>Unclassified</td>
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<td>65,098</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,304,518</td>
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</tbody>
</table>

### 169—Tax Division—Office of Chief Inspector
(WV Code Chapter 6)

"Former" Account No. 8091
"WVFIMS" Account No.

**Fund 7067 FY 1994 Org 0702**

<table>
<thead>
<tr>
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<tbody>
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<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
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<td></td>
<td>170—Municipal Bond Commission</td>
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<td></td>
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<tr>
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</tr>
<tr>
<td></td>
<td>(WV Code Chapter 13)</td>
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<tr>
<td></td>
<td>“Former” Account No. 8340</td>
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<td></td>
<td>“WVFIMS” Account No.</td>
<td></td>
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<td></td>
<td>Fund 7253 FY 1994 Org 0706</td>
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<td>Employee Benefits ............... 010</td>
<td>35,200</td>
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<td>4</td>
<td>Unclassified .................... 099</td>
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<td>Total ............................</td>
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<table>
<thead>
<tr>
<th></th>
<th>171—Alcohol Beverage Control Administration—</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Wine License Special Fund</td>
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<tr>
<td></td>
<td>(WV Code Chapter 60)</td>
</tr>
<tr>
<td></td>
<td>“Former” Account No. 8592</td>
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<td>“WVFIMS” Account No.</td>
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<tr>
<td></td>
<td>Fund 7351 FY 1994 Org 0708</td>
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<td>1</td>
<td>Personal Services ............... 001</td>
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<tr>
<td>2</td>
<td>Annual Increment ................. 004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ............... 010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified .................... 099</td>
</tr>
<tr>
<td>5</td>
<td>Total ............................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>172—Alcohol Beverage Control Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(WV Code Chapter 60)</td>
</tr>
<tr>
<td></td>
<td>“Former” Account No. 9270</td>
</tr>
<tr>
<td></td>
<td>“WVFIMS” Account No.</td>
</tr>
<tr>
<td></td>
<td>Fund 7352 FY 1994 Org 0708</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services ............... 001</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues. The above appropriation includes the salary of the commissioner and salaries, expenses and equipment of administrative offices, warehouses and inspectors. There is hereby appropriated from liquor revenues, in addition to the appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

173—Division of Motor Vehicles—

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

“Former” Account No. 8422

“WVFIMS” Account No.

Fund 8213 FY 1994 Org 0802

1 Personal Services ................. 001 $ 171,068
2 Annual Increment ................. 004 2,376
3 Employee Benefits ............... 010 66,347
4 Unclassified ..................... 099 113,013
5 Total ............................ $ 352,804

174—Division of Motor Vehicles—

Driver Rehabilitation

(WV Code Chapter 17C)

“Former” Account No. 8423

“WVFIMS” Account No.

Fund 8214 FY 1994 Org 0802

1 Personal Services ................. 001 $ 54,766
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>756</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>22,537</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>508,170</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>586,229</td>
</tr>
</tbody>
</table>

**175—Division of Motor Vehicles—**

**Insurance Certificate Fees**

(WV Code Chapter 20)

"Former" Account No. 8424

"WVFIMS" Account No.

Fund 8215 FY 1994 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 509,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,928</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>230,526</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>149,288</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$ 897,894</td>
</tr>
</tbody>
</table>

**176—Division of Motor Vehicles—**

**Motorboat Licenses**

(WV Code Chapter 20)

"Former" Account No. 8425

"WVFIMS" Account No.

Fund 8216 FY 1994 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 65,500</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,980</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>25,853</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>44,340</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 137,673</td>
</tr>
</tbody>
</table>

**177—Division of Motor Vehicles—**

**Returned Check Fees**

(WV Code Chapter 17)

"Former" Account No. 8426
## APPROPRIATIONS

### “WVFIMS” Account No.

**Fund 8217 FY 1994 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$14,250</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>$180</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>$5,110</td>
</tr>
<tr>
<td>4. Unclassified</td>
<td>099</td>
<td>$8,470</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$28,010</td>
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</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

**178—Real Estate Commission**

(WV Code Chapter 47)

“**Former**” Account No. 8010

“**WVFIMS**” Account No.

**Fund 8635 FY 1994 Org 0927**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$264,332</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>$1,980</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>$87,990</td>
</tr>
<tr>
<td>4. Unclassified</td>
<td>099</td>
<td>$204,623</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$558,925</td>
</tr>
</tbody>
</table>

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

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

(WV Code Chapter 30)

“**Former**” Account No. 8113

“**WVFIMS**” Account No.

**Fund 8646 FY 1994 Org 0930**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unclassified—Total</td>
<td>096</td>
<td>$20,000</td>
</tr>
</tbody>
</table>

2. The total amount of this appropriation shall be paid out of collections of license fees and fines as provided by law.
180—West Virginia Cable Television—
Advisory Board
(WV Code Chapter 5)
“Former” Account No. 8173
“WVFIMS” Account No.
Fund 8609 FY 1994 Org 0924

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
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<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$167,200</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>2,160</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>43,542</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>60,268</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$273,170</strong></td>
</tr>
</tbody>
</table>

181—Public Service Commission
(WV Code Chapter 24)
“Former” Account No. 8280
“WVFIMS” Account No.
Fund 8623 FY 1994 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$5,100,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>42,578</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>1,670,352</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>1,790,238</td>
</tr>
<tr>
<td>5 765 KV Transmission Line Study</td>
<td>485</td>
<td>150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$8,753,168</strong></td>
</tr>
</tbody>
</table>

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

182—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
“Former” Account No. 8285
“WVFIMS” Account No.
### Fund 8624 FY 1994 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$124,323</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>32,613</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>70,369</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$228,505</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

### 183—Public Service Commission—
**Motor Carrier Division**

(WV Code Chapter 24A)

"Former" Account No. 8290

"WVFIMS" Account No. 8625 FY 1994 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,225,214</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>18,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>384,121</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>531,355</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,158,690</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

### 184—Public Service Commission—
**Consumer Advocate**

(WV Code Chapter 24)

"Former" Account No. 8295

"WVFIMS" Account No.
1608 APPROPRIATIONS

Fund 8627 FY 1994 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>328,195</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,160</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>101,802</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>286,314</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>718,471</td>
</tr>
</tbody>
</table>

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

Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery, not to exceed thirty-two million, seven hundred thousand dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The auditor shall prorate each deposit of net profits by the lottery director among account nos. 8209, 8243, 8546, 8825 and 9132 in the proportion the appropriation for each account bears to the total of the appropriations for the five accounts.

185—Commission on Aging
(WV Code Chapter 29)

“Former” Account No. 8209
“WVFIMS” Account No.
Fund 5405 FY 1994 Org 0508

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-Home Services for Senior Citizens—Total</td>
<td>287 $ 600,000</td>
</tr>
</tbody>
</table>

186—State Department of Education
(WV Code Chapters 18 and 18A)

“Former” Account No. 8243
### Ch. 1] Appropriations 1609

**“WVFIMS” Account No.**

**Fund 3951 FY 1994 Org 0402**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Elementary Computer Education—Total(R)</td>
<td>440 $6,520,000</td>
</tr>
</tbody>
</table>

3 Any unexpended balance remaining in the appropriation Elementary Computer Education (account no. 8243-06) at the close of the fiscal year 1992-93 is hereby reappropriated for expenditure during the fiscal year 1993-94.

### 187—Division of Tourism and Parks

(WV Code Chapter 5B)

**“Former” Account No. 8546**

**“WVFIMS” Account No.**

**Fund 3067 FY 1994 Org 0304**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099 $11,020,000</td>
</tr>
<tr>
<td>2</td>
<td>Capital Outlay—Parks (R)</td>
<td>288 $2,340,000</td>
</tr>
<tr>
<td>3</td>
<td>Coopers Rock Land Acquisition</td>
<td>439 $200,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$13,560,000</td>
</tr>
</tbody>
</table>

5 Any unexpended balances remaining in the appropriations for Unclassified (account no. 8546-06) and Capital Outlay—Parks (account no. 8546-26) at the close of the fiscal year 1992-93 are hereby reappropriated for expenditure during the fiscal year 1993-94.

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

(WV Code Chapter 18B)

**“Former” Account No. 8825**

**“WVFIMS” Account No.**

**Fund 4030 FY 1994 Org 0453**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099 $11,020,000</td>
</tr>
<tr>
<td>2</td>
<td>Capital Outlay—Parks (R)</td>
<td>288 $2,340,000</td>
</tr>
<tr>
<td>3</td>
<td>Coopers Rock Land Acquisition</td>
<td>439 $200,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$13,560,000</td>
</tr>
</tbody>
</table>
1610 APPROPRIATIONS

1 Unclassified—Total .................. 096 $ 3,520,000

189—Division of Human Services
(WV Code Chapters 9, 48 and 49)

“Former” Account No. 9132
“WVFIMS” Account No.
Fund 5063 FY 1994 Org 0511

1 Health Care and Title
2 XIX Waiver for Senior Citizens—Total .................. 434 $ 8,500,000

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

8 Total TITLE II, Section 4—
9 Lottery Funds ..................... $ 32,700,000

Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-four.

LEGISLATIVE
190—Crime Victims Compensation Fund
(WV Code Chapter 14)

“Former” Account No. 7907
“WVFIMS” Account No.
Fund 8738 FY 1994 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total ..................</td>
<td>096 $ 550,000</td>
</tr>
</tbody>
</table>
EXECUTIVE

191—Governor's Office—
Governor's Cabinet on Children and Families
(WV Code Chapter 5)
“Former” Account No. 7753
“WVFIMS” Account No.
Fund 8792 FY 1994 Org 0100
1 Unclassified—Total ............... 096 $ 59,697

192—Department of Agriculture
(WV Code Chapter 19)
“Former” Account No. 7911
“WVFIMS” Account No.
Fund 8736 FY 1994 Org 1400
1 Unclassified—Total ............... 096 $ 1,804,318

193—Department of Agriculture—
Meat Inspection
(WV Code Chapter 19)
“Former” Account No. 7918
“WVFIMS” Account No.
Fund 8737 FY 1994 Org 1400
1 Unclassified—Total ............... 096 $ 468,729

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

194—West Virginia
Development Office
(WV Code Chapter 5B)
“Former” Account No. 7755
“WVFIMS” Account No.
Fund 8705 FY 1994 Org 0307

1  Unclassified—Total .................. 096  $ 14,968,516

195—Division of Miners’ Health,
Safety and Training
(WV Code Chapter 22)
“Former” Account No. 7868
“WVFIMS” Account No.
Fund 8709 FY 1994 Org 0314

1  Unclassified—Total .................. 096  $ 418,984

196—Division of Labor
(WV Code Chapters 21 and 47)
“Former” Account No. 7884
“WVFIMS” Account No.
Fund 8706 FY 1994 Org 0308

1  Unclassified—Total .................. 096  $ 317,883

197—Division of Environmental Protection
(WV Code Chapter 22)
“Former” Account No. 7897
“WVFIMS” Account No.
Fund 8708 FY 1994 Org 0313

1  Unclassified—Total .................. 096  $102,365,439
<table>
<thead>
<tr>
<th>Code</th>
<th>Division/Department</th>
<th>Account No.</th>
<th>Fund FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>198</td>
<td>Division of Forestry</td>
<td>7924</td>
<td>8703</td>
<td>0305</td>
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<tr>
<td></td>
<td></td>
<td>WVFIMS</td>
<td>FY 1994</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Org 0305</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Unclassified</td>
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<td>096</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,442,800</td>
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<tr>
<td>199</td>
<td>Geological and Economic Survey</td>
<td>7929</td>
<td>8704</td>
<td>0306</td>
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<td>WVFIMS</td>
<td>FY 1994</td>
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<tr>
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<td></td>
<td></td>
<td>Org 0306</td>
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<td></td>
<td></td>
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<td>619,793</td>
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<tr>
<td>200</td>
<td>Division of Natural Resources</td>
<td>7930</td>
<td>8707</td>
<td>0310</td>
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<tr>
<td></td>
<td></td>
<td>WVFIMS</td>
<td>FY 1994</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Org 0310</td>
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</tr>
<tr>
<td></td>
<td></td>
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<td>096</td>
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<td></td>
<td></td>
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<td>5,497,991</td>
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<td></td>
<td>DEPARTMENT OF EDUCATION</td>
<td></td>
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</tr>
<tr>
<td>201</td>
<td>State Department of Education</td>
<td>7772</td>
<td>8712</td>
<td>0402</td>
</tr>
<tr>
<td></td>
<td></td>
<td>WVFIMS</td>
<td>FY 1994</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Org 0402</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Unclassified</td>
<td>Total</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5,293,404</td>
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</tbody>
</table>
202—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)
“Former” Account No. 7783
“WVFIMS” Account No.
Fund 8713 FY 1994 Org 0402
1 Unclassified—Total ................. 096 $ 52,930,750

203—State Board of Education—
Vocational Division
(WV Code Chapters 18 and 18A)
“Former” Account No. 7794
“WVFIMS” Account No.
Fund 8714 FY 1994 Org 0402
1 Unclassified—Total ................. 096 $ 14,500,000

204—State Department of Education—
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
“Former” Account No. 7805
“WVFIMS” Account No.
Fund 8715 FY 1994 Org 0402
1 Unclassified—Total ................. 096 $ 26,490,000

205—State Department of Education—
State Aid to Schools
(WV Code Chapters 18 and 18A)
“Former” Account No. 7812
“WVFIMS” Account No.
Fund 8716 FY 1994 Org 0402
1  Unclassified—Total ................ 096  $  2,000,000

206—State Board of Rehabilitation—
Division of Rehabilitation Services
(WV Code Chapter 18)
“Former” Account No. 7873
“WVFIMS” Account No.
Fund 8734 FY 1994 Org 0932

1  Unclassified—Total ................ 096  $  34,632,283

DEPARTMENT OF EDUCATION
AND THE ARTS

207—Educational Broadcasting Authority
(WV Code Chapter 10)
“Former” Account No. 7803
“WVFIMS” Account No.
Fund 8721 FY 1994 Org 0439

1  Unclassified—Total ................ 096  $  800,000

208—Library Commission
(WV Code Chapter 10)
“Former” Account No. 7817
“WVFIMS” Account No.
Fund 8720 FY 1994 Org 0433

1  Unclassified—Total ................ 096  $  1,800,673

209—Division of Culture and History
(WV Code Chapter 29)
“Former” Account No. 7828
“WVFIMS” Account No.
Fund 8718 FY 1994 Org 0432
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1994 Organizational Code</th>
<th>1994 Appropriation</th>
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<tr>
<td>1</td>
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<td>O96</td>
<td>$1,240,503</td>
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<tr>
<td>2</td>
<td><strong>DEPARTMENT OF HEALTH AND</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>HUMAN RESOURCES</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>210</td>
<td><em>Division of Human Services</em></td>
<td></td>
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</tr>
<tr>
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<td><em>(WV Code Chapters 9, 48 and 49)</em></td>
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</tr>
<tr>
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<td><strong>&quot;Former&quot; Account No. 7851</strong></td>
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</tr>
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<td><strong>&quot;WVFIMS&quot; Account No.</strong></td>
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<td>Fund 8722 FY 1994 Org 0511</td>
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<td>1</td>
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<td>2</td>
<td>OSCAR and RAPIDS</td>
<td>188</td>
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<td>3</td>
<td>Medical Services</td>
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<td>1,213,006,268</td>
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<td>4</td>
<td>Family Law Masters</td>
<td>190</td>
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</tr>
<tr>
<td>5</td>
<td>Public Assistance</td>
<td>193</td>
<td>103,500,000</td>
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<tr>
<td>6</td>
<td>JOBS Program</td>
<td>197</td>
<td>9,500,000</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Education Medical Services</td>
<td>198</td>
<td>1,200,000</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$1,402,658,019</td>
<td></td>
</tr>
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</table>

211—Consolidated Medical Service Fund

*"Former" Account No. 7839*

*"WVFIMS" Account No.*

Fund 8723 FY 1994 Org 0506

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1994 Organizational Code</th>
<th>1994 Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$38,699,878</td>
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</tbody>
</table>

212—Commission on Aging

*(WV Code Chapter 29)*

*"Former" Account No. 7862*

*"WVFIMS" Account No.*

Fund 8724 FY 1994 Org 0508

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1994 Organizational Code</th>
<th>1994 Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>$11,260,000</td>
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</table>

213—Human Rights Commission

*(WV Code Chapter 5)*
### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Account</th>
<th>WVFIMS Account</th>
<th>Fund</th>
<th>FY 1994 Org</th>
<th>Classification</th>
<th>Total</th>
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<tr>
<td>214</td>
<td>Office of Emergency Services</td>
<td>7761</td>
<td>8727</td>
<td>1994</td>
<td>0606</td>
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<td>3,150,506</td>
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<td>215</td>
<td>Division of Veterans' Affairs—Veterans' Home</td>
<td>7840</td>
<td>8728</td>
<td>1994</td>
<td>0618</td>
<td>Unclassified</td>
<td>917,535</td>
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<td>216</td>
<td>Division of Public Safety</td>
<td>7946</td>
<td>8741</td>
<td>1994</td>
<td>0612</td>
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<tr>
<td>217</td>
<td>Adjutant General—State Militia</td>
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<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
1618  APPROPRIATIONS  [Ch. 1

“Former” Account No. 7957
“WVFIMS” Account No.
Fund 8726 FY 1994 Org 0603
1 Unclassified—Total .............. 096 $ 5,708,492

DEPARTMENT OF TAX AND REVENUE
218—Tax Division
(WV Code Chapter 11)
“Former” Account No. 7763
“WVFIMS” Account No.
Fund 7069 FY 1994 Org 0702
1 Unclassified—Total .............. 096 $ 50,000

DEPARTMENT OF TRANSPORTATION
219—Railroad Maintenance Authority
(WV Code Chapter 29)
“Former” Account No. 7932
“WVFIMS” Account No.
Fund 8733 FY 1994 Org 0804
1 Unclassified—Total .............. 096 $ 337,116

220—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)
“Former” Account No. 7970
“WVFIMS” Account No.
Fund 8787 FY 1994 Org 0802
1 Unclassified—Total .............. 096 $ 199,950

221—Department of Transportation—
Office of the Secretary
(WV Code Chapter 5F)
### APPROPRIATIONS

#### 222—Division of Public Transit

(WV Code Chapter 17)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>“Former” Account No.</th>
<th>“WVFIMS” Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Total</th>
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<tr>
<td>7982</td>
<td>7982</td>
<td>WVFIMS</td>
<td>8782</td>
<td>1994</td>
<td>0801</td>
<td>096</td>
</tr>
</tbody>
</table>

#### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 223—Public Service Commission—

Motor Carrier Division

(WV Code Chapter 24A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>“Former” Account No.</th>
<th>“WVFIMS” Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>7993</td>
<td>7993</td>
<td>WVFIMS</td>
<td>8743</td>
<td>1994</td>
<td>0926</td>
<td>096</td>
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</tbody>
</table>

#### 224—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>“Former” Account No.</th>
<th>“WVFIMS” Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>7996</td>
<td>7996</td>
<td>WVFIMS</td>
<td>8744</td>
<td>1994</td>
<td>0926</td>
<td>096</td>
</tr>
</tbody>
</table>
Sec. 6. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1993-94.

225—West Virginia Development Office—Community Development

“Former” Account No. 8029

“WVFIMS” Account No.

Fund 8746 FY 1994 Org 0307

1 Unclassified—Total ................. 096 $ 16,099,000

226—West Virginia Development Office—Community Service

“Former” Account No. 8031

“WVFIMS” Account No.

Fund 8747 FY 1994 Org 0307

1 Unclassified—Total ................. 096 $ 6,996,154

227—State Department of Education—Education Grant

“Former” Account No. 8242

“WVFIMS” Account No.

Fund 8748 FY 1994 Org 0402

1 Unclassified—Total ................. 096 $ 69,922,000

228—Bureau of Employment Programs—Job Training Partnership Act

“Former” Account No. 8255

“WVFIMS” Account No.
Fund 8749 FY 1994 Org 0323
1 Unclassified—Total ................. 096 $ 42,200,644

229—Division of Health—Substance Abuse Prevention and Treatment
“Former” Account No. 8501
“WVFIMS” Account No.
Fund 8793 FY 1994 Org 0506
1 Unclassified—Total ................. 096 $ 6,311,527

230—Division of Health—Maternal and Child Health
“Former” Account No. 8502
“WVFIMS” Account No.
Fund 8750 FY 1994 Org 0506
1 Unclassified—Total ................. 096 $ 7,000,000

231—Division of Health—Alcohol, Drug Abuse and Mental Health
“Former” Account No. 8503
“WVFIMS” Account No.
Fund 8751 FY 1994 Org 0506
1 Unclassified—Total ................. 096 $ 2,200,000

232—Division of Health—Community Youth Activity Program
“Former” Account No. 8504
“WVFIMS” Account No.
Fund 8752 FY 1994 Org 0506
1 Unclassified—Total ................. 096 $ 30,000
### 233—Division of Health—Community Mental Health Services
“Former” Account No. 8505
“WVFIMS” Account No.
Fund 8794 FY 1994 Org 0506

| Unclassified—Total | 096 | $2,867,102 |

### 234—Division of Health—Preventive Health
“Former” Account No. 8506
“WVFIMS” Account No.
Fund 8753 FY 1994 Org 0506

| Unclassified—Total | 096 | $1,100,000 |

### 235—Division of Human Services—Energy Assistance
“Former” Account No. 9147
“WVFIMS” Account No.
Fund 8755 FY 1994 Org 0511

| Unclassified—Total | 096 | $17,000,000 |

### 236—Division of Human Services—Child Care and Development
“Former” Account No. 9149
“WVFIMS” Account No.
Fund 8756 FY 1994 Org 0511

| Unclassified—Total | 096 | $6,500,000 |

### 237—Division of Human Services—Social Services
“Former” Account No. 9161
"WVFIMS" Account No.

Fund 8757 FY 1994 Org 0511

1 Unclassified—Total ............... 096 $ 24,000,000
2 Total TITLE II, Section 6—
3 Federal Block Grants ............. $ 202,226,427

Sec. 7. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1992-1993 and to remain in effect until June 30, 1994, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 2686, regular session 1993—crime victims compensation funds of $285,000.00 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1993-1994 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 573, regular session 1993, and enrolled house bill no. 2687, regular session 1993—general revenue funds of $3,111,517.93.

The total of general revenue funds above does not include payment for claims in the amount of $8,220.00 from the senate, account no. 1010; in the amount of $61,813.61 from the supreme court—general judicial, account no. 1110; and in the amount of $11,855.77 from the governor's office—civil contingent fund, account no. 1240, specifically made payable from the respective appropriations for the current fiscal year 1992-1993.

There are hereby appropriated for the fiscal year 1993-1994 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 573, regular session 1993—special revenue funds of $255,080.16, state road funds of $1,445,044.30, and workers' compensation funds of $3,966.59.

Sec. 8. Appropriations from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1993-94 out of
surplus funds only, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued as of the thirty-first day of July, one thousand nine hundred ninety-three.

In the event that surplus revenues available on the thirty first day of July, one thousand nine hundred ninety-three, are not sufficient to meet all of the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

Any surplus balance remaining, after the allocation to meet the appropriations set forth in this section, shall be transferred and made available to the state fund, general revenue, during the fiscal year 1993-94.

238—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1994 Org 1400

1 Infrastructure Projects—Total ... 239 $ 2,100,000

The line item above shall be expended to fund grants and loans for water, sewage, and soil conservation projects.

239—Board of Risk and Insurance Management
### Appropriations

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>2250</td>
<td>0217</td>
<td>1994</td>
<td>0218</td>
</tr>
<tr>
<td>5380</td>
<td>0510</td>
<td>1994</td>
<td>0805</td>
</tr>
</tbody>
</table>

1. **Public Transportation—Total**
   - Total: $1,000,000

### Division of Human Services

(WV Code Chapters 9, 48 and 49)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>4050</td>
<td>0403</td>
<td>1994</td>
<td>0511</td>
</tr>
</tbody>
</table>

1. **Repayment of Consolidated Fund Loan—Total**
   - Total: $3,900,900

2. **Total TITLE II, Section 8—Surplus Accrued**
   - Total: $10,000,000

---

1. **Sec. 9. Supplemental and deficiency appropriation.**—From the state fund, general revenue, except as otherwise provided, there is hereby appropriated the following amount, as itemized, for expenditure during the fiscal year 1992-93 to supplement the appropriation for such fiscal year and to be available for expenditure upon date of passage.

### Division of Human Services—

(WV Code Chapters 9, 48, and 49)
Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-four appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

Sec. 11. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-four, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so depos-
12 ited during the fiscal year one thousand nine hundred
13 ninety-four to be expended as authorized by the
14 governor, for such studies and recommendations which
15 may encompass any problems of organization, proce-
16 dures, systems, functions, powers or duties of a state
17 spending unit in the executive branch, or the betterment
18 of the economic, social, educational, health and general
19 welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.—
1 A fund or collection account which by law is dedicated
2 to a specific use is hereby appropriated in sufficient
3 amount to meet all lawful demands upon the fund or
4 collection account and shall be expended according to
5 the provisions of article three, chapter twelve of the
6 code.

Sec. 13. Appropriations for refunding erroneous
1 payment.—Money that has been erroneously paid into
2 the state treasury is hereby appropriated out of the fund
3 into which it was paid, for refund to the proper person.
4
5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid,
7 he shall issue his or her requisition upon the auditor for
8 the refunding of the proper amount. The auditor shall
9 issue his warrant to the treasurer and the treasurer
10 shall pay the warrant out of the fund into which the
11 amount was originally paid.

Sec. 14. Sinking fund deficiencies.—There is
1 hereby appropriated to the governor a sufficient amount
2 to meet any deficiencies that may arise in the Mortgage
3 Finance Bond Insurance Fund of the West Virginia
4 Housing Development Fund which is under the super-
5 vision and control of the Municipal Bond Commission as
6 provided by section twenty-b, article eighteen, chapter
7 thirty-one of the code, or in the funds of the Municipal
8 Bond Commission because of the failure of any state
9 agency for either general obligation or revenue bonds or
10 any local taxing district for general obligation bonds to
11 remit funds necessary for the payment of interest and
12 sinking fund requirements. The governor is authorized
13 to transfer from time to time such amounts to the
Municipal Bond Commission as may be necessary for these purposes.

The Municipal Bond Commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia Housing Development Fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 15. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.
branches of the state government, are conditioned upon
the compliance by the spending unit with the require-
ments of article two, chapter five-a of the code.

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

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

CHAPTER 2
(H. B. 109—By Delegates Kiss, Browning and Rutledge)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, expiring and
transferring specified amounts from Acct. No. 7030-07,
public service corporation taxes; Acct. No. 7030-10, tax
forfeitures; Acct. No. 8004-21, board of investments;
Acct. No. 8014-99, insurance commission—cash control;
Acct. No. 8016-99, insurance commission—cash control;
Acct. No. 8121-06, social security contributions; and
Acct. No. 8280-99, public service commission—cash
control; and transferring, as provided herein, such
specified amounts for expenditure during the fiscal year
ending the thirtieth day of June, one thousand nine
hundred ninety-three, to Acct. No. 4050, department of
health and human resources, division of human services,
all amending chapter twelve, acts of the Legislature,
regular session, one thousand nine hundred ninety-two,
known as the budget bill.

Whereas, The Legislature finds that the amounts collected in
Acct. No. 7030-07, public service corporation taxes;
Title II—Appropriations.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES

64—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050
The purpose of this supplementary appropriation bill is to transfer specified amounts from the accounts designated herein to supplement and amend the existing items of appropriation in Acct. No. 4050, division of human services, for expenditure in the fiscal year 1992-1993, with such amounts to be transferred and available for expenditure upon passage of the bill.

### CHAPTER 3

**(H. B. 108—By Delegates Kiss, Browning and Rutledge)**

[Passed May 19, 1993; in effect from passage. Approved by the Governor.]

An ACT supplementing, amending, and transferring specified unexpended amounts from Acct. No. 8013-10, state lottery fund, and transferring, as provided herein, such specified amounts for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to Acct. No. 9132, division of human services, all amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Whereas, The Legislature finds that amounts collected in Acct. No. 8013-10, state lottery fund, exceed the amounts necessary to effectuate the purposes of the fund and should be redesignated, therefore:

Be it enacted by the Legislature of West Virginia:

That the amount of one million five hundred thousand dollars be transferred from Acct. No. 8013-10, state lottery

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th></th>
<th>General Revenue Fund</th>
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<tbody>
<tr>
<td>8</td>
<td></td>
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<td>$8,834,559.89</td>
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<tr>
<td>9</td>
<td></td>
<td></td>
<td>128,000.00</td>
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<table>
<thead>
<tr>
<th></th>
<th></th>
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<th>Fiscal Year 1992-93</th>
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</thead>
<tbody>
<tr>
<td>14</td>
<td>Medical Services</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>15</td>
<td>Family Law Masters</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Fiscal Year 1992-93</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Medical Services</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>8</td>
<td>Family Law Masters</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
fund, and that said amount be added to the line item in Acct. No. 9132, division of human services, as designated herein and as set forth in chapter twelve, acts of the Legislature, one thousand nine hundred ninety-two, as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations from lottery net profits.
3
4 180—Division of Human Services
5 (WV Code Chapters 9, 48 and 49)
6 Acct. No. 9132
7 TO BE PAID FROM LOTTERY NET PROFITS
8
9 1 Health Care and
10 2 Title XIX Waiver for
11 3 Senior Citizens—Total ................  $ 1,500,000
12
13 The purpose of this bill is to add one million five hundred thousand dollars to the line item “Health Care and Title XIX Waiver for Senior Citizens” in Acct. No. 9132, division of human services, to be available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three.
14 The funds are to be transferred from Acct. No. 8013-10, state lottery fund.

CHAPTER 4

(Com. Sub. for S. B. 6—By Senators Burdette, Mr. President, and Boley, By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections five and six, article twenty-three, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two-a, article nine, chapter eleven of said code; to amend and reenact section ten, article twenty, chapter forty-seven of said code; to amend and reenact section eleven, article twenty-one of
said chapter; to amend and reenact sections two, three, eight, nine, ten and eleven, article twenty-three of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and fourteen, all relating to charitable bingo and charitable raffle boards and games; repealing provisions requiring indicia on charitable raffle boards or games; providing for the deposit of specified amount of fees to special revenue account; providing for remittance of balance in special revenue account to be transferred to general revenue; increasing the limits on prizes awarded in bingo and charitable raffles; providing definitions for retail value for the purpose of imposition of fee; amending definition of charitable raffle board or game; requiring serial numbers or other form of verification to be affixed to charitable raffle boards or games; requiring wholesalers and distributors be licensed to do business in this state; requiring the appointment of an agent for service of process in order to do business in state; providing criminal penalties for violations of article; allowing emergency rule making for initial promulgation; and specifying an effective date for new article relating to charitable raffle boards and games.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

47. Regulation of Trade.
CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation section established; funding of same.

A criminal investigation section consisting of no more than twelve investigators plus necessary support staff is hereby established within the state tax division for the purpose of assuring compliance with laws, rules and regulations pertaining to the taxes or credits established by articles eleven, eleven-a, eleven-b, twelve, twelve-a, twelve-b, thirteen, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, fourteen, fourteen-a, fifteen, fifteen-a, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four and twenty-six of this chapter, and articles twenty, twenty-one and twenty-three, chapter forty-seven of this code. Charitable bingo fees imposed under sections six and six-a, article twenty of said chapter; charitable raffle fees imposed under section seven, article twenty-one of said chapter; and charitable raffle boards and games fees imposed under section three, article twenty-three of said chapter in an amount not to exceed three hundred fifty thousand dollars in any fiscal year shall be deposited in a special revenue account established in the office of the treasurer and shall be used to support compliance expenditures relating to the establishment, maintenance and support of such criminal investigation section. Prior to the close of the fiscal year, any moneys in the special revenue account in excess of fifty thousand dollars shall be transferred to the general revenue fund.

Any employee of the criminal investigation section so designated by the tax commissioner who shall have a background in accounting and who shall be certified as a law-enforcement officer pursuant to article twenty-nine, chapter thirty of this code, or its equivalent, shall have all the lawful powers delegated to members of the department of public safety except the power to carry firearms to enforce the provisions of this article in any county or municipality of this state. The commissioner shall establish such additional standards as he or she
deems applicable or necessary. Any such employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his or her office. The department of public safety, any county sheriff, or deputy sheriff, or any municipal police officer, upon request by the tax commissioner, is hereby authorized to assist the tax commissioner in enforcing the provisions of this article and the criminal penalty provisions of this article or any article of this chapter administered under this article.

CHAPTER 47. REGULATION OF TRADE.

Article.

ARTICLE 20. CHARITABLE BINGO.

§47-20-10. Limits on prizes awarded — General provisions.

Except as otherwise provided in section twenty-two of this article, the total value of all prizes awarded by a licensee during the period of a license may not exceed in value eighty-five percent of the gross proceeds collected during that period: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license, may not exceed seven thousand five hundred dollars in value.

Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.
ARTICLE 21. CHARITABLE RAFFLES.

§47-21-11. Limits on prizes awarded — General provisions.

During the period of a license, the total value of all prizes awarded by a licensee shall not exceed in value eighty-five percent of the gross proceeds collected during such period: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint raffle occasion, for any raffle occasion held pursuant to a limited occasion license, may not exceed in value seven thousand five hundred dollars.

Prizes may be money, real or personal property or merchandise other than beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are real or personal property or merchandise, the value assigned to them is their fair market value at the time of acquisition for the raffle or at the time of purchase.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

§47-23-3. Fees.
§47-23-7a. Requirement of wholesalers and distributors to be licensed to do business in state; resident agent requirement.
§47-23-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.
§47-23-9. Penalty for failure to file return when no fee due; other offenses; penalties; seizures of illegal boards and games; disposition.
§47-23-10. Transportation of charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.
§47-23-11. Administration; rule making; required verification.
§47-23-14. Effective date of article.


For purposes of this article, unless specified otherwise:

(a) “Commissioner” means tax commissioner of the state of West Virginia, or his delegate.
(b) “Retail value” means the actual consideration paid to the wholesaler by the retailer for any raffle boards or games.

(c) “Person” means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

(d) “Retailer” means every person engaged in the business of making retail sales of raffle chances except a charitable or public service organization authorized to conduct raffles pursuant to section three, article twenty-one of this chapter.

(e) “Charitable raffle board” or “charitable raffle game” means: (1) A board or other device that has many folded printed slips to be pulled from the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize; (2) a series of paper cards with perforated break-open tabs, a face value of which is covered or otherwise hidden from view to conceal one or more numbers, letters or symbols, which, on payment of a nominal sum, entitles the player to obtain a chance to a designated prize; or (3) such other similar game which may be defined by the state tax commissioner by legislative rule.

(f) “Sale” means the transfer of the ownership of tangible personal property for a consideration.

(g) “Verification” means a unique manufacture identifiable serial number which is required to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form of identification as may be prescribed by the tax commissioner upon a showing of undue hardship by the taxpayer: Provided, That such other form of identification shall be prescribed by rule in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(h) “Wholesaler” or “distributor” means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices,
as defined by the commissioner, and licensed under the provisions of this article, to distribute said devices to charitable raffle boards or games retailers as defined in this article. It also includes anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this state.

§47-23-3. Fees.

Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of five hundred dollars shall be paid to the commissioner by each wholesaler or distributor for an annual license. Wholesalers and distributors shall also pay a fee of twenty cents on each dollar of retail value of each charitable raffle board or game sold to a retailer. This fee shall be in addition to any tax imposed pursuant to the provisions of article fifteen, chapter eleven of this code. The fees imposed by this article shall be deposited in accordance with the provisions of section two-a, article nine, chapter eleven of this code.

§47-23-7a. Requirement of wholesalers and distributors to be licensed to do business in state; resident agent requirement.

(a) Any wholesaler or distributor supplying charitable raffle boards or games to retailers in this state shall be registered to do business in this state pursuant to the provisions of article twelve, chapter eleven of this code.

(b) Nonresidents otherwise complying with the provisions of this article may be licensed as wholesalers or distributors of charitable raffle boards or games upon designating to the tax commissioner a resident agent upon whom notices, orders or other communications issued pursuant to this article may be served and upon whom process may be served.

§47-23-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.

The retail value fee imposed by section three of this
article shall be paid by each licensed wholesaler or
distributor to the commissioner on or before the
twentieth day of April, July, October and January for
the preceding three calendar months. The measure of
the fee on the retail value of charitable raffle boards or
games shall be determined by multiplying the total
amount of the retail value of all charitable raffle boards
and games sold by a wholesaler or distributor to
retailers during the said three-month period by twenty
percent. Said fee shall be in addition to any tax imposed
pursuant to the provisions of article fifteen, chapter
eleven of this code. All fees due and owing to the
commissioner by reason of this article, if paid after the
due dates required by this section, shall be subject to
the provisions of article ten, chapter eleven of this code.
Each wholesaler or distributor shall provide with each
quarterly payment of fees a return covering the business
transacted in the previous three calendar months and
providing such other information as the commissioner
may deem necessary for the ascertainment or assess-
ment of the fee imposed by this article. Such return
shall be signed under penalty of perjury on such forms
as the tax commissioner may prescribe and the wholes-
aler or distributor shall at the time of filing remit all
fees owed or due.

The returns prescribed herein are required, although
a fee might not be due or no business transacted for the
period covered by the return.

Each person required to file a return under this
article shall make and keep such records as shall be
prescribed by the commissioner that are necessary to
substantiate the returns required by this article,
including, but not limited to, invoices, serial numbers or
other verification, inventories, receipts, disbursements
and sales, for a period of time not less than three years.

Unless otherwise permitted, in writing, by authority
of the commissioner, each delivery ticket or invoice for
each purchase or sale of charitable raffle boards or
games must be recorded upon a serially numbered
invoice showing the name and address of the seller and
the purchaser, the point of delivery, the date, quantity.
serial number and price of the product sold and the fee
must be set out separately, and such other reasonable
information as the commissioner may require. These
invoicing requirements also apply to cash sales and a
person making such sales must maintain such records
as may be reasonably necessary to substantiate his
return.

In addition to the commissioner's powers set forth in
section five, article ten, chapter eleven of this code, the
commissioner shall have authority to inspect or examine
the stock of charitable raffle boards and games kept in
and upon the premises of any person where charitable
raffle boards and games are placed, stored or sold, and
he or she shall have authority to inspect or examine the
records, books, papers and any equipment or records of
manufacturers, wholesalers and distributors or any
other person for the purpose of determining the quantity
of charitable raffle boards and games acquired or
disbursed to verify the truth and accuracy of any
statement or return and to ascertain whether the fee
imposed by this article has been properly paid.

In addition to the commissioner's powers set forth in
section five, article ten, chapter eleven of this code, and
as a further means of obtaining the records, books and
papers of a manufacturer, wholesaler, distributor or any
other person and ascertaining the amount of fees and
returns due under this article, the commissioner shall
have the power to examine witnesses under oath; and
if the witness shall fail or refuse at the request of the
commissioner to grant access to the books, records or
papers, the commissioner shall certify the facts and
names to the circuit court of the county having jurisdic-
tion of the party and such court shall thereupon issue
summons to such party to appear before the commis-
ioner, at a place designated within the jurisdiction of
such court, on a day fixed, to be continued as the
occasion may require for good cause shown and give
such evidence and lay open for inspection such books
and papers as may be required for the purpose of
ascertaining the amount of fee and returns due, if any.
§47-23-9. Penalty for failure to file return when no fee due; other offenses; penalties; seizures of illegal boards and games; disposition.

(a) Penalty for failure to file required return where no fee due. — In the case of any failure to make or file a return when no fee is due, as required by this article, on the date prescribed therefor, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, there shall be collected a penalty of twenty-five dollars for each month of such failure or fraction thereof.

(b) It shall be a misdemeanor, punishable pursuant to the terms of this article, if any person:

(1) Makes any false entry upon an invoice required to be made under the provisions of this article or with intent to evade the fee imposed by this article presents any such false entry for the inspection of the commissioner;

(2) Prevents or hinders the commissioner from making a full inspection of any place where charitable raffle boards or games subject to the fee imposed by this state are sold or stored or prevents or hinders the full inspection of invoices, books, records or papers required to be kept under the provisions of this article;

(3) Sells any charitable raffle boards or games in this state on which the applicable fee or tax has not been paid;

(4) Being a retailer in this state, fails to produce on demand by the commissioner invoices and verification of all charitable raffle boards and games purchased or received by him within three years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control; or

(5) Being a retailer in this state, purchases or acquires charitable raffle boards and games from any person other than a wholesaler or distributor licensed under this article.
(c) Any person convicted of violating the provisions of subsection (b) of this section shall be confined in the county jail or regional jail for not more than one year or fined not less than one thousand dollars nor more than ten thousand dollars, or both.

(d) Any person who falsely or fraudulently makes, forges, alters or counterfeits any invoice or serial number prescribed by the provisions of this article, or its related rules and regulations, for the purpose of evading the fee hereby imposed, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than five thousand dollars nor more than ten thousand dollars or imprisoned in the penitentiary for a term of not less than one year nor more than five years, or both.

(e) Whenever the commissioner, or any of his deputies or employees authorized by him, or any peace officer of this state shall discover any charitable raffle boards or games subject to the fee as provided by this article and upon which the fee has not been paid as herein required, such charitable raffle boards and games shall thereupon be deemed to be contraband, and the commissioner, or such deputy or employee or any peace officer of this state, is hereby authorized and empowered forthwith to seize and take possession of such charitable raffle boards or games, without a warrant, and such charitable raffle boards and games shall be forfeited to the state, and the commissioner shall retain the forfeited charitable raffle boards and games until they are no longer needed as evidence in any prosecution of the person from whom the raffle boards and games were seized. The commissioner may within a reasonable time thereafter destroy such charitable raffle boards and games or sell said charitable raffle boards or games at public auction to the highest bidder: Provided, That such seizure and destruction or public auction shall not be deemed to relieve any person from fine or imprisonment as provided herein for violation of any provisions of this article. Such destruction may be made in any county the commissioner deems most convenient and economical. All revenue from said license fee shall be deposited in
the special revenue account established under the
authority of section two-a, article nine, chapter eleven
of this code and used to support the investigatory
activities provided for in said section.

(f) Magistrates shall have concurrent jurisdiction with
any other courts having jurisdiction for the trial of all
misdemeanors arising under this article.

§47-23-10. Transportation of charitable raffle boards and
games; forfeitures and sales of charitable
raffle boards, charitable raffle games and
equipment; criminal sanctions.

Every person who shall knowingly transport charit-
able raffle boards or games upon the public highways,
waterways, airways, roads or streets of this state shall
have in his actual possession invoices or delivery tickets
for such charitable raffle boards or games which shall
show the true name and the complete and exact address
of the manufacturer, the true name and complete and
exact address of the wholesaler or distributor who is the
purchaser, the quantity and description of the charitable
raffle boards and games transported and the true name
and complete and exact address of the person who has
or shall assume payment of the West Virginia state fee,
or the tax, if any, of the state or foreign country at the
point of ultimate destination. In the absence of such
invoices, delivery tickets or bills of lading, as the case
may be, the charitable raffle boards or games so
transported, the vehicle or vessel in which the charitable
raffle boards or games are being transported and any
paraphernalia or devices used in connection with such,
are declared to be contraband goods and may be seized
by the commissioner, his agents or employees or by any
peace officer of the state without a warrant.

Any person who transports charitable raffle boards or
games in violation of this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than three hundred dollars nor more than
five thousand dollars, or imprisoned in the county jail
not more than one year, or both.

Charitable raffle boards and games seized under this
section shall be forthwith destroyed in the manner provided hereinafter in this section and such destruction shall not relieve the owner of the destroyed charitable raffle boards and games of any action by the commissioner for violations of this or any other sections of this article.

The commissioner shall immediately, after any seizure made pursuant to this section, institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation by the commissioner: Provided, That any person claiming to be the holder of a security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard, and in the event it appears to the court that the property was unlawfully used by a person other than such claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel was going to be so used, the court shall waive forfeiture in favor of such claimant and order the vehicle or vessel returned to such claimant.

§47-23-11. Administration; rule making; required verification.

(a) The commissioner shall propose for promulgation, rules to administer the provisions of this article in accordance with the provisions of chapter twenty-nine-a of this code: Provided, That the initial promulgation of rules to administer the provisions of this article shall be by emergency rule. Additionally, the commissioner shall promulgate a rule which requires that every charitable raffle board or game shall each bear verification, as defined by section two of this article, printed by a manufacturer on each ticket in a game unless, upon application by the taxpayer showing undue hardship, the tax commissioner consents to waive this requirement in favor of some other form of verification.

(b) The commissioner shall deny an application for a license if he or she finds that the issuance thereof would
be in violation of the provisions of this article.

(c) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article or administrative rule if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(d) The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler's or distributor's license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

§47-23-14. Effective date of article.

The provisions of this article enacted in the year one thousand nine hundred ninety-three shall be effective on and after the ninth day of July, one thousand nine hundred ninety-three.
article six of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact sections two, three, five and six, article seven of said chapter; to amend and reenact section two, article eight of said chapter; to amend and reenact sections one, twelve, sixteen, eighteen, twenty, twenty-one, twenty-three, twenty-four, twenty-eight and thirty-one, article nine of said chapter; and to further amend said article by adding thereto two new sections, designated sections thirty-four and thirty-five, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing and directing certain of the agencies to amend legislative rules filed in the code of state regulations; authorizing the division of personnel to promulgate legislative rules relating to the administrative rules and regulations of the division, as modified and amended; authorizing the ethics commission to promulgate legislative rules relating to complaints, investigations and hearings, as modified; authorizing the ethics commission to promulgate legislative rules relating to the ethics commission, as modified; authorizing the ethics commission to promulgate legislative rules relating to advisory opinions, as modified; authorizing the consolidated public retirement board to promulgate legislative rules relating to general provisions, as modified; authorizing the consolidated public employees retirement board to promulgate legislative rules relating to the public employees retirement system, as modified and amended; authorizing the consolidated public retirement board to promul-
gate legislative rules relating to the teachers' defined benefit retirement system, as modified and amended; authorizing the consolidated public retirement board to promulgate legislative rules relating to the teachers' defined contribution system, as modified; authorizing the consolidated public retirement board to promulgate legislative rules relating to benefit determination and appeal, as modified; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to the procurement list: committee for the purchase of commodities and services from the handicapped, as modified and amended; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to qualifications for participation: committee for the purchase of commodities and services from the handicapped, as modified and amended; authorizing the committee for the purchase of commodities and services from the handicapped to promulgate legislative rules relating to fair market price determination, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to confidential information; authorizing the air pollution control commission to promulgate legislative rules relating to serious and minor violations of applicable rules; authorizing the air pollution control commission to promulgate legislative rules relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, as amended; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the operation of coal preparation plants and coal handling operations, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the requirements for pre-construction review, determination of emission offsets for proposed
new or modified stationary sources of air pollutants and emission trading for intrasource pollutants, as modified and amended; authorizing the air pollution control commission to promulgate legislative rules relating to the submission of emission statements for volatile organic compound emissions and oxides of nitrogen emissions, as modified and amended; authorizing the division of banking to promulgate legislative rules relating to implementing the West Virginia community reinvestment act, as modified; authorizing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules, as amended; authorizing the division of natural resources to promulgate legislative rules relating to the commercial sale of wildlife, as modified; authorizing the division of natural resources to promulgate legislative rules relating to deer hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to defining the terms to be used concerning all hunting and trapping regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to dog training, as modified; authorizing the division of natural resources to promulgate legislative rules relating to general hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to general trapping regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special migratory bird hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to prohibitions when hunting and trapping, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to the revocation of hunting and fishing licenses, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to special bear hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to special requirements concerning boating, as modified; authorizing the division of natural resources
to promulgate legislative rules relating to special waterfowl hunting regulations, as modified; authorizing the division of natural resources to promulgate legislative rules relating to wild boar hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to wild turkey hunting, as modified; authorizing the division of natural resources to promulgate legislative rules relating to West Virginia wildlife management areas, as modified; authorizing the division of natural resources to promulgate legislative rules relating to the recycling assistance fund grant program, as modified; authorizing the water resources board to promulgate legislative rules relating to underground injection control, as amended; authorizing the water resources board to promulgate legislative rules relating to the national pollutant discharge elimination system (NPDES), as amended; authorizing the water resources board to promulgate legislative rules relating to groundwater standards, as modified; authorizing the water resources board to promulgate legislative rules relating to requirements governing water quality standards, as modified and amended; authorizing the West Virginia economic development authority to promulgate legislative rules relating to the West Virginia capital company act: establishment of the application procedures to implement the act, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the disbursement of grants to solid waste authorities, as modified; authorizing the board of manufactured housing construction and safety to promulgate legislative rules relating to the West Virginia manufactured housing construction and safety standards act, as modified; authorizing the division of tourism and parks to promulgate legislative rules relating to the public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks, as modified and amended; authorizing the public energy authority to promulgate legislative rules relating to the rules and procedures for application for and environmental assessment of projects seeking qualification for the public energy authority's assist-
ance, as modified; authorizing the division of forestry to promulgate legislative rules relating to sediment control during commercial timber-harvesting operations - logger certification, as modified; authorizing the division of forestry to promulgate legislative rules relating to sediment control during commercial timber-harvesting operations - licensing, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to an operator's designation of bona fide future use of oil and gas wells - qualification for inactive status, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to oil and gas wells and other wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to abandoned wells, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tank assessment fees, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks; authorizing the division of environmental protection to promulgate legislative rules relating to hazardous waste management, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to the groundwater protection act fee schedule, as modified; authorizing the director of the office of miners' health, safety and training to promulgate legislative rules relating to the standards for certification of blasters for surface coal mines and surface areas of underground coal mines, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to infectious medical waste, as modified and amended; authorizing the department of health and human resources to promulgate legislative rules relating to residential board and care homes, as modified; authorizing the division of health to promulgate legislative rules relating to trauma center or facility designation, as modified; authorizing the division of health to promul-
gate legislative rules relating to primary care center uncompensated care grants, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for birthing centers, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for primary care hospitals, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for new primary care services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the temporary approval of discount contracts for border hospitals, as modified; authorizing the workers' compensation fund to promulgate legislative rules relating to self-insured employers, as modified; authorizing the division of workers' compensation to promulgate legislative rules relating to protocols and procedures for performing medical evaluations in noise-induced hearing loss claims, as modified; authorizing and directing the division of workers' compensation to promulgate legislative rules relating to the enforcement of reporting and payment requirements (85 CSR 11), as amended; authorizing the state fire commission to promulgate legislative rules relating to electrician licensing, as modified; authorizing jail and correctional facility standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of jails, as modified and amended; authorizing and directing the jail and prison standards commission to promulgate legislative rules relating to West Virginia minimum standards for construction, operation and maintenance of holding facilities (95 CSR 3), as amended; authorizing the state emergency response commission to promulgate legislative rules relating to the commission, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to the regulation of credit life insurance and credit accident and sickness insurance; authorizing the insurance commissioner to promulgate legislative rules relating to filing fees for purchasing groups and for risk retention groups not chartered in this state, as modified;
authorizing the insurance commissioner to promulgate legislative rules relating to the group coordination of benefits, as amended; authorizing the insurance commissioner to promulgate legislative rules relating to permanent regulations on medicare supplement insurance, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to individual and employer group minimum benefits for accident and sickness insurance policies, as modified and amended; authorizing the insurance commissioner to promulgate legislative rules relating to long-term care insurance, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to standards for uniform health care administration, as modified; authorizing the state board of investments to promulgate legislative rules relating to the reporting of state debt to the board, as modified; authorizing the racing commission to promulgate legislative rules relating to pari-mutuel wagering; authorizing the racing commission to promulgate legislative rules relating to thoroughbred racing, as modified; authorizing the racing commission to promulgate legislative rules relating to greyhound racing, as modified; authorizing and directing the division of tax to promulgate legislative rules relating to the division of tax (consumers sales and service tax and use tax), (110 CSR 15), as amended; authorizing the division of tax to promulgate legislative rules relating to bingo; authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle dealers, wreckers/ dismantlers/ rebuilders and license services, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to commercial feed, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to general groundwater protection rules for fertilizers and manures, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to primary and secondary containment of fertilizers, as modified and amended; authorizing the commissioner of agriculture to promulgate legislative rules relating to general groundwater protection rules for pesticides, as
modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to bulk pesticide operational rules, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to nonbulk pesticide rules for permanent operational areas, as modified; authorizing the board of registration for professional engineers to promulgate legislative rules relating to the board, as modified and amended; authorizing the board of medicine to promulgate legislative rules relating to licensing, disciplinary and complaint procedures: physicians and podiatrists, as modified; authorizing the board of medicine to promulgate legislative rules relating to certification, disciplinary and complaint procedures and continuing education for physician assistants, as modified and amended; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to limited prescriptive authority for nurses in advanced practice, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to the board, as modified and amended; authorizing the board of examiners of psychologists to promulgate legislative rules relating to penalties and fees, as modified; authorizing the board of examiners of psychologists to promulgate legislative rules relating to the qualifications for licensure as a psychologist, as modified; authorizing the real estate commission to promulgate legislative rules relating to the requirements in licensing real estate brokers and salesmen and in the conduct of a brokerage business, as modified; authorizing the secretary of state to promulgate legislative rules relating to the filing fee for credit service organizations, as modified; authorizing the secretary of state to promulgate legislative rules relating to combined voter registration and driver licensing programs, as modified; authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to implementing regulations, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements of licensure and certification, as modified; authorizing the board of occupational therapy to promulgate legislative
rules relating to the administration of the board, as modified; and authorizing the board of social work examiners to promulgate legislative rules relating to qualifications for licensure as a social worker, as modified.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Authorization for Department of Administration to Promulgate Legislative Rules.
3. Authorization for Department of Commerce, Labor and Environmental Resources to Promulgate Legislative Rules.
5. Authorization for Department of Health and Human Resources to Promulgate Legislative Rules.
6. Authorization for Department of Public Safety to Promulgate Legislative Rules.
7. Authorization for Department of Tax and Revenue to Promulgate Legislative Rules.
8. Authorization for Department of Transportation to Promulgate Legislative Rules.
ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-3. Division of personnel.


§64-2-10. Committee for the purchase of commodities and services from the handicapped.

§64-2-3. Division of personnel.

(a) The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

(b) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-eight, modified by the civil service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the civil service commission (civil service system), are authorized with the amendments set forth below:

On page fifteen, section 5.05(d), after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On page fifteen, section 5.06, after the words "established in" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chapter 29-6A of the Code of West Virginia, as amended."

On pages sixteen and seventeen by deleting all of section 5.07.
29 And,
30 On page 46, section 13(f) line 2 by striking the words
31 “previously held”.
32 (c) The legislative rules filed in the state register on
33 the fourteenth day of May, one thousand nine hundred
34 ninety, modified by the division of personnel to meet the
35 objections of the legislative rule-making review commit-
36 tee and refiled in the state register on the twenty-fifth
37 day of September, one thousand nine hundred ninety,
38 relating to the division of personnel (civil service
39 system), are authorized.
40 (d) The legislative rules filed in the state register on
41 the seventeenth day of September, one thousand nine
42 hundred ninety-two, modified by the division of person-
43 nel to meet the objections of the legislative rule-making
44 review committee and refiled in the state register on the
45 eighteenth day of February, one thousand nine hundred
46 ninety-three, relating to the division of personnel
47 (administrative rules and regulations of the West
48 Virginia division of personnel), are authorized, with the
49 following amendments:
50 On page 5, section 3, subsection 42, after the word
51 “affected”, by striking the word “classified”, and
52 inserting in lieu thereof the word “state”;
53 And,
54 On page 66, subsection 17.01(e)(3), after the words
55 “provisions of” by striking out the words “W.V. Code §3-
56 8-3, §3-3-4 or §3-8-5(e), or serve as a ballot commissioner
57 or election official working inside a polling place; or sell
58 tickets to political affairs to employees in the classified
59 services; or post or distribute campaign literature in a
60 classified employee’s worksite; or wear apparel bearing
61 political logos or endorsements during work hours when
62 observed by or in contact with the public” and inserting
63 the words “sections three, four or five-e, article eight,
64 chapter three of the Code of West Virginia, as
65 amended.”
66  And,
67  On page 67, subsection 17.04, by striking all of subsection 17.04.


1  (a) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (contributions), are authorized, with the amendment set forth below:

10  On page one, subsection 3.4, by striking out the words “use their official title or position in the endorsement or support of” and inserting in lieu thereof “endorse”.

13  (b) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (gifts), are authorized, with the amendments set forth below:

21  On page two, subsection 3.1, by striking out the word “significant”;

23  On page two, section four, subsection 4.1, by striking out “$20” and inserting in lieu thereof “$25”;

25  On page three, subsection 4.2, after the words “hotel room” by inserting a period and striking out the remainder of the sentence;

28  On page three, subsection 5.1, by striking out the word “unlawful” and inserting in lieu thereof “improper”;

30  On page three, subsection 5.1, after the words “health club fees” by striking out the period and adding “, unless
such expenses are offered to all of the panelists or speakers.”;

On page four, subsection 6.2, by striking out the word “unlawful” and inserting in lieu thereof “improper”.

And,

On page four, section 7, at the end of the section by striking out the period and adding the following: “:

Provided, That public officials and public employees may accept complimentary tickets to sporting events, if the tickets are incidental to the conduct of their official or ceremonial duties.”

(c) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (interest in public contracts), are authorized, with the amendment set forth below:

On page two, subsection 6.2, by striking out the words “complete in every particular and including the exact” and inserting in lieu thereof “including the”.

(d) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of October, one thousand nine hundred ninety-one, relating to the ethics commission (lobbying), are authorized, with the amendment set forth below:

On page three, subsection 4.3, after the words “copies of forms” by inserting a period and striking out the remainder of the sentence.

(e) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine
hundred ninety-one, modified by the ethics commission
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
seventeenth day of December, one thousand nine
hundred ninety-one, relating to the ethics commission
(private gain), are authorized, with the amendments set
forth below:

On page one, subsection 2.2, after the words “A public
official” by inserting “acting in his or her capacity as
a public official”;

On page one, subsection 2.2, after the words “the
public official.” by adding a new sentence to read as
follows: “The provisions of this subsection shall not apply
to a public official acting in his or her private capacity.”;

On pages one and two, by striking out all of section
three;

On pages two through four, by renumbering the
remaining sections;

On page two, subsection 4.1, by striking out the words
“persons in high office” and inserting in lieu thereof “a
public official or public employee”;

On page two, subsection 4.1, by striking out the words
“close friends” and inserting in lieu thereof “cohabitat-
ing sexual partners”;

On page two, subsection 4.2, after the word “sister”
by striking out the remainder of the sentence and
inserting in lieu thereof “or spouse.”;

On page two, subsection 4.3, by striking out the words
“close friend” and inserting in lieu thereof “cohabitating
sexual partner”;

On page three, subdivision 4.3.b, by striking out the
words “close friend” and inserting in lieu thereof
“cohabitating sexual partner”;

On page three, by striking out all of paragraph 4.3.b.2
and inserting in lieu thereof a new paragraph 4.3.b.2 to
read as follows:
"A public official or public employee should at least have some independent person take part in the selection. He or she should avoid using a subordinate for the independent person."

On page three, by striking out all of subsection 4.4 and inserting in lieu thereof a new subsection to read as follows:

"4.4 All hiring by public officials and public employees of relatives prior to the twenty-ninth day of February, one thousand nine hundred ninety-two is not subject to review under the ethics act, in Chapter 6B of the W. Va. Code."

On page three, subsection 4.5, by striking out the words "close friend" and inserting in lieu thereof "cohabitating sexual partner";

On page three, after subsection 4.5, by adding thereto a new subsection, designated subsection 4.6, to read as follows:

"4.6 It is improper for a public official or public employee to terminate the employment of a person without sufficient cause for the purpose of hiring a relative, friend or political supporter."

On page three, subsection 5.2, after the words "supervisor during work hours.", by adding the following sentence: "This subsection does not apply to de minimus work or services."

On page four, by striking out all of subsection 6.2 and inserting in lieu thereof a new subsection 6.2, to read as follows:

"6.2 Improper Use—Public officials and public employees shall not use government property for personal projects or activities that result in private gain. This subsection does not apply to the de minimus use of government property."

And,

On page four, by striking out all of section 9 and inserting in lieu thereof a new section 9 to read as
follows:

"Full-time appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during public work hours. This section shall not apply to de minimus private work."

(f) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of December, one thousand nine hundred ninety-one, relating to the ethics commission (voting), are authorized, with the amendments set forth below:

On page one, subsection 2.2, by striking out the second and third paragraphs of subsection 2.2;

And,

On page one, after subsection 2.3, by adding a new subsection, designated subsection 2.4 to read as follows:

"2.4 In any case where a Senator or Delegate is voting as part of their official duties of office, the members of the Senate and the members of the House of Delegates are governed by the rules of their respective houses. The provisions of subsection 2.3 of this rule shall not apply to members of the Legislature when acting as a member thereof."

(g) The legislative rules filed in the state register on the thirty-first day of January, one thousand nine hundred ninety-one, modified by the ethics commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of December, one thousand nine hundred ninety-one, relating to the ethics commission (employment), are authorized, with the amendments set forth below:

On page two, subsection 3.3, by striking out the words "if there is a reasonable probability that the person will
179 be regulated. There must be” and inserting in lieu
180 thereof “upon”;

181 On page two, subdivision 4.2.c, after the word
182 “prohibition” by inserting the words “for all practical
183 purposes”;

184 On page three, by striking out all of subsections 4.5,
185 4.6 and 4.7;

186 And,

187 On page three, by renumbering the remaining
188 subsections.

189 (h) The legislative rules filed in the state register on
190 the ninth day of September, one thousand nine hundred
191 ninety-two, modified by the ethics commission to meet
192 the objections of the legislative rule-making review
193 committee and refiled in the state register on the
194 twentieth day of January, one thousand nine hundred
195 ninety-three, relating to the ethics commission (com-
196 plaints, investigations and hearings), are authorized.

197 (i) The legislative rules filed in the state register on
198 the ninth day of September, one thousand nine hundred
199 ninety-two, modified by the ethics commission to meet
200 the objections of the legislative rule-making review
201 committee and refiled in the state register on the
202 twentieth day of January, one thousand nine hundred
203 ninety-three, relating to the ethics commission (ethics
204 commission), are authorized.

205 (j) The legislative rules filed in the state register on
206 the ninth day of September, one thousand nine hundred
207 ninety-two, modified by the ethics commission to meet
208 the objections of the legislative rule-making review
209 committee and refiled in the state register on the
210 twentieth day of January, one thousand nine hundred
211 ninety-three, relating to the ethics commission (advisory
212 opinions), are authorized.


1 (a) The legislative rules filed in the state register on
2 the fifth day of November, one thousand nine hundred
3 ninety-one, modified by the consolidated public retire-
ment board to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of September, one thou-
sand nine hundred ninety-two, relating to the consoli-
dated public retirement board (general provisions), are
authorized.

(b) The legislative rules filed in the state register on
the fifth day of November, one thousand nine hundred
ninety-one, modified by the consolidated public retire-
ment board to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of December, one thousand
nine hundred ninety-two, relating to the consolidated
public retirement board (public employees retirement
system), are authorized with the amendment set forth
below:

"On page one, subsection §162-5-2 after the word
'hereby' by striking out the word 'appealed' and
inserting in lieu thereof the word 'repealed'".

(c) The legislative rules filed in the state register on
the fifth day of November, one thousand nine hundred
ninety-one, modified by the consolidated public retire-
ment board to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of December, one thousand
nine hundred ninety-two, relating to the consolidated
public retirement board (teachers' defined benefit
retirement system), are authorized with the amendment
set forth below:

"On page one, subsection §162-4-2 after the word
'hereby' by striking out the word 'appealed' and
inserting in lieu thereof the word 'repealed'".

(d) The legislative rules filed in the state register on
the fourth day of November, one thousand nine hundred
ninety-one, modified by the consolidated public retire-
ment board to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth day of September, one thou-
sand nine hundred ninety-two, relating to the consoli-
dated public retirement board (teachers' defined
contribution system), are authorized.

(e) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred ninety-one, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-three, relating to the consolidated public retirement board (benefit determination and appeal), are authorized.

§64-2-10. Committee for the purchase of commodities and services from the handicapped.

(a) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the committee for the purchase of commodities and services from the handicapped to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of February, one thousand nine hundred ninety-three, relating to the committee for the purchase of commodities and services from the handicapped (procurement list: committee for the purchase of commodities and services from the handicapped), are authorized with amendments set forth below:

On page two, subsection 2.9., by striking out the entirety of said subsection and inserting in lieu thereof the following: "'Nonprofit workshops', 'workshops' and 'rehabilitation facility' means an establishment (a) where any manufacture or handiwork is carried on, (b) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval, by the state board
of vocational education, division of vocational
rehabilitation.”;

On page three, subsection 2.13., by striking out the
entirety of said subsection.;

On page five, subsection 4.2., by striking out the word
“facility” and inserting in lieu thereof the word
“workshop”;

And,

On page six, subsection 4.7., by striking out the words
‘certified or approved’.

(b) The legislative rules filed in the state register on
the eighteenth day of September, one thousand nine
hundred ninety-two, modified by the committee for the
purchase of commodities and services from the handi-
capped to meet the objections of the legislative rule-
making committee and refiled in the state
register on the seventeenth day of February, one
thousand nine hundred ninety-three, relating to the
committee for the purchase of commodities and services
from the handicapped (qualifications for participation:
committee for the purchase of commodities and services
from the handicapped), are authorized with amend-
ments set forth below:

“On page one, subsection 2.1., by striking out the
entirety of said subsection;

On page one, subsection 2.3., by striking out the
entirety of said subsection;

On page two, subsection 2.7., by striking out the
entirety of said subsection;

On page two, subsection 2.8., by striking out the
entirety of said subsection;

On page three, subsection 2.10., by striking out the
entirety of said subsection and inserting in lieu thereof
the following ‘Nonprofit workshop’, ‘workshop’ and
‘rehabilitation facility’ means an establishment (a)
where any manufacture or handiwork is carried on, (b)
which is operated either by a public agency or by a
cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval, by the state board of vocational education, division of vocational rehabilitation."

And,

On page four, subdivision 3.1.1.e.D., by striking out the entirety of said subsection and inserting in lieu thereof the following: "To comply with state and federal laws regarding safety standards and wage payment."

(c) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the committee for the purchase of commodities and services from the handicapped to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-three, relating to the committee for the purchase of commodities and services from the handicapped (fair market price determinations), are authorized with amendments set forth below:

"On page one, subsection 2.1., by striking out the entirety of said subsection.;

On page one, subsection 2.2., by striking out the entirety of said subsection.;

On page two, subsection 2.10., by striking out the entirety of said subsection.;

On page two, subsection 2.11., by striking out the entirety of said subsection.;

On page three, subsection 2.14., by striking out the entirety of said subsection and inserting in lieu thereof the following:
"Nonprofit workshop', 'workshop' and 'rehabilitation facility' mean an establishment (a) where any manufacture or handiwork is carried on, (b) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association, in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual, (c) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market, and (d) which shall be approved, as evidenced by a certificate of approval, by the state board of vocational education, division of vocational rehabilitation."

On page four, subdivision 3.3.1., by striking out the last sentence.

And,

On page five, subdivision 3.4.1., by striking out the last two sentences.

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Air pollution control commission.
§64-3-2. Division of banking.
§64-3-3. Division of natural resources.
§64-3-10. Water resources board.
§64-3-11. Economic development authority.
§64-3-12. Solid waste management board.
§64-3-13. Board of manufactured housing construction and safety.
§64-3-14. Division of tourism and parks.
§64-3-15. Public energy authority.
§64-3-16. Division of forestry.
§64-3-17. Division of environmental protection.
§64-3-18. Director of the office of miners' health safety and training.

§64-3-1. Air pollution control commission.

(a) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series VII), are authorized.

(b) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series XIX), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (emission standards for hazardous air pollutants) (series XV), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (standards of performance for new stationary sources) (series XVI), are authorized.

(e) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV), are authorized with the amendments set forth below:

Page 3, §1.06, change the § title from “Enforcement” to “Procedure”; place an “(a)” in front of the existing paragraph and add the following:

“(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation.”

Such rules shall also include a section which shall read as follows:

“The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission’s data gathering efforts, the development of compliance programs, the progress
in implementation, and such other matters as the committee may require, pertaining to the regulations hereby authorized.”

(f) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration) (series XIV), are authorized.

(g) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities), are authorized.

(h) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (good engineering practice as applicable to stack heights), are authorized.

(i) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (TP-2, compliance test procedures for regulation 2 — to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers), are authorized.

(j) The legislative rules filed in the state register on
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the sixth day of September, one thousand nine hundred
eighty-nine, modified by the air pollution control
commision to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the tenth day of January, one thousand nine
hundred ninety, relating to the air pollution control
commission (ambient air quality standards for sulfur
oxides and particulate matter), are authorized.

(k) The legislative rules filed in the state register on
the sixth day of September, one thousand nine hundred
eighty-nine, modified by the air pollution control
commision to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the tenth day of January, one thousand nine
hundred ninety, relating to the air pollution control
commission (prevention of air pollution emergency
episodes), are authorized.

(l) The legislative rules filed in the state register on
the sixth day of September, one thousand nine hundred
eighty-nine, modified by the air pollution control
commision to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the tenth day of January, one thousand nine
hundred ninety, relating to the air pollution control
commission (permits for construction and major modi-
fication of major stationary sources of air pollution for
the prevention of significant deterioration), are
authorized.

(m) The legislative rules filed in the state register on
the sixth day of September, one thousand nine hundred
eighty-nine, relating to the air pollution control commis-
sion (standards of performance for new stationary
sources), are authorized.

(n) The legislative rules filed in the state register on
the sixth day of September, one thousand nine hundred
eighty-nine, relating to the air pollution control commis-
sion (emission standards for hazardous air pollutants),
are authorized.

(o) The legislative rules filed in the state register on
the sixteenth day of October, one thousand nine hundred
eighty-nine, modified by the air pollution control
commission to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the tenth day of January, one thousand nine
hundred ninety, relating to the air pollution control
commission (prevention and control of emissions of toxic
air pollutants), are authorized.

(p) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, relating to the air pollution control commission
(prevention and control of air pollution from the
emission of volatile organic compounds from bulk
gasoline terminals), are authorized.

(q) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety, modified by the air pollution control commission
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifteenth day of November, one thousand nine hundred
ninety, relating to the air pollution control commission
(air quality management fee program), are authorized.

(r) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, relating to the air pollution control commission
(prevention and control of air pollution from the
emission of volatile organic compounds from the storage
of petroleum liquids in fixed roof tanks), are authorized.

(s) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, relating to the air pollution control commission
(prevention and control of air pollution from the
emission of volatile organic compounds from petroleum
refinery sources), are authorized.

(t) The legislative rules filed in the state register on
the eighteenth day of December, one thousand nine
hundred ninety-one, modified by the air pollution
control commission to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the fifteenth day of December, one
thousand nine hundred ninety-two, relating to the air
pollution control commission (regulations to prevent and control air pollution from the emission of volatile organic compounds), are authorized with the amendments set forth below:

"On page 26, subsection §45-21-9.2, by striking all of §45-21-9.2 and inserting in lieu thereof a new §45-21-9.2, to read as follows:

9.2 Registration. — Within thirty (30) days after May 31, 1993, all persons owning and/or operating a source subject to this regulation and not previously registered shall have registered such source(s) with the chief: Provided, That on a case-by-case basis, the chief may extend the 30-day period for the registration of sources to allow sources up to one hundred eighty (180) days after May 31, 1993 to register. The information required for registration shall be determined and provided in the manner specified by the chief. Registration forms shall be requested from the chief by the owner or operator of such source(s)."

And,

"On page fifty-six, subsection §45-21-20.5a by striking out all of line “a” and its equivalent column and inserting in lieu thereof the words “a = Surface area coated per day in terms of square meters divided by 100 or surface area coated per day in terms of square feet divided by 1000.”

And,

"On page one hundred eighty-three, subsection §45-21-40.2 after the words “control technology (RACT) in section” by striking the numbers “2.57.” and inserting in lieu thereof the numbers “2.60.”

(u) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the air pollution control commission (confidential information), are authorized.

(v) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the air pollution control
The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred ninety-two, relating to the air pollution control commission (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration), are authorized with the amendments set forth below:

"On page fourteen, subsection §45.13.6.5 after the word "Within" by striking the word "twelve (12)" and inserting in lieu thereof the word "six (6)".

The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-two, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the air pollution control commission (regulations to prevent and control air pollution from the operation of coal preparation plants and coal handling operations), are authorized.

The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred ninety-two, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the air pollution control commission (requirements for pre-construction review, determination of emission offsets for proposed new or modified stationary sources of air pollutants and emission trading for intrasource pollutants), are authorized with amendments set forth below:

"On page twenty-one, subsection §45.19.12.5 after the word "Within" by striking the word "twelve (12)" and inserting in lieu thereof the word "six (6)".

The legislative rules filed in the state register on
the twenty-eighth day of August, one thousand nine
hundred ninety-two, modified by the air pollution
control commission to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the nineteenth day of February, one
thousand nine hundred ninety-three, relating to the air
pollution control commission (requiring the submission
of emission statements for volatile organic compound
emissions and oxides of nitrogen emissions), are autho-
"On page four, section 2.27. after the words 'VOC or'
by striking out the words '100 tons per year or more of'”.

§64-3-2. Division of banking.

(a) The legislative rules filed in the state register on
the eleventh day of June, one thousand nine hundred
eighty-two, relating to commissioner of banking (com-
munication terminals and interchange systems), are
authorized.

(b) The legislative rules filed in the state register on
the fifteenth day of December, one thousand nine
hundred eighty-three, relating to the commissioner of
banking (consumer credit sales), are authorized.

(c) The legislative rules filed in the state register on
the nineteenth day of August, one thousand nine
hundred eighty-three, relating to the commissioner of
banking (legal lending limit), are authorized.

(d) The legislative rules filed in the state register on
the seventh day of November, one thousand nine
hundred eighty-six, modified by the commissioner of
banking to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the eleventh day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
banking (implementing the West Virginia community
reinvestment act), are authorized.

(e) The legislative rules filed in the state register on
the twenty-fifth day of October, one thousand nine
hundred eighty-eight, modified by the commissioner of
banking to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventh day of December, one thousand
nine hundred eighty-eight, relating to the commissioner
of banking (subsidiary bank holding the stock of its
parent company as collateral), are authorized.

(f) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
ninety-one, modified by the division of banking to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
fifteenth day of November, one thousand nine hundred
ninety-one, relating to the division of banking (West
Virginia consumer credit and protection act), are
authorized.

(g) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, modified by the division of banking to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
fifteenth day of November, one thousand nine hundred
ninety-one, relating to the division of banking (lease
financing transactions), are authorized.

(h) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, modified by the division of banking to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
fifteenth day of November, one thousand nine hundred
ninety-one, relating to the division of banking (operation
of state-chartered financial institutions in West Vir-
ginia), are authorized.

(i) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
ninety-one, modified by the division of banking to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
fifteenth day of November, one thousand nine hundred
ninety-one, relating to the division of banking (West
Virginia industrial bank and industrial loan company
act), are authorized.
(j) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (West Virginia consumer credit and protection act and the money and interest article of chapter forty-seven), are authorized.

(k) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety-one, relating to the division of banking (permissible additional charges in connection with a consumer credit sale), are authorized.

(l) The legislative rules filed in the state register on the twenty-sixth day of June, one thousand nine hundred ninety-two, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of August, one thousand nine hundred ninety-two, relating to the division of banking (general rules implementing the West Virginia community reinvestment act), are authorized.

§64-3-8. Division of natural resources.

(a) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining), are authorized with the amendments set forth below:

Page 3-4, §3E.01 by adding after the word "engineer" the words "or licensed land surveyor."

Page 3-5, §3E.02, subsection (a), by adding after the word "mining" the words "or civil."

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 prefiling review of the application. The division, with the cooperation of the solid waste authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete."

On page 15, section 6.03(c)(1) in the first full sentence, after the word "cease", strike the remainder of the sentence and insert in lieu thereof the words "within fifteen (15) days of receipt of an order of suspension" and in the second sentence strike the word "recommence" and insert the words "continue beyond fifteen (15) days";

(c)(2) in the first full sentence, after the word "cease" by striking out the remainder of the sentence and insert in lieu thereof the words "immediately upon receipt of an order of revocation."

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-four, relating to the department of natural resources (public use of state parks, forests, hunting and fishing areas), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (surface mining reclamation), are authorized.

(e) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of
natural resources (coal refuse disposal), are authorized.

(f) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (transfer of the state national pollutant discharge elimination system program), are authorized with the 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 quan-
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 "which-ever is less,” after the words “ten percent or more of gross personal income for a calendar year.”

(p) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(q) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-seven, relating to the department of natural resources (WV/NPDES regulations for coal mining facilities), are authorized.

(r) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (outfitters and guides), are authorized.

(s) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations), are authorized.

(t) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(u) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regu-
lations, series 35), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred eighty-seven, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the department of natural resources (solid waste management), are authorized.

(w) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-seven, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations), are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period "This regulation does not apply to licensed outfitters and guides." These rules were proposed by the director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-eight, relating to the department of natural resources (hazardous waste management), are authorized.

(y) The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (boating), are authorized.
(z) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-eight, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (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
"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 ground-
water quality protection standards, the existing use of such waters, the reasonable uses of such waters, background water quality, and the protection of human health and the environment.”

(dd) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (underground storage tanks), are authorized.

(ee) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (transporting and selling wildlife pelts), are authorized.

(ff) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of August, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (underground storage tank fee assessments), are authorized.

(gg) The legislative rules filed in the state register on the twenty-fourth day of April, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of May, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (public hunting and fishing areas), are authorized.

(hh) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-nine, relating to the department of natural resources (water pollution control permit fee schedules), are authorized with the amendments set forth below:

On page five, section 3.3, by deleting the following:

“Submitted fees are not refundable.”
On page two, after section 2.6, by inserting the following:

"Customer" means any person that purchases waste disposal services from a facility permitted under article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. For the purposes of these regulations, commercial and other non-single family dwelling customers shall be translated into customer equivalents by dividing the total daily estimated volume of waste water by three hundred and fifty gallons per day." and renumbering the remaining subsections.

On page nine, section 7.2, by striking out the words "seven hundred fifty dollars ($750)." and inserting in lieu thereof the following:

"determined using Table D, but in no case shall be less than two hundred fifty dollars ($250)."

And,

On page thirteen, by striking out all of Table D, Schedule of Annual Permit Fees, and inserting in lieu thereof a new Table D, designated "Schedule of Annual Permit Fees", to read as follows:

"TABLE D

SCHEDULE OF ANNUAL PERMIT FEES

SEWAGE FACILITIES

<table>
<thead>
<tr>
<th>Number of Customers</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1000</td>
<td>$ 250</td>
</tr>
<tr>
<td>1000 to 1499</td>
<td>$ 500</td>
</tr>
<tr>
<td>1500 to 1999</td>
<td>$ 750</td>
</tr>
<tr>
<td>2000 to 2499</td>
<td>$1000</td>
</tr>
<tr>
<td>2500 to 2999</td>
<td>$1250</td>
</tr>
<tr>
<td>3000 to 3499</td>
<td>$1500</td>
</tr>
<tr>
<td>3500 to 3999</td>
<td>$1750</td>
</tr>
<tr>
<td>4000 to 4499</td>
<td>$2000</td>
</tr>
<tr>
<td>4500 to 4999</td>
<td>$2250</td>
</tr>
<tr>
<td>greater than 5000</td>
<td>$2500</td>
</tr>
</tbody>
</table>
INDUSTRIAL OR OTHER WASTE FACILITIES

Average Discharge Volume (gallons per day)  Annual Permit Fee

less than 1,000 ........................... $ 50
1,001 to 10,000 ........................... $ 500
10,001 to 50,000 ........................... $1000
greater than 50,000 ........................... $2500”

(ii) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (revocation of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the division of natural resources (state water pollution control revolving fund program), are authorized.

(kk) The legislative rules filed in the state register on the twenty-ninth day of March, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety, relating to the division of natural resources (assessment of civil administrative penalties), are authorized.

(II) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety, relating to the division of natural resources (water pollution control permit fee schedules), are authorized.
(mm) The legislative rules filed in the state register on the fifteenth day of June, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of August, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tank insurance trust fund), are authorized with the amendment set forth below:

On page four, after subsection 5.1, by inserting a new subdivision 5.1.1 to read as follows:

"5.1.1 The fee shall be one hundred dollars per tank per year ($100/tank/year) for a period of not less than one (1) year and not more than three (3) years. Second and third year capitalization fees may be levied if there is an inadequate surplus of funds, as determined by the Board of Risk and Insurance Management, the Division of Natural Resources and the Underground Storage Tank Advisory Committee pursuant to W. Va. Code, §20-5H-7."

(nn) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety, relating to the division of natural resources (underground storage tanks), are authorized with the amendment set forth below:

On page four, section five, subsection 5.1, after the word "requirements" by striking out the remainder of the subsection and inserting in lieu thereof, the following:

"of Title 47, Series 37 (Underground Storage Tank Fee Assessments); Title 47, Series 36, Section 4 (Notification Requirements); and Title 47, Series 37A, Section 5 (Capitalization Fees) of the Code of State Regulations and the owner or operator presents proof of the certification to the carrier."
(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 inserting the 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

<table>
<thead>
<tr>
<th>(gallons per day)</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 5,001</td>
<td>$50</td>
</tr>
<tr>
<td>5,001 to 15,000</td>
<td>$125</td>
</tr>
<tr>
<td>15,001 to 50,000</td>
<td>$250</td>
</tr>
<tr>
<td>50,001 to 100,000</td>
<td>$500</td>
</tr>
<tr>
<td>greater than 100,000</td>
<td>$750</td>
</tr>
</tbody>
</table>

and

“TABLE G

SCHEDULE OF ANNUAL PERMIT FEES FOR AQUACULTURE FACILITIES

<table>
<thead>
<tr>
<th>#Feed/Month</th>
<th>Annual Fee</th>
<th>Application Fee (Initial and Reissuance)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000 to 9,999</td>
<td>$250</td>
<td>$250</td>
</tr>
<tr>
<td>10,000 to 14,999</td>
<td>$500</td>
<td>$250</td>
</tr>
<tr>
<td>15,000 to 19,999</td>
<td>$750</td>
<td>$250</td>
</tr>
<tr>
<td>20,000 to 24,999</td>
<td>$1,000</td>
<td>$250</td>
</tr>
<tr>
<td>25,000 to 29,999</td>
<td>$1,250</td>
<td>$250</td>
</tr>
<tr>
<td>greater than 30,000</td>
<td>$1,750</td>
<td>$250</td>
</tr>
</tbody>
</table>

(vv) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, 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 December, one thousand nine hundred ninety-two, relating to the division of natural resources (commercial sale of wildlife), are authorized.

(ww) The legislative rules filed in the state register
on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (deer hunting), are authorized.

(xx) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (defining the terms to be used concerning all hunting and trapping regulations), are authorized.

(yy) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (dog training), are authorized.

(zz) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (general hunting regulations), are authorized.

(aaa) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (general trapping regulations), are authorized.
(bbb) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (special migratory bird hunting regulations), are authorized.

(ccc) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (prohibitions when hunting and trapping), are authorized with the amendments set forth below:

"On page two, subsection 3.9., by striking out the words 'No person may use portable tree stands on public lands' and inserting in lieu thereof the words 'No person may use tree stands, except for portable tree stands, on public lands.'"

(ddd) The legislative rules filed in the state register on the twenty-first day of April, one thousand nine hundred ninety-two, 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 December, one thousand nine hundred ninety-two, relating to the division of natural resources (revocation of hunting and fishing licenses), are authorized with the amendments set forth below:

"On page two, subsection 4.1., by striking out the word 'court' and inserting in lieu thereof the word 'commission';"

And,

"On page two, subdivision 4.1.1, by striking out the
The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (special bear hunting regulations), are authorized.

On page one, after subdivision 3.1, by inserting a new subdivision, designated 3.2, to read as follows:

3.2. The Pipestem Creek Cove portion of Bluestone Lake in Bluestone State Park is designated for marina use only and is restricted from fishing and other recreational use not directly related to use as a marina.

The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (special waterfowl hunting regulations), are authorized.

The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (special requirements concerning boating), are authorized with the following amendment set forth below:

On page one, after subdivision 3.1, by inserting a new subdivision, designated 3.2, to read as follows:

4.2. The Pipestem Creek Cove portion of Bluestone Lake in Bluestone State Park is designated for marina use only and is restricted from fishing and other recreational use not directly related to use as a marina.
making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (wild boar hunting), are authorized.

(iii) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, 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 seventh day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (wild turkey hunting), are authorized.

(jjj) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred ninety-two, 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 eighth day of December, one thousand nine hundred ninety-two, relating to the division of natural resources (West Virginia wildlife management areas), are authorized.

(kkk) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, 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 January, one thousand nine hundred ninety-three, relating to the division of natural resources (recycling assistance fund grant program), are authorized.

§64-3-10. Water resources board.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-three, relating to the state water resources board (underground injection control program), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water
resources board (special regulations), are authorized.

(c) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the state water resources board (groundwater protection standards), are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the state water resources board to promulgate rules relating to water quality standards in exact conformity with the rules relating to water quality standards tendered to the secretary of state on the seventh day of March, one thousand nine hundred eighty-four, by the executive secretary of the state water resources board, to be received and filed for inclusion in the state register by the secretary of state.

(f) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized.

(g) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred eighty-five, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the water resources board (water quality standards), are authorized.

(h) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water
resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (water quality standards), are authorized.

(i) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(j) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (underground injection control program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized.

(l) The legislative rules filed in the state register on the thirtieth day of June, one thousand nine hundred eighty-seven, relating to the water resources board (water quality standards), are authorized.

(m) The legislative rules filed in the state register on the fourteenth day of October, one thousand nine hundred eighty-eight, relating to the water resources board (water quality standards), are authorized.

(n) The legislative rules filed in the state register on the twenty-seventh day of August, one thousand nine hundred ninety, relating to the water resources board (requirements governing water quality standards), are authorized.

(o) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the water resources board (underground injection control), are authorized with the amendments set forth below:

"On page two, subsection §46-9-2.3, by deleting the entire subsection and by renumbering the following subsections:

"On page three, subsection §46-9-2.7, after the word "means" by striking out the remainder of the sentence and inserting in lieu thereof the words 'the personnel of the Office of Water Resources and the personnel of the Office of Oil and Gas and the Commissioner.'"

"On page three, subsection §46-9-2.11, after the word "means" by striking out the remainder of the sentence and inserting in lieu thereof the words "Chief of the Office of Water Resources of the Division of Environmental Protection."

"On page seven, subsection §46-9-2.59.b, by striking out the sentence and inserting in lieu thereof the words "which is not an exempted aquifer."

"On page eight, subsection §46-9-3.1.b.1, after the
words "permit application for a" by striking out the
words "Class II or III" and inserting in lieu thereof the
words "Class 2 or 3"

"On page nine, subsection §46-9-4.1. by striking out
the words "Class I" and inserting in lieu thereof the
words "Class 1."

"On page nine, subsection §46-9-4.2. by striking out
the words "Class II" and inserting in lieu thereof the
words "Class 2."

"On page nine, subsection §46-9-4.3. by striking out
the words "Class III" and inserting in lieu thereof the
words "Class 3."

"On page ten, subsection §46-9-4.4. by striking out the
words "Class IV" and inserting in lieu thereof the words
"Class 4."

"On page ten, subsection §46-9-4.5. by striking out the
definition and inserting in lieu thereof the words "Class
5. Injection wells not included in Classes 1, 2, 3, or 4.
Class 5 wells include, but are not limited to"

"On page eleven, subsection §46-9-4.5.r. after the word
"associated" by striking out the word "wit" and inserting
in lieu thereof the word "with".

"On page twelve, subsection §46-9-5.3.b. after the
words "possible objective method:" by striking out the
remainder of the subsection and inserting in lieu thereof the following:

"Where "r" is equal to the square root of a quantity
which consists of a numerator divided by the denomina-
tor where the numerator is equal to 2.25 multiplied
by "K" multiplied by "H" multiplied by "t"; and, the
denominator is equal to "S" multiplied by 10 to the "x"
power. And, where "x" is equal to a numerator divided
by a denominator, where the numerator is equal to four
multiplied by "pi" multiplied by "K" multiplied by "H"
multiplied by the quantity equal to the product of
("h(subscript w)" minus "h(subscript bo))" multiplied by
"S(subscript p)G(subscript b)"; and, the denominator is
equal to 2.3 multiplied by "Q":
Where "r" is equal to the radius of endangering influence from injection well (length);

"k" is equal to hydraulic conductivity of the injection zone (length/time);

"H" is equal to thickness of the injection zone (length);

"t" is equal to time of injection (time);

"S" is equal to storage coefficient (dimensionless);

"Q" is equal to injection rate (volume/time);

"h(subscript bo)" is equal to observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water;

"h(subscript w)" is equal to hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water;

"S(subscript p)G(subscript b)" is equal to specific gravity of fluid in the injection zone (dimensionless);

and,

"pi" is equal to 3.142 (dimensionless)."

"On page fifteen, subsection §46-9-6.2.c.1. by striking out the words "Class II" and inserting in lieu thereof the words "Class 2";

"On page fifteen, subsection §46-9-6.2.c.2. by striking out the words "Class III" and inserting in lieu thereof the words "Class 3";

"On page fifteen, subsection §46-9-7.1. after the words "using any" by striking out the words "Class I" and inserting in lieu thereof the words "Class 1";

"On page sixteen, subsection §46-9-7.3.b. after the words "comply with the" by striking out the word "requirements" and inserting in lieu thereof the word "requirements";

"On page eighteen, subsection §46-9-8.2.c. after the word "All" by striking out the words "Class I" and
inserting in lieu thereof the words "Class 1."

"On page nineteen, subsection §46-9-8.2.e. after the words "construction of new" by striking out the words "Class I" and inserting in lieu thereof the words "Class 1"

"On page twenty-five, subsection §46-9-10.2. after the words "construction of" by striking out the words "Class III" and inserting in lieu thereof the words "Class 3."

"On page twenty-six, subsection §46-9-10.2.a. after the words "All new" by striking out the words "Class III" and inserting in lieu thereof the words "Class 3."

"On page twenty-six, subsection §46-9-10.2.b. after the words "parts of" by striking out the words "Class III" and inserting in lieu thereof the words "Class 3."

"On page twenty-six, subsection §46-9-10.2.c. after the words "construction of the new" by striking out the words "Class III" and inserting in lieu thereof the words "Class 3."

"On page twenty-six, subsection §46-9-10.2.c. after the words "each type of" by striking out the words "Class III" and inserting in lieu thereof the words "Class 3."

"On page thirty, subsection §46-9-13.2.d.3. after the words "Chief reported" by striking out the word "wit" and inserting in lieu thereof the word "with"

"On page forty, subsection §46-9-13.2.d.3. after the words "than one" by striking out the word "(10" and inserting in lieu thereof the word "(1)"

"On page forty, subsection §46-9-13.3.b. after the words "application to" by striking out the word "he" and inserting in lieu thereof the word "the"

"On page forty-six, subsection §46-9-13.9.a. after the words "drinking water" by striking out the words "('corrective action')" by inserting in lieu thereof the words "('corrective action')"

"On page fifty-eight, subsection §46-9-13.18.a.3.ii. after the words "stayed State" by striking out the word "promulgation" and inserting in lieu thereof the word "promulgated"
And,

"On page sixty, subsection §46-9-13.22.b.1. after the word "gradient" by inserting a comma."

(p) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the water resources board (national pollutant discharge elimination system (NPDES)), are authorized with the amendments set forth below:

"On page seventy-two, subsection §46-2-14.1 after the word "dischargers" by striking the remainder of the sentence and inserting in lieu thereof the words "and POTWs shall comply with the requirements of the Clean Water Act and the regulations at 40 CFR 403 promulgated thereunder."

"On page seventy-two, subsection §46-2-14.1.a.5. after the words "accommodate such heat." by inserting a new subsection §46-2-14.1.a.6. to read as follows:

6. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through."

(q) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of February, one thousand nine hundred ninety-three, relating to the water resources board (requirements governing groundwater standards), are authorized.

(r) The legislative rules filed in the state register on the twenty-first day of August, one thousand nine hundred ninety-one, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of February, one thousand nine hundred ninety-three, relating to the water resources board (requirements governing water quality standards), are authorized with the amendment set forth
below:

On page nineteen, by striking out all of subdivision 8.2.c. and inserting in lieu thereof a new subdivision 8.2.c, to read as follows:

"A final determination on the critical design flow for carcinogens is not made in this rule, in order to permit further review and study of that issue. Following the conclusion of such review and study, the Legislature may again take up the authorization of this rule for purposes of addressing the critical design flow for carcinogens: Provided, That until such time as the review and study of the issue is concluded or until such time as the Legislature may again take up the authorization of this rule, the regulatory requirements for determining effluent limits for carcinogens shall remain as they were on the date this rule was proposed."

§64-3-11. Economic development authority.

(a) The legislative rules filed in the state register on the twenty-sixth day of May, one thousand nine hundred eighty-nine, modified by the West Virginia economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety, relating to the West Virginia economic development authority (general administration of the West Virginia capital company act and the establishment of the application procedures to implement the act), are authorized.

(b) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred ninety-one, modified by the West Virginia economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of August, one thousand nine hundred ninety-two, relating to the West Virginia economic development authority (general administration of the West Virginia capital company act: establishment of the application procedures to implement the act), are authorized.
§64-3-12. Solid waste management board.

(a) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (development of comprehensive litter and solid waste control plans), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (disbursement of loans and grants to governmental agencies for the acquisition or construction of solid waste disposal projects), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (establishment of fee schedule and cost allocation applicable to the issuance of bonds by the board), are authorized.

(d) The legislative rules filed in the state register on the twenty-third day of October, one thousand nine hundred ninety, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of January, one thousand nine hundred ninety-one, relating to the solid waste management board (development of commercial solid waste facility siting plans), are authorized.

(e) The legislative rules filed in the state register on
the eighteenth day of September, one thousand nine hundred ninety-two, modified by the solid waste management board to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of February, one thousand nine hundred ninety-three, relating to the solid waste management board (rules and regulations for the disbursement of grants to solid waste authorities), are authorized.

§64-3-13. Board of manufactured housing construction and safety.

(a) The legislative rules filed in the state register on the twenty-third day of May, one thousand nine hundred ninety, modified by the board of manufactured housing construction and safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety, relating to the board of manufactured housing construction and safety (licensing, fees, standards, complaint handling, sanctions, recovery fund, designation of board as state administrative agency under the national manufactured housing construction and safety standards act of 1974), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred ninety-two, modified by the board of manufactured housing construction and safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of December, one thousand nine hundred ninety-two, relating to the board of manufactured housing construction and safety (West Virginia manufactured housing construction and safety standards act), are authorized.

§64-3-14. Division of tourism and parks.

(a) The legislative rules filed in the state register on the twenty-sixth day of April, one thousand nine hundred ninety-one, modified by the division of tourism and parks to meet the objections of the legislative rule-
making review committee and refiled in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the division of tourism and parks (public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks), are authorized with the amendment set forth below:

On page five, subsection 2.21 by striking out the words "and Tomlinson Run".

(b) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of tourism and parks to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred ninety-two, relating to the division of tourism and parks (public use of West Virginia state parks, state forests and state hunting and fishing areas under the division of tourism and parks), are authorized with the amendment set forth below:

"On page five, section 2.21, after the words 'posted signs' by striking out the period and inserting a colon and the words 'Provided, That any person, group or association sponsoring a private party at the restaurant at Chief Logan State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at the private party as long as the party is not open to the general public.'"

§64-3-15. Public energy authority.

(a) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the public energy authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the public energy authority (establishment of rules and procedure for the exercise of the powers of eminent domain for qualified projects), are authorized.
(b) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the public energy authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the public energy authority (establishment of a fee schedule and cost allocations to the issuance of bonds by the West Virginia public energy authority), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of forestry to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-three, relating to the division of forestry (sediment control during commercial timber-harvesting operations - logger certification), are authorized.

§64-3-16. Division of forestry.

(a) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of forestry to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-three, relating to the division of forestry (sediment control during commercial timber-harvesting operations - licensing), are authorized with the amendment set forth below:
On page five, by striking out all of subsection 6.7.

§64-3-17. Division of environmental protection.

(a) The legislative rules filed in the state register on the eleventh day of October, one thousand nine hundred ninety-one, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of November, one thousand nine hundred ninety-two, relating to the division of environmental protection (operator's designation of bona fide future use of oil and gas wells - qualification for inactive status), are authorized.

(b) The legislative rules filed in the state register on the third day of September, one thousand nine hundred ninety-two, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (oil and gas wells and other wells), are authorized.

(c) The legislative rules filed in the state register on the third day of September, one thousand nine hundred ninety-two, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (abandoned wells), are authorized.

(d) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (underground storage tank assessment fees), are authorized.
The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the division of environmental protection (underground storage tanks), are authorized.

The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (hazardous waste management), are authorized.

The legislative rules filed in the state register on the third day of March, one thousand nine hundred ninety-two, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (groundwater protection act fee schedule), are authorized.

§64-3-18. Director of the office of miners’ health, safety and training.

The legislative rules filed in the state register on the thirteenth day of November, one thousand nine hundred ninety-two, modified by the director of the office of miners’ health, safety and training to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of February, one thousand nine hundred ninety-three, relating to the director of the office of miners’ health, safety and training (rules and regulations governing the standards for certification of blasters for surface coal mines and surface areas of underground coal mines), are authorized.

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.
§64-5-1. Department of health and human resources.

(a) The legislative rules filed in the state register on the twenty-second day of January, one thousand nine hundred ninety, modified by the secretary of the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety, relating to the secretary of the department of health and human resources (implementation of omnibus health care act), are authorized.

(b) The legislative rules filed in the state register on the twenty-second day of January, one thousand nine hundred ninety, modified by the secretary of the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety, relating to the secretary of the department of health and human resources (implementation of omnibus health care act payment provisions), are authorized.

(c) The legislative rules filed in the state register on the twentieth day of March, one thousand nine hundred ninety-two, modified by the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-two, relating to the department of health and human resources (infectious medical waste), are authorized with the amendments set forth below:

"On page seventeen, subsection 8.2, by after the words '(45) days.' by inserting the following language: 'Facilities that treat infectious medical waste on-site shall not store the infectious medical waste more than thirty (30) days.';"
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On page twenty-one, subdivision 10.1.2., by after the words 'disposed of' striking out the words 'as solid waste' and inserting in lieu thereof the words 'in the same manner as ash from solid waste incineration and as provided in subdivision 10.2.5. of this rule.:

On page twenty-six, subsection 11.7., by after the words 'permit to' inserting the words 'own, operate and':

On page twenty-six, subsection 11.7., by striking out the word 'publish' and inserting in lieu thereof the words 'announce the public hearing required by subsection 11.9. of this rule by publishing';

On page twenty-six, by further amending subsection 11.7. by adding thereto a new subdivision, designated subdivision 11.7.1.4. to read as follows: 'The announcement of the date, time and place where the hearing is to be conducted, shall be made at least fourteen (14) but not more than forty-five (45) days prior to the hearing;

And,

On page twenty-six, subsection 11.9, by after the words 'proposing to' inserting the words 'own, construct and'.

(d) The legislative rules filed in the state register on the third day of September, one thousand nine hundred ninety-two, modified by the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of January one thousand nine hundred ninety-three, relating to the department of health and human resources (residential board and care homes), are authorized.

§64-5-2. State board of health; division of health.

(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations), are authorized.

(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health
(laboratory reporting of syphilis and gonorrhea), are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories), are authorized.

(f) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (permit fees), are authorized.

(g) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (certificate of need), are authorized.

(h) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred eighty-two, relating to the state board of health (eyes of newborn children), are authorized.

(i) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home
licensure), are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word "and" at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): "(h) One (1) member who represents social work services."

(j) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (guardianship service), are authorized with the exception of section 9.3 of those rules which may not be promulgated.

(k) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (controlled substances research program and certification), are authorized.

(l) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-two, relating to the state board of health (chemical test for intoxication), are authorized.

(m) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (birthing center licensure), are authorized.

(n) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the state board of health (licensure of behavioral health centers), are authorized with the amendment set forth below:

Page 45, §12.8.2. In the first sentence delete the words "without delay" and insert in lieu thereof the words "within twenty-four hours after receiving a report of a complaint."

(o) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of
85 health (procedures for recovery of corneal tissue for
86 transplant), are authorized.
87
88 (p) The legislative rules filed in the state register on
89 the seventh day of September, one thousand nine
90 hundred eighty-three, relating to the state board of
91 health (well water regulations), are authorized with the
92 amendments set forth below:
93
94 §4.1. In the first sentence delete the word “obtaining”
95 and insert in lieu thereof the words “applying for”. In
96 the second sentence after “4.3” add “and 4.5.”
97
98 §4.2. At the end of the second sentence, strike the
99 period and add the words “unless emergency conditions
100 prevail as noted under §4.3.”
101 With the balance of §4.2 and create a new §4.3 with
102 the following changes: In the first sentence delete the
103 word “deadline” and insert in lieu thereof the word
104 “requirements.” Add after the first sentence the
105 sentence, “Emergency conditions and unavoidable
106 circumstances are those conditions involving acts of God,
107 water outages or disruption of water service, unsatisfac-
108 tory water quality or quantity or public health threats.”
109 In the third sentence delete the word “exceed” and insert
110 in lieu thereof the words “be made in excess of.”
111 Renumber §4.3 as §4.4 and add the following two
112 sentences at the end of the section: “Such standards shall
113 constitute the minimum standards for the installation,
114 the alteration or the deepening of water wells. Any plans
115 approved by the director pursuant to these regulations
116 shall be in substantial compliance with the heretofore
117 mentioned standards.”
118
119 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
120 as §4.8 and §4.8 as §4.9.
121 And,
122
123 §5.2. Delete the words “four (4)” and insert in lieu
124 thereof the words “two (2)” and delete the words “active,
125 continuous.”
126
127 (q) The legislative rules filed in the state register on
128 the third day of October, one thousand nine hundred
eighty-four, relating to the state board of health (trauma
center or facility designation), are authorized.

(r) The legislative rules filed in the state register on
the twenty-first day of December, one thousand nine
hundred eighty-four, relating to the state board of
health (reportable diseases), are authorized.

(s) The legislative rules filed in the state register on
the twenty-first day of December, one thousand nine
hundred eighty-four, relating to the state board of
health (licensure of medical adult day care centers), are
authorized.

(t) The legislative rules filed in the state register on
the third day of October, one thousand nine hundred
eighty-four, relating to the state board of health (retail
food store sanitation), are authorized.

(u) The legislative rules filed in the state register on
the seventeenth day of December, one thousand nine
hundred eighty-five, modified by the director of health
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifteenth day of January, one thousand nine hundred
eighty-six, relating to the director of health (adult group
home licensure), are authorized.

(v) The legislative rules filed in the state register on
the twenty-ninth day of October, one thousand nine
hundred eighty-five, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-seventh day of December, one
thousand nine hundred eighty-five, relating to the state
board of health (licensure of hospice care programs), are
authorized.

(w) The legislative rules filed in the state register on
the thirty-first day of October, one thousand nine
hundred eighty-five, modified by the director of health
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-seventh day of December, one thousand nine
hundred eighty-five, relating to the director of health
(rules governing emergency medical services), are authorized with the amendments set forth below:

On page 3, §3.9 shall read as follows:

"3.9 Quorum — When applied to the EMSAC, a majority of the members thereof, except in the instance when at any meeting of the EMSAC, where a quorum is not present and the director causes to be deposited in the United States mail, postage prepaid, return receipt requested, to each member of the EMSAC within three days, a notice calling a meeting of the EMSAC at some convenient place in the state of West Virginia two weeks after the meeting at which no quorum was present. Quorum means any number of members of the EMSAC who attend such subsequent meeting. Any member missing two consecutive meetings shall be removed from the EMSAC."

On page 6, §4.7.1 shall be deleted in its entirety;

And,

On page 7, §4.10.1 shall read as follows:

"4.10.1 every applicant for certification as an EMSP prior to such certification, shall demonstrate his or her knowledge and ability by undergoing a written examination and a demonstration of skills, and by attaining a passing score on the same. Passing score shall be the same for all testing programs."

(x) The legislative rules filed in the state register on the fifth day of September, one thousand nine hundred eighty-five, relating to the state department of health (revising the list of hazardous substances), are authorized.

(y) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-six, modified by the director of the department of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the director of the department of health (hazardous material treatment
The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (methods and standards for chemical tests for intoxication), are authorized.

The legislative rules filed in the state register on the twenty-first day of November, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (licensure of behavioral health centers), are authorized.

The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure), are authorized.

The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure and allowing hospitals to have licensed hospital professionals, other than licensed physicians, on their medical staff), are authorized.

The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet
the objections of the legislative rule-making review
commitee and refiled in the state register on the
twenty-third day of December, one thousand nine
hundred eighty-six, relating to the state board of health
(vital statistics), are authorized.

(ee) The legislative rules filed in the state register on
the eleventh day of September, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (immunization criteria for
transfer students), are authorized.

(ff) The legislative rules filed in the state register on
the sixteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (hazardous substances), are
authorized with the amendment set forth below:

Page 33, section 8, line 8 (unnumbered), by adding at
the end of section 8 the following proviso: "Provided,
That the owner's or operator's submissions are based on
the threshold reporting requirements contained in
section 5, article 31, chapter 16."

(gg) The legislative rules filed in the state register on
the eighteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (trauma center or facility desig-
nation), are authorized.

(hh) The legislative rules filed in the state register on
the twenty-second day of June, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the fifteenth day of September, one thousand
nine hundred eighty-eight, relating to the state board of
health (licensure of hospice care programs), are
authorized.

(ii) The legislative rules filed in the state register on
the fifteenth day of September, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the third day of November, one thousand
nine hundred eighty-eight, relating to the state board of health (water wells), are authorized with the amend-
ment set forth below:

On page 2, §3.8, shall read as follows:

"3.8 Water Well — Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include, but are not limited to: A water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under chapter 22, 22a or 22b of the code."

(jj) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (plumbing requirements), are authorized.

(kk) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (public water supply operators), are authorized.

(II) The legislative rules filed in the state register on the nineteenth day of October, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred eighty-eight, relating to the state board of health (volatile synthetic organic chemicals), are authorized.
(mm) The legislative rules filed in the state register on the second day of January, one thousand nine hundred ninety, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred ninety, relating to the division of health (asbestos abatement licensing), are authorized.

(nn) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-nine, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred eighty-nine, relating to the division of public health (AIDS-related medical testing and confidentiality), are authorized.

(oo) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-nine, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the state board of health (nursing home licensure), are authorized.

(pp) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-nine, relating to the state board of health (licensure of behavioral health centers), are authorized.

(qq) The legislative rules filed in the state register on the twenty-eighth day of December, one thousand nine hundred eighty-nine, relating to the state board of health (methods and standards for chemical test for intoxication), are authorized.

(rr) The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred ninety, modified by the board of health to meet the objections of the legislative rule-making review commit-
tee and refiled in the state register on the fifth day of September, one thousand nine hundred ninety, relating to the board of health (fees for permits), are authorized with the amendments set forth below:

On page two, subsection 3.6, by striking out all of the subsection and renumbering the subsequent subsections.

On page four, subsection 5.4, by striking out all of the subsection and renumbering the subsequent subsections.

And,

On page six, Table 64-30c, by striking out Table 64-30c and inserting in lieu thereof a new table, to read as follows:

**TABLE 64-30C.**

**Individual On-Site and Innovative Alternative Type Sewage System Permit Fees**

<table>
<thead>
<tr>
<th>Type of System</th>
<th>Fees for Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I (New or Modified)</td>
<td>$100</td>
</tr>
<tr>
<td>Class II (New or Modified)</td>
<td>$100</td>
</tr>
<tr>
<td>Home Aeration Unit</td>
<td>$100</td>
</tr>
</tbody>
</table>

(ss) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred ninety, modified by the board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the board of health (public water systems, bottled water and laboratory certification), are authorized.

(tt) The legislative rules filed in the state register on the thirteenth day of December, one thousand nine hundred ninety, modified by the board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the board of health (vital statistics), are authorized.
(uu) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred ninety-one, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the division of health (fees for services), are authorized.

(vv) The legislative rules filed in the state register on the twenty-eighth day of December, one thousand nine hundred ninety, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, relating to the division of health (specialized health procedures), are authorized.

(ww) The legislative rules filed in the state register on the second day of January, one thousand nine hundred ninety-one, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of May, one thousand nine hundred ninety-one, relating to the division of health (emergency medical services), are authorized.

(xx) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred ninety-one, modified by the secretary of the department of health and human resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of January, one thousand nine hundred ninety-two, relating to the secretary of the department of health and human resources (retail food store sanitation), are authorized.

(yy) The Legislature hereby authorizes and directs the division of health to promulgate the legislative rule relating to swimming pools and bathing beaches, 64 CSR 16, effective the fifth day of May, one thousand nine hundred eighty, with the amendment set forth below:

On page five, section 11.3 by striking out the period following the word “beach” and adding the following:
“Provided, That at hotels, motels, apartment complexes, or condominiums which have swimming pools of five feet or less in depth at the deepest point, employment of lifeguards is recommended but not mandatory, whether or not the establishment charges an admission fee (gate receipt, annual pass or membership dues). If no lifeguards are employed, the management shall post a sign in a prominent location near the swimming pool stating “SWIM AT YOUR OWN RISK—ALL PERSONS UNDER THE AGE OF 14 MUST BE ACCOMPANIED BY AN ADULT.”

(zz) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred ninety-two, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-two, relating to the division of health (trauma center or facility designation), are authorized.

(aaa) The legislative rules filed in the state register on the second day of November, one thousand nine hundred ninety-two, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of health (primary care center seed money grants), are authorized.

(bbb) The legislative rules filed in the state register on the second day of November, one thousand nine hundred ninety-two, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the division of health (primary care center uncompensated care grants), are authorized.

§64-5-3. Health care cost review authority.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost
review authority (limitation on hospital gross patient revenue), are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases), are authorized.

(c) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the health care cost review authority (implementation of the utilization review and quality assurance program), are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred eighty-four, relating to the health care cost review authority (hospital cost containment methodology), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services), are authorized.

(f) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-eight, relating to the West Virginia health care cost review authority (exemptions from certificate of need review), are authorized.

(g) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the health care cost
review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the health care cost review authority (financial disclosure), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-nine, relating to the West Virginia health care cost review authority (expedited review for rate changes), are authorized with the amendments set forth below:

On page 5, Section 4.1, after the words: "affected by the increase." by inserting the following language: "The hospital shall also reconcile any excesses in gross revenue, gross patient revenue, gross inpatient revenue or charges per discharge. Within fifteen days of submission the Authority shall inform the hospital if it accepts the justification for excesses provided by the hospital."

And,

On page 6, section 4.2, after the words "the excess in gross outpatient revenue" by striking the period and inserting the following:

"or if any excesses in the above categories (1 through 4) have been sufficiently justified to the Authority as required in Section 4.1 of this rule."

(i) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred eighty-nine, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-nine, relating to the West Virginia health care cost review authority (exemp-
tion for conversion of acute care beds to skilled nursing care beds), are authorized.

(j) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred ninety, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety, relating to the health care cost review authority (exemption for shared services), are authorized.

(k) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred ninety, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of September, one thousand nine hundred ninety, relating to the health care cost review authority (health services offered by health professionals), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred ninety, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-one, relating to the West Virginia health care cost review authority (conversion of acute care beds to one hundred skilled nursing care beds), are authorized.

(m) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of November, one thousand nine hundred ninety-one, relating to the health care cost review authority (health services offered by health professionals), are authorized.

(n) The legislative rules filed in the state register on
the first day of May, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of July, one thousand nine hundred ninety-one, relating to the health care cost review authority (review for automatic rate changes), are authorized.

(o) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred ninety-one, relating to the health care cost review authority (certificate of need), are authorized.

(p) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred ninety-one, relating to the health care cost review authority (exemption for shared services), are authorized with the amendments set forth below:

On page six, subsection 4.4, after the words “Charleston newspapers”, by striking out the word “and” and inserting in lieu thereof a comma;

On page six, subsection 4.4, after the words “State Register” by adding the words “and a newspaper of general circulation within the area of the facility.”;

On page seven, subsection 4.5, after the words “notice in the Saturday Charleston newspapers”, by striking out the word “and” and inserting in lieu thereof a comma;

On page seven, subsection 4.5, before the words “the state agency shall within ten”, by striking out the comma and inserting the words “and a newspaper of general circulation within the area of the facility”;

And,
On page seven, subsection 4.5, after the words “decision in the Saturday Charleston newspapers”, by striking out the remainder of the sentence and inserting in lieu thereof the following: “, the state register and a newspaper of general circulation within the area of the facility.”.

(q) The legislative rules filed in the state register on the twenty-seventh day of June, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-one, relating to the health care cost review authority (development of life care retirement centers), are authorized.

(r) The legislative rules filed in the state register on the twenty-seventh day of June, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-one, relating to the health care cost review authority (conversion of acute care beds to skilled nursing care beds), are authorized.

(s) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the health care cost review authority (financial disclosure), are authorized with the amendment set forth below:

On page eighteen, after subsection 5.3, by adding thereto a new subsection, designated subsection 5.4, to read as follows:

“5.4 A covered facility which is a nonprofit, community-based primary care center providing primary care services without regard to ability to pay which provides the board with a year-end audited financial statement
preparing in accordance with generally accepted auditing standards and with governmental auditing standards issued by the comptroller general of the United States shall be considered to have complied with the disclosure requirements of sections 3 and 4 of this rule."

(t) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-two, relating to the health care cost review authority (exemption for birthing centers), are authorized.

(u) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-two, relating to the health care cost review authority (exemption for primary care hospitals), are authorized.

(v) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-two, relating to the health care cost review authority (exemption for new primary care services), are authorized.

(w) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-two, modified by the health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of February, one thousand nine hundred ninety-three, relating to the health care cost review authority (temporary approval of discount
contracts for border hospitals), are authorized.


(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the workers’ compensation commissioner (employers’ excess liability fund), are authorized.

(b) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, relating to the workers’ compensation commissioner (time limits for the administrative proceedings of adjudications and awards), are authorized.

(c) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers’ compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the workers’ compensation commissioner (self-insured employers), are authorized.

(d) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers’ compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-five, relating to the workers’ compensation commissioner (payment of attorney’s fees), are authorized.

(e) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers’ compensation commissioner (standards for medical examination in occupational pneumoconiosis claims), are authorized with the amendments set forth below:

On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:
“When two or more ventilatory function tests performed in reasonably close proximity in time produce differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.”

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.”

And,

On page 7, paragraph (11) is amended to read as follows:

“(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by ‘standardizing’ for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the
average altitude of Charleston, because the relationship
of barometric pressure (altitude) and alveolar oxygen is
approximately linear up to 4,000 feet as long as the
subject breathes room air.

As an example, Bluefield is located approximately
2,600 feet above sea level. Charleston is approximately
600 feet above sea level. Thus, arterial oxygen values
obtained in Bluefield should have 6.67 mmHg added to
them before applying the table to them to obtain
‘percent impairment.’ The calculations are as follows:

‘Bluefield (2,600’) minus Charleston (600’) equals
2,000’
differential 2,000’ divided by 300’ altitude equals 6.67
6.67 multiplied by 1 mmHg per 300’ altitude equals
6.67 mmHg.’”

(f) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
eighty-five, modified by the workers’ compensation
commissioner to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifteenth day of January, one thousand
nine hundred eighty-six, relating to the workers’
compensation commissioner (administration of the coal-
workers’ pneumoconiosis fund), are authorized.

(g) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred eighty-nine, modified by the division of
workers’ compensation to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the tenth day of January, one
thousand nine hundred ninety, relating to the division
of workers’ compensation (enforcement of reporting and
payment requirements), are authorized.

(h) The legislative rules filed in the state register on
the sixteenth day of January, one thousand nine hundred
ninety, modified by the division of workers’ compensa-
tion to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-third day of January, one thousand nine hundred
ninety, relating to the division of workers’ compensation
(self-insured employers), are authorized.

(i) The legislative rules filed in the state register on
the eighteenth day of September, one thousand nine
hundred ninety-two, modified by the workers’ compen-
sation fund to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-first day of January, one thou-
sand nine hundred ninety-three, relating to the workers’
compensation fund (self-insured employers), are
authorized.

(j) The legislative rules filed in the state register on
the eighteenth day of September, one thousand nine
hundred ninety-two, modified by the division of workers’
compensation to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-first day of January, one thou-
sand nine hundred ninety-three, relating to the division
of workers’ compensation (protocols and procedures for
performing medical evaluations in noise-induced hear-
ing loss claims), are authorized.

(k) The Legislature hereby authorizes and directs the
division of workers’ compensation to amend its rules
relating to enforcement of reporting and payment
requirements which were filed in the code of state
regulations (85 CSR 11) on the thirtieth day of March,
one thousand nine hundred ninety, with the amend-
ments set forth below:

On page one, by striking out all of subsection 2.8 and
inserting in lieu thereof a new subsection 2.8 to read as
follows:

“2.8 The term “employer” has the meaning ascribed
to that term by West Virginia Code, §23-2-1, which
includes, but is not limited to, any individual, firm,
partnership, limited partnership, copartnership, joint
venture, association, corporation, organization, receiver,
estate, trust, guardian, executor, administrator, or any
other entity regularly employing another person or
persons for the purpose of carrying on any form of
industry, service or business in this state.”; and
On page 3, after subsection 3.8, by inserting a new subsection 3.9, to read as follows:

"3.9 Any person required to collect, truthfully account for, and pay over to the commissioner any premium, premium deposit, interest, or penalty pursuant to the provisions of West Virginia Code, §23-2-1, et. seq., who willfully fails to collect the premium, premium deposit, interest or penalty, or truthfully account for and pay over the premium, premium deposit, interest or penalty, or willfully attempts in any manner to evade or defeat any premium, premium deposit, interest or penalty or the payment thereof, is, in addition to other penalties provided by law, liable for a penalty equal to the total amount of the premium, premium deposit, interest or penalty evaded, or not collected, or not accounted for and paid over. The penalty is a personal obligation of the responsible person immediately due and owing to the commissioner and, in addition thereto, is a lien enforceable against all the property of the person."

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-2. Fire commission.
§64-6-3. Jail and correctional facility standards commission.
§64-6-6. State emergency response commission.

§64-6-2. Fire commission.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state fire commission (state fire code), are authorized with the amendments set forth below:

On page 1, section 106, line 1, after the word “to” add the words “personal care homes caring for five or less patients or”;

And,

On page 26, section 11.06 (3) A. (3), strike the period at the end of the sentence and add the words “except for existing sleeping rooms owned by the state and located in dormitories or state parks.”
(b) The legislative rules filed in the state register on the first day of August, one thousand nine hundred eighty-six, modified by the state fire commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred eighty-six, relating to the state fire commission (hazardous substance emergency response training program), are authorized.

(c) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-eight, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the state fire commission (state building code), are authorized.

(d) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety, relating to the state fire commission (electrician licensing), are authorized with the following amendment:

On page 6, section 3.03, by deleting all of subsection (A) and inserting in lieu thereof the following:

"(A) Any person who performs electrical work with respect to any property owned or leased by such person. For purposes of this subparagraph: (1) ‘property owner’ includes the property owner, lessee, and his or her maintenance personnel; and, (2) ‘performs electrical work’ includes routine maintenance, repairs, and improvements to existing structures; or."

(e) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the
twenty-fifth day of October, one thousand nine hundred eighty-nine, relating to the state fire commission (fees for services rendered), are authorized with the amendment set forth below:

On page 1, section 2.1(G), by striking out the word “underground.”

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-nine, relating to the state fire commission (fire code), are authorized.

(g) The legislative rules filed in the state register on the sixteenth day of July, one thousand nine hundred ninety, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety, relating to the state fire commission (state building code), are authorized with the amendments set forth below:

On page two, subsection 4.1 after the words “The BOCA National Property Maintenance Code, Third Edition, 1990” insert the following “: Provided, That section PM-104.4 Right of Entry may be adopted or rejected at the option of the local jurisdiction.”

And,

On page two, subsection 4.1 by adding thereto a new subdivision, designated subdivision 4.1.1 to read as follows:

“4.1.1 The following structures shall not be subject to inspection by local jurisdictions:

4.1.1.a Group U utility structures and storage sheds comprising an area of not more than 150 square feet which have no plumbing or electrical connections and are utilized only for residential storage purposes.”
Examples include storage sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture) Group U utility structures do not include those utility structures and storage sheds which have plumbing or electrical connections or are used for the storage of explosives or other hazardous or explosive-type materials.

(h) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-one, relating to the state fire commission (state fire code), are authorized.

(i) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred ninety-two, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of November, one thousand nine hundred ninety-two, relating to the state fire commission (electrician licensing), are authorized.

§64-6-3. Jail and correctional facility standards commission.

(a) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-seven, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of jails), are authorized.

(b) The legislative rules filed in the state register on the ninth day of May, one thousand nine hundred eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and
maintenance of holding facilities), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of March, one thousand nine hundred eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of prisons), are authorized.

(d) The Legislature hereby authorizes and directs the jail and prison standards commission to amend its rules relating to West Virginia minimum standards for construction, operation and maintenance of jails which were filed in the code of state regulations (95 CSR 1) on the fifth day of April, one thousand nine hundred eighty-eight, with the following amendment set forth below:

On page 7, §8.10 by striking out in the first sentence, after the word "house", the following words: "no less than four (4)" and

On page 30 by adding a new section 17.21 to read as follows:

"17.21 Visitation to Home County. To the extent that the previous subsections provide requirements for visitation with inmates housed in regional jail facilities, it is the intent that such requirements apply only to visitation provided in a regional jail facility. When visitation with family and friends is required to be provided to a person incarcerated in a regional jail facility in a location other than the regional jail, the following provisions shall apply:

17.21.1 The regional jail need not assume the responsibility for transportation to the home county seat of a person incarcerated in the regional jail facility for visitation with their family and friends unless that person has had no visits from family and friends in the previous three months."
17.21.2 In providing any transportation under subsection 17.21.1 the regional jail has the right to schedule such transportation for visits with family and friends of the person incarcerated in a manner which would utilize to the utmost the regional jail’s regularly scheduled trips to each of the respective counties it serves, including the scheduling of round-trips, so long as a minimum of 30 minutes is available for visitation.

17.21.3 The regional jail need not assume any responsibility for transportation under subsection 17.21.1 when the distance from the regional jail to the respective county seat is less than two hours driving time.”

(e) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred ninety-one, modified by the jail and correctional facility standards commission to meet the objections of the legislative rule-making review committee and refilled in the state register on the ninth day of July, one thousand nine hundred ninety-two, relating to the jail and correctional facility standards commission (minimum standards for construction, operation and maintenance of jails), are authorized, with the following amendment:

On page 4, section 1.1, by striking everything after the word “Scope” and inserting in lieu thereof the following: “This legislative rule establishes minimum standards and procedures for new jail facilities completed after the fifth day of April, one thousand nine hundred eighty-eight, and shall serve only as guidelines for jail facilities that were in operation prior to fifth day of April, one thousand nine hundred eighty-eight.”

(f) The Legislature hereby authorizes and directs the jail and prison standards commission to amend its rules relating to West Virginia minimum standards for construction, operation and maintenance of holding facilities which were filed in the code of state regulations (95 CSR 3) on the twenty-seventh day of June, one thousand nine hundred eighty-nine, with the following amendment:
On page 30, by striking out all of §8.7, and renumbering the following subsections.

§64-6-6. State emergency response commission.

1 The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred ninety-one, modified by the state emergency response commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred ninety-two, relating to the state emergency response commission (SERC legislative rules), are authorized.

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-2. Insurance commissioner.

§64-7-3. Board of investments.

§64-7-5. Racing commission.

§64-7-6. Department of tax and revenue; division of tax; and state tax commissioner.

§64-7-2. Insurance commissioner.

(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-six, relating to the insurance commissioner (examiners' compensation, qualification and classification), are authorized.

(c) The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the insurance commissioner (West Virginia essential property insurance association), are authorized.
(d) The legislative rules filed in the state register on the twenty-ninth day of May, one thousand nine hundred eighty-seven, relating to the insurance commissioner (medical malpractice annual reporting requirements), are authorized.

(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine hundred eighty-seven, relating to the insurance commissioner (medical malpractice loss experience and loss expense reporting requirements), are authorized.

(f) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred eighty-eight, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the insurance commissioner (transitional requirements for the conversion of Medicare supplement insurance benefits and premiums to conform to Medicare program revisions), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of May, one thousand nine hundred eighty-nine, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-nine, relating to the insurance commissioner (insurance adjusters), are authorized.

(h) The legislative rules filed in the state register on the second day of February, one thousand nine hundred ninety, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of May, one thousand nine hundred ninety, relating to the insurance commissioner (accident and sickness rate filing), are authorized.
(i) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, modified by the insurance commissioner to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the ninth
day of October, one thousand nine hundred ninety,
relating to the insurance commissioner (group coordina-
tion of benefits), are authorized.

(j) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, modified by the insurance commissioner to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of January, one thousand nine hundred
ninety-one, relating to the insurance commissioner
(AIDS regulations), are authorized.

(k) The legislative rules filed in the state register on
the third day of December, one thousand nine hundred
ninety, relating to the insurance commissioner (health
insurance benefits for temporomandibular and cranio-
mandibular disorders), are authorized.

(l) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
ninety-one, modified by the insurance commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
thirteenth day of January, one thousand nine hundred
ninety-two, relating to the insurance commissioner
(guaranteed loss ratios as applied to individual sickness
and accident insurance policies), are authorized.

(m) The legislative rules filed in the state register on
the ninth day of August, one thousand nine hundred
ninety-one, modified by the insurance commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
thirteenth day of January, one thousand nine hundred
ninety-two, relating to the insurance commissioner
(examiners' compensation, qualifications and classifica-
tion), are authorized.

(n) The legislative rules filed in the state register on
the seventeenth day of July, one thousand nine hundred ninety-one, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred ninety-two, relating to the insurance commissioner (permanent regulations on Medicare supplement insurance), are authorized.

(o) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-one, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred ninety-two, relating to the insurance commissioner ("tail" malpractice insurance covering certain medical and allied health care providers), are authorized.

(p) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the insurance commissioner (regulation of credit life insurance and credit accident and sickness insurance), are authorized.

(q) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred ninety-two, relating to the insurance commissioner (filing fees for purchasing groups and for risk retention groups not chartered in this state), are authorized.

(r) The legislative rules filed in the state register on the fourteenth day of October, one thousand nine hundred ninety-two, relating to the insurance commissioner (group coordination of benefits), are authorized with the amendments set forth below:

"On page six, subsection 2.1.9., after the words 'If a person is covered by more than one employer group minimum benefits plan, the order of benefits determi-
nation rules of this regulation decide the order in which
their benefits are determined in relation to each other' by inserting a colon and the words 'Provided, That under the provisions of West Virginia Code §5-16-12(a), coverage issued pursuant to the Public Employees Insurance Act is secondary to an employer group minimum benefits plan and any other applicable health insurance coverage.'

(s) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-three, relating to the insurance commissioner (permanent regulations on medicare supplement insurance), are authorized.

(t) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-three, relating to the insurance commissioner (individual and employer group minimum benefits, accident and sickness insurance policies), are authorized with the amendments set forth below:

"On page two, subsection 3.2 by striking out the period and inserting the following: 'other than coverage issued pursuant to the Public Employees Insurance Act, as provided in West Virginia Code §5-16-12(a).'"

(u) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-three, relating to the insurance commissioner (long-term care insurance), are authorized.
(v) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-three, relating to the insurance commissioner (standards for uniform health care administration), are authorized.

§64-7-3. Board of investments.

(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (selection of state depositories for disbursement accounts through competitive bidding), are authorized.

(b) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (administration of the consolidated fund), are authorized.

(c) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred ninety, modified by the state board of investments to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the state board of investments (administration of the consolidated fund), are authorized.

(d) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred ninety, modified by the state board of investments to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety, relating to the state board of investments (administration of the consolidated pension fund), are authorized.

(e) The legislative rules filed in the state register on
30 the thirtieth day of November, one thousand nine
31 hundred ninety, modified by the state board of invest-
32 ments to meet the objections of the legislative rule-
33 making review committee and refiled in the state
34 register on the seventeenth day of May, one thousand
35 nine hundred ninety-one, relating to the state board of
36 investments (establishment of imprest funds), are
37 authorized.
38
39 (f) The legislative rules filed in the state register on
40 the thirtieth day of November, one thousand nine
41 hundred ninety, modified by the state board of invest-
42 ments to meet the objections of the legislative rule-
43 making review committee and refiled in the state
44 register on the seventeenth day of May, one thousand
45 nine hundred ninety-one, relating to the state board of
46 investments (administration of the consolidated pension
47 fund by the West Virginia state board of investments),
48 are authorized.
49
50 (g) The legislative rules filed in the state register on
51 the thirtieth day of November, one thousand nine
52 hundred ninety, modified by the state board of invest-
53 ments to meet the objections of the legislative rule-
54 making review committee and refiled in the state
55 register on the seventeenth day of May, one thousand
56 nine hundred ninety-one, relating to the state board of
57 investments (procedures for processing payments from
58 the state treasury), are authorized.
59
60 (h) The legislative rules filed in the state register on
61 the thirtieth day of November, one thousand nine
62 hundred ninety, modified by the state board of invest-
63 ments to meet the objections of the legislative rule-
64 making review committee and refiled in the state
65 register on the seventeenth day of May, one thousand
66 nine hundred ninety-one, relating to the state board of
67 investments (selection of state depositories for disburse-
68 ment accounts through competitive bidding), are
69 authorized.
70
71 (i) The legislative rules filed in the state register on
72 the thirtieth day of November, one thousand nine
73 hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (administration of the consolidated fund by
the West Virginia state board of investments), are
authorized.

(j) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (selection of state depositories for receipt
accounts), are authorized with the amendment set forth
below:

On page three, section four, by striking out the period
after the word "agency" and adding the words "but shall
select a depository in the same community or geogra-
phical area as the agency."

(k) The legislative rules filed in the state register on
the thirtieth day of November, one thousand nine
hundred ninety, modified by the state board of invest-
ments to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventeenth day of May, one thousand
nine hundred ninety-one, relating to the state board of
investments (procedures for deposit of moneys with the
board of investments and treasurer's office by state
agencies), are authorized.

(l) The legislative rules filed in the state register on
the sixth day of November, one thousand nine hundred
ninety-one, modified by the state board of investments
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-first day of August, one thousand nine hundred
ninety-two, relating to the state board of investments
(reporting of state debt to the West Virginia state board
of investments), are authorized.
§64-7-5. Racing commission.

(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 819), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(d) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(e) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) greyhound racing, are authorized with the amendment set forth below:

Following the word "Association" insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing, are
authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

(j) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing, are authorized.

(k) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing, are authorized.

(l) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing, are authorized.

(m) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 845) thoroughbred racing, are authorized.

(n) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 628), are authorized.

(o) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 672), are authorized.
(p) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 808), are authorized.

(q) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 843), are authorized.

(r) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 845-I), are authorized.

(s) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, one thousand nine hundred eighty-seven, relating to the West Virginia racing commission (greyhound racing), are authorized.

(t) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-seven, relating to the West Virginia racing commission (thoroughbred racing), are authorized with the amendment set forth below:

On page fifty-five, Section 61.3(f), by striking all of subsection (f) and inserting in lieu thereof the existing provisions of subsection (f) as contained in 178 CSR 1, which reads as follows:

“All moneys held by any licensee for the payment of
outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety (90) days after the close of the horse race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the Racing Commission within fifteen (15) days after the expiration of such ninety (90) day period and the licensee shall give such information as the Racing Commission may require concerning such outstanding and unredeemed tickets; viz. The outs ledger enumerating all outstanding tickets at the close of each meeting, to contain a record of all tickets redeemed in the ninety (90) day period following, together with all redeemed tickets which shall bear the stamp of the cashier(s) making redemption: A stamp indicating “Outs Ticket”. In addition, a statement to accompany said ledger and tickets, setting forth the quantity and amount of each denomination redeemed in the ninety (90) day period, with a grand total indicating the sum paid in “Outs”. This sum subtracted from the outs on the closing day to equal the remittance of the Association in settlement of the “Out” account for the meeting."

(u) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-eight, relating to the West Virginia racing commission (thoroughbred racing), are authorized.

(v) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-nine, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-nine, relating to the West Virginia racing commission (greyhound racing), are authorized.

(w) The legislative rules filed in the state register on the fourth day of March, one thousand nine hundred eighty-nine, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of June, one thousand nine hundred eighty-nine, relating to the West Virginia
racing commission (thoroughbred racing), are authorized.

(x) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-nine, relating to the West Virginia racing commission (greyhound racing), are authorized.

(y) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (thoroughbred racing), are authorized.

(z) The legislative rules filed in the state register on the twenty-ninth day of October, one thousand nine hundred ninety, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (greyhound racing), are authorized with the amendment set forth below:

On pages seventy-four-a through seventy-eight, section forty-five, by striking out all of subsection 45.38.

(aa) The legislative rules filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-one, modified by the racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, one thousand nine hundred ninety-one, relating to the racing commission (thoroughbred racing), are authorized.

(bb) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred ninety-one, relating to the West Virginia racing commission (greyhound racing), are authorized.

(cc) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine
hundred ninety-two, relating to the racing commission (pari-mutuel wagering), are authorized.

(dd) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of January, one thousand nine hundred ninety-three, relating to the racing commission (thoroughbred racing), are authorized.

(ee) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of January, one thousand nine hundred ninety-three, relating to the racing commission (greyhound racing), are authorized.

§64-7-6. Department of tax and revenue; division of tax; and state tax commissioner.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized with the amendments set forth below:

On page 8, section 11.04(b)(2), definition of “Active Mining Property,” at the end of the first paragraph following the period, by adding the following: “In the application of the herein provided valuation formula on ‘active mining property,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

On page 9, section 11.04(b)(3), definition of “Active Reserves,” at the end of the subsection, following the period, by adding the following: “In the application of the herein provided valuation formula on ‘active reserves,’ the appropriate formula calculation will be
based upon the actual market to which the coal from
that tract and seam is currently being sold, whether it
is ‘metallurgical’ or ‘steam’.”

On page 11, section 11.04(b)(11), definition of “Mine-
able Coal,” by striking the subsection and substituting
in lieu thereof the following: “(11) Mineable Coal. Coal
which can be mined under present day mining technol-
ogy and economics.”

On page 25, section 11.04(c)(2)(C), entitled “Property
Tax Component,” by striking the subsection and
inserting in lieu thereof the following: “(C) Property Tax
Component — This component will be derived by
multiplying the assessment rate by the statewide
average of tax rates on Class III property.”

On page 30, section 11.04(c)(4), entitled “Valuation of
Mined-Out/Unmineable/Barren Coal Properties,” by
striking the numbers “$5.00” and inserting in lieu
thereof the following: “$1.00.”

On page 31, section 11.04(c)(5)(B), by striking the
words and numbers “Five Dollars ($5.00)” and inserting
in lieu thereof the following: “One Dollar ($1.00).”

On page 53, section 11.05(h) by striking the symbol
and figures “($5.00)” and inserting in lieu the following:
“(1$1.00).”

On page 73, section 11.06(h) by striking the symbol
and figures “$5.00” and inserting in lieu the following:
“$1.00.”

On page 81, section 11.07(e)(15)(B)(4) at the end of the
second sentence remove the period after the word
“property” and insert the words “unless the land is used
for some other purpose in which case it will be taxed
according to its actual use.”

On page 86, section 11.07(k) delete all of subsection
(k).

On page 110, section 11.08(c)(4) by striking the symbol
and figures “$5.00” and inserting in lieu thereof the
following: “$1.00.”
On page 111, section 11.08(c)(5)(B) by striking the symbol and figures "$5.00" and inserting in lieu thereof the following: "$1.00."

And,

On page 115, section 11.09(a)(3) in the first sentence, insert after the word "land" the words "excluding farmland."

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, relating to the state tax commissioner (estimated personal income tax), are authorized with the amendments set forth below:

55.02(a)(2)(on page 182.2) line 18, after the word "profession" strike the words "on his own account" and the comma(.).

55.12(b)(1)(page 182.35) at the end of the section, change the period to a comma, and add the following language: "and in the case of a court appointed agent, a copy of the court order of appointment is sufficient."

And,

55.12(c)(page 182.36) after the word "for," strike the word "erroneous."

(c) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of November, one thousand nine hundred eighty-four, and on the twenty-first day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (estimated corporation net income tax), are authorized.

(d) The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal), are authorized.
and directed to be promulgated with the following amendments:

Title page, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, TABLE OF CONTENTS, Section 10; following the words “Valuation of Farmland” add the words “and of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARMLAND” insert the words “AND STRUCTURES SITUATED THEREON.”

Page 10.1, Section 10, Title; following the word “Farmland” add the words “and Structures Situated Thereon.”

Page 10.1, Section 10.01(b); following the word “farmland” insert the words “and structures situated thereon.”

Page 10.2, Section 10.02(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following the word “farmland” insert the words “and structures situated thereon.” Delete the words “for purposes of the statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add “or the incapability to be adapted to alternative uses.”

Page 10.9, Section 10.04(6), first sentence; following the words “land currently being used” insert the words “as part of a farming operation.”

Page 10.9, Section 10.04(6), following the last sentence; add the sentence “For the purposes of this
definition, 'contiguous tracts' are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan."

Page 10.10, Section 10.04(8), is amended to read in its entirety as follows:

"(8) Farm buildings. — The term 'farm buildings' shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters furnished farm employees without rent as a part of the terms of their employment."

Page 10.11, Section 10.04; delete the word "November" and insert in lieu thereof the word "September." Delete the period following the word "valuation" and add the words, "for the assessment year beginning July first of each year."

Page 10.11, Section 10.04, insert the following subdivision: "(12) Application Form: The application form required to be filed with the assessor on or before September first of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify 'farm use' classification for assessment purposes." Renumber the subdivisions of Section 10.04 following the new 10.04(12); formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29), respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words "woodland products" insert a comma and the words "such as nuts or fruits harvested" and add a comma following the words "human consumption" on Page 10.15.

Page 10.16, Section 10.05, subsection (a), following the words "land is used for farm purposes" by striking the period and inserting in lieu thereof a colon and the following: "Provided, That the true and actual value of all farm used, occupied and cultivated by their owners
or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations."

Page 10.16, Section 10.05(b), first clause; following the words "following factors shall be" insert the words "indicative of but not conclusive" and delete the word "considered."

Page 10.16, Section 10.05(b)(2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05(b)(7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices ‘custom farming’ on the land in question."

Page 10.17, Section 10.05(b)(9); following the word "type" add a comma and insert the word "utility."

Page 10.17, Section 10.05(b)(11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05(b)(12)(A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05(b)(12)(B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situated thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the
locality wherein situate, if rented.”

Page 10.18, Section 10.05(b)(12)(B); delete the semicolons and the words “it was purchased at the same time as the tract so used.” Delete the period following the word “purposes” and add the words “or any nonfarm use.”

Page 10.19, Section 10.05(c)(2); following the words “Provided, That no” delete the word “reason” and insert in lieu thereof the words “individual event.”

Page 10.20, Section 10.05(c)(4)(C); following the words “(1,000) minimum production value” insert the words “or the small farm five hundred dollars ($500) minimum production and sale.”

Page 10.23, Section 10.05(d)(3)(B), third sentence; following the word “If” insert the words “timber from.” Delete the period following the word “purpose” and add the words “or is being converted to farm production uses.”

Page 10.26, Section 10.05(f)(2) is amended in its entirety to read as follows:

“(2) Farm buildings. — Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations shall be made in accordance with the tax department’s real property appraisal manual as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.”

Page 10.28, Section 10.05(f)(3)(B)(1); following the words “or more of the” insert the word “usual.”
Page 10.28, Section 10.05(f)(3)(B)(2); following the words "(50%) of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual."

Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

And,

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

(e) The legislative rules filed in the state register on the twenty-second day of May, one thousand nine hundred eighty-five, relating to the state tax commissioner (rules governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property), are authorized.

(f) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, relating to the state tax commissioner (listing of interests in natural resources for the first statewide reappraisal; provision for penalties), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refilled in the state
register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.

(h) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by a circuit court on certiorari), are authorized with the following amendment:

On page 3, §18.3.1 is stricken in its entirety and a new §18.3.1 is inserted in lieu thereof to read as follows:

“18.3.1 Who May Request Review. — The property owner, Tax Commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari. Parties to the proceeding wherein review by the circuit court is sought shall pay costs and fees as they are incurred: *Provided, That the circuit court upon rendering judgment or making any order may award costs to any party in accordance with the provisions of W. Va. Code §53-3-5.*”

(i) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twelfth day of February, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (additional review and implementation of
property appraisals), are authorized.

(k) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, relating to the state tax commissioner
(guidelines for assessors to assure fair and uniform
personal property values), are authorized.

(l) The legislative rules filed in the state register on
the eighteenth day of August, one thousand nine
hundred eighty-six, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the tenth day of December, one thousand
nine hundred eighty-six, relating to the state tax
commissioner (registration of transient vendors), are
authorized.

(m) The legislative rules filed in the state register on
the fourth day of February, one thousand nine hundred
eighty-six, modified by the state tax commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
fourteenth day of January, one thousand nine hundred
eighty-seven, relating to the state tax commissioner
(business and occupation tax), are authorized.

(n) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the fourth day of November, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (telecommunications tax), are authorized.

(o) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, relating to the state tax commis-
sioner (business franchise tax), are authorized.
(p) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (consumers sales and service tax and use tax), are authorized.

(q) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized.

(r) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred eighty-eight, relating to the state tax commissioner (severance tax), are authorized.

(s) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the state tax commissioner (solid waste assessment fee), are authorized.

(t) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-first day of September, one thousand nine
hundred eighty-eight, relating to the state tax commis-
sioner (electronic data processing system network for
property tax administration), are authorized.

(u) The legislative rules filed in the state register on
the nineteenth day of September, one thousand nine
hundred eighty-eight, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-nine, relating to the state
tax commissioner (exemption of property from ad
valorem property taxation), are authorized.

(v) The legislative rules filed in the state register on
the sixteenth day of September, one thousand nine
hundred eighty-eight, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirteenth day of January, one thousand
nine hundred eighty-nine, relating to the state tax
commissioner (consumers sales and service tax and use
tax), are authorized.

(w) The legislative rules filed in the state register on
the twenty-third day of June, one thousand nine hundred
eighty-nine, relating to the state tax department
(personal income tax), are authorized.

(x) The legislative rules filed in the state register on
the twenty-ninth day of June, one thousand nine
hundred eighty-nine, relating to the state tax depart-
ment (severance tax), are authorized.

(y) The legislative rules filed in the state register on
the fourth day of August, one thousand nine hundred
eighty-nine, modified by the state tax department to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
eleventh day of December, one thousand nine hundred
eighty-nine, relating to the state tax department (solid
waste assessment fee), are authorized.
(z) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business franchise tax), are authorized.

(aa) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business and occupation tax), are authorized.

(bb) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety, relating to the department of tax and revenue (consumers sales and use tax), are authorized with the amendments set forth below:

On page eight, Section 2.28, after the word “as” by inserting the words “art, science,”.

On pages eight and nine, Section 2.28.1, after the word “intellectual” by deleting the word “or” and inserting in lieu thereof the words “physical and”.

On page nine, Section 2.28.2, by deleting the words “or instruction.”

On page nine, Section 2.28.2, after the word “training” by adding the word “or”.

On page nine, Section 2.28.2, by deleting the words “or any portion of a school curriculum classified as physical education.”
On page nine, by deleting all of Section 2.28.2.1.

On page nine, Section 2.28.2.2, by deleting the section number.

On page nine, Section 2.28.2.2, by deleting the words "or instruction."

On page nine, Section 2.28.2.2, after the word "training" by adding the word "or".

On page nine, Section 2.28.2.2, after the word "conditioning" by inserting a period and striking the remainder of the sentence.

On page one hundred twelve, Section 59.2, after the words "sales of the service of cremation" by adding the words "sales on perpetual care trust fund deposits."

And,

On page one hundred twenty-eight, Section 91.2, after the words "include food" by inserting the following: "as defined in section 2.30 of this rule."

(cc) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (motor carrier road tax), are authorized.

(dd) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (gasoline and special fuel excise tax), are authorized.

(ee) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred
eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (corporation net income tax), are authorized.

(ff) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (soft drinks tax), are authorized.

(gg) The legislative rules filed in the state register on the twenty-first day of February, one thousand nine hundred ninety-one, relating to the state tax commissioner (business investment and jobs expansion tax credit, corporations headquarters relocation tax credit, and small business tax credit), are authorized.

(hh) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of April, one thousand nine hundred ninety-one, relating to the state tax commissioner (valuation of timberland and managed timberland), are authorized.

(ii) The legislative rules filed in the state register on the twenty-second day of April, one thousand nine hundred ninety-one, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of September, one thousand nine hundred ninety-one, relating to the state tax commissioner (bingo rules and regulations), are authorized.

(jj) The legislative rules filed in the state register on
the thirty-first day of July, one thousand nine hundred ninety-one, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of September, one thousand nine hundred ninety-one, relating to the state tax commissioner (property transfer tax), are authorized.

(kk) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-two, relating to the division of tax (municipal business and occupation tax), are authorized with the amendments set forth below:

On page forty-six, section 2g, by striking out all of subsection 2g.3;

And,

On pages forty-six and forty-seven, by renumbering the remaining subsections.

(ll) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the division of tax (soft drinks tax), are authorized with the amendments set forth below:

On page six, subsection 5.2, in the section heading, by striking out the word “breakfast” and inserting in lieu thereof “certain bottled”;

And,

On page six, subsection 5.2, after the word “mixes” by inserting the words “low-alcoholic brewed beverages such as near beer.”

(mm) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred
ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the division of tax (corporation net income tax), are authorized with the amendment set forth below:

On page twelve, subdivision 6.4.3, by striking out all of subdivision 6.4.3.

(nn) The legislative rules filed in the state register on the eighteenth day of June, one thousand nine hundred ninety-one, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the state tax commissioner (appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized.

(oo) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the state tax commissioner (severance tax), are authorized.

(pp) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relating to the division of tax (business franchise tax), are authorized.

(qq) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety-two, relat-
(rr) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred ninety-two, relating to the division of tax (consumers sales and service tax and use tax), are authorized with the amendments set forth below:

On page six, by deleting all of subdivisions 2.25.2 and 2.25.4;

On page six, subsection 2.25 by renumbering the remaining subdivisions;

On page forty-five, paragraph 8.1.1.1, after the words “licensed social workers”, by inserting “enrolled agents, professional foresters,”;

On page forty-five, paragraph 8.1.1.1, after the word “electricians”, by striking out the words “enrolled agents”;

On page forty-five, paragraph 8.1.1.1, after the word “musicians” by striking out the word “auctioneers,”;

On page fifty-six, subdivision 9.2.19, after the word “laws” by striking out the colon and inserting the following “, such as, for example, sales by credit unions under W. Va. Code §31-10-33 the sale of services by owners, trainers or jockeys which are essential to the effective conduct of a horse or dog racing meeting under W. Va. Code §19-23-12, or the commission of an auctioneer licensed under W. Va. Code §19-2C-1 et seq.:”;

On page one hundred five, subsection 33.5, by striking out the words “child care”;

On page one hundred ten, subsection 38.1 after the words “daily charge.”, by inserting the following sentence: “The daily charge subject to the consumers
sales and service tax does not include complimentary items such as shampoo, coffee and newspapers given to guests by hotels and motels.

On page one hundred forty-three, subsection 86.1, after the word "auctioneer" by inserting the following="licensed under W. Va. Code §19-2C-1 et seq.">

On page one hundred forty-three, subsection 86.1, after the word "is" by inserting the word "not";

On page one hundred forty-three, subsection 86.2 after the word "tax" by inserting the following "on the full sales price of the sales";

On page one hundred forty-three, subsection 86.3, in the last sentence after the word "services" by inserting the following "by an auctioneer not licensed in accordance with the W. Va. Code §19-2C-1 et seq.">

On page one hundred forty-three, subsection 86.3, in the last sentence after the word "sold" by striking out the period and adding the following ": Provided, That an auctioneer licensed in accordance with W. Va. Code §19-2C-1 et seq. is not required to collect sales tax on such fees or commissioners."

And,

On page one hundred forty-three, subsection 86.4, by striking out the first sentence and inserting, in lieu thereof, the following sentence: "An auctioneer is taxable on all of his or her purchases except purchases for resale."

The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, relating to the division of tax (bingo), are authorized.

The Legislature hereby authorizes and directs the division of tax to amend its rule relating to consumers sales and service tax and use tax which were filed in the code of state regulations (110 CSR 15) on the twenty-seventh day of April, one thousand nine hundred ninety-two, with the following amendments:
On page fifty-eight, by striking out all of subparagraph 9.3.4.3.d and by renumbering the remaining subparagraph; and,

On page one hundred eight, section 38.1, after the words “daily charge.” by striking out the words “The daily charge subject to the consumers sales and service tax does not include complimentary items such as shampoo, coffee and newspapers given to guests by hotels and motels.” and inserting in lieu thereof the following:

“Notwithstanding the fact that persons engaged in the rendering of a service are required to pay tax on their purchases for use and/or consumption in rendering such services, the purchase by hotels, motels, tourist homes and rooming houses of complimentary items such as shampoos, coffee and newspapers given to guests by such hotels, motels, tourist homes and rooming houses are not taxable.”

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States” after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

(b) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, driver’s license revocation administrative hearings), are authorized.
(c) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the department of motor vehicles (safety and treatment program), are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance), are authorized.

(e) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle), are authorized.

(f) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (compulsory motor vehicle liability insurance), are authorized.

(g) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges), are authorized.

(h) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (the administration and enforcement of motor vehicle inspections), are authorized.

(i) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred
eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (seizure of a driver's license and issuance of a temporary driver's license), are authorized.

(j) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred eighty-seven, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized with the amendments set forth below:

On page 7, section 7.2 after the words “75 m.p.h.”, add the words “except on highways where the established speed limit is 65 m.p.h., and conviction was in excess of 80 m.p.h.,”

And,

On page 14, section 8.1 by inserting the words “not to exceed fifteen hours” after the word “course” and in section 8.2 by inserting the words “not to exceed fifteen hours” after the word “course”.

(l) The legislative rules filed in the state register on the twenty-second day of November, one thousand nine hundred eighty-eight, modified by the commissioner of motor vehicles to meet the objections of the legislative
rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized.

(m) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-one, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of September, one thousand nine hundred ninety-one, relating to the division of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges), are authorized with the amendment set forth below:

"On page nine, after the words "Following too closely", by striking out the number "3" and inserting in lieu thereof the number "2".

(n) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the division of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-two, relating to the division of motor vehicles (motor vehicle dealers, wreckers/ dismantlers/ rebuilders and license services), are authorized.

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-12. West Virginia state board of registration for professional engineers.
§64-9-16. Board of medicine.
§64-9-18. Board of examiners for registered professional nurses.
§64-9-20. Board of pharmacy.
§64-9-23. Real estate commission.
§64-9-31. Real estate appraiser licensing and certification board.
§64-9-34. Board of occupational therapy.
§64-9-35. Board of social work examiners.

§64-9-1. Commissioner of agriculture.

1 (a) The legislative rules filed in the state register on
2 the sixth day of April, one thousand nine hundred
3 eighty-three, relating to the commissioner of agriculture
4 (schedule of charges for inspection services: fruit), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the third day of August, one thousand nine hundred
8 eighty-three, relating to the commissioner of agriculture
9 (licensing of auctioneers), are authorized.

10 (c) The legislative rules filed in the state register on
11 the eighth day of February, one thousand nine hundred
12 eighty-four, relating to the commissioner of agriculture
13 (conduct of beef industry self-improvement assessment
14 program referendum), are authorized.

15 (d) The legislative rules filed in the state register on
16 the fourth day of June, one thousand nine hundred
17 eighty-four, relating to the commissioner of agriculture
18 (feeding untreated garbage to swine), are authorized.

19 (e) The legislative rules filed in the state register on
20 the fourth day of June, one thousand nine hundred
21 eighty-four, relating to the commissioner of agriculture
22 (registration, taxation and control of dogs), are
23 authorized.

24 (f) The legislative rules filed in the state register on
25 the first day of November, one thousand nine hundred
26 eighty-four, relating to the commissioner of agriculture
27 (public markets), are authorized.

28 (g) The legislative rules filed in the state register on
29 the tenth day of September, one thousand nine hundred
30 eighty-four, relating to the commissioner of agriculture
31 (noxious weed rules), are authorized.

32 (h) The legislative rules filed in the state register on
33 the fourth day of June, one thousand nine hundred
34 eighty-four, relating to the commissioner of agriculture
35 (animal disease control), are authorized.
(i) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(j) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, relating to the commissioner of agriculture (increasing certain fees by rules and regulations), are authorized.

(k) The legislative rules filed in the state register on the thirteenth day of January, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand nine hundred eighty-six, relating to the commissioner of agriculture (licensing of livestock dealers), are authorized.

(l) The legislative rules filed in the state register on the eighteenth day of June, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (West Virginia pesticide use and application act), are authorized.

(m) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the director of the division of forestry of the department of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred eighty-seven, relating to the director of the division of forestry of the department of agriculture (ginseng), are authorized.

(n) The legislative rules filed in the state register on the tenth day of April, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture
(schedule of charges for inspection services: fruit), are authorized.

(o) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of September, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (animal disease control), are authorized.

(p) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the commissioner of agriculture (sale and distribution of commercial fertilizer), are authorized.

(q) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-eight, relating to the commissioner of agriculture (animal disease control), are authorized.

(r) The legislative rules filed in the state register on the fifteenth day of May, one thousand nine hundred eighty-nine, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of August, one thousand nine hundred eighty-nine, relating to the commissioner of agriculture (production of milk and cream for manufacturing purposes), are authorized.

(s) The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-nine, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred eighty-nine, relating to the commissioner of agriculture
(animal disease control), are authorized.

(t) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred ninety, relating to the commissioner of agriculture (meat inspection), are authorized.

(u) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of October, one thousand nine hundred ninety, relating to the commissioner of agriculture (agricultural liming materials), are authorized.

(v) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of October, one thousand nine hundred ninety, relating to the commissioner of agriculture (public markets), are authorized.

(w) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of November, one thousand nine hundred ninety, relating to the commissioner of agriculture (animal disease control), are authorized.

(x) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of
agriculture (commercial feed), are authorized with the amendments set forth below:

On page two, after subsection 3.3., by adding a new subsection, designated subsection 3.4., to read as follows:

"3.4. The commissioner will not assess a tonnage fee on any commercial feed or feed ingredients used in the manufacture of poultry contract feed."

On page five, after subsection 4.3.m., by adding a new subsection, designated subsection 4.3.n., to read as follows:

"4.3.n. The commissioner will consider poultry contract feed to be customer-formula feed."

And,

On page eight, after subsection 5.5., by adding a new subsection, designated subsection 5.6., to read as follows:

"5.6. Poultry contract feed labels shall conform to the requirements of W. Va. Code §19-14-8(d), except that:

5.6.a. The name of the grower or feeder will substitute for the requirements for the name of the purchaser; and,

5.6.b. The net weight (avoir dupois) of the commercial feed and each feed ingredient used in the feed shall not be required to be listed."

(y) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of August, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (wood destroying insect treatment standards), are authorized.

(z) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of April, one thousand nine
193 hundred ninety-one, relating to the commissioner of
194 agriculture (fee structure for the pesticide control act of
195 1990), are authorized.
196 (aa) The legislative rules filed in the state register on
197 the eighth day of August, one thousand nine hundred
198 ninety-one, modified by the commissioner of agriculture
199 to meet the objections of the legislative rule-making
200 review committee and refiled in the state register on the
201 twelfth day of November, one thousand nine hundred
202 ninety-one, relating to the commissioner of agriculture
203 (animal disease control), are authorized.
204 (bb) The legislative rules filed in the state register on
205 the eighth day of August, one thousand nine hundred
206 ninety-one, modified by the commissioner of agriculture
207 to meet the objections of the legislative rule-making
208 review committee and refiled in the state register on the
209 tenth day of September, one thousand nine hundred
210 ninety-one, relating to the commissioner of agriculture
211 (West Virginia plant pest act), are authorized.
212 (cc) The legislative rules filed in the state register on
213 the twenty-sixth day of July, one thousand nine hundred
214 ninety-one, modified by the commissioner of agriculture
215 to meet the objections of the legislative rule-making
216 review committee and refiled in the state register on the
217 sixteenth day of October, one thousand nine hundred
218 ninety-one, relating to the commissioner of agriculture
219 (licensing of pesticide businesses), are authorized.
220 (dd) The legislative rules filed in the state register on
221 the eighth day of August, one thousand nine hundred
222 ninety-one, modified by the commissioner of agriculture
223 to meet the objections of the legislative rule-making
224 review committee and refiled in the state register on the
225 second day of October, one thousand nine hundred
226 ninety-one, relating to the commissioner of agriculture
227 (certified pesticide applicators), are authorized.
228 (ee) The legislative rules filed in the state register on
229 the eighth day of August, one thousand nine hundred
230 ninety-one, modified by the commissioner of agriculture
231 to meet the objections of the legislative rule-making
232 review committee and refiled in the state register on the
twenty-fourth day of September, one thousand nine
hundred ninety-one, relating to the commissioner of
agriculture (assessment of civil penalties and procedures
for consent agreements and negotiated settlements), are
authorized.

(ff) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred
ninety-one, modified by the commissioner of agriculture
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-fourth day of September, one thousand nine
hundred ninety-one, relating to the commissioner of
agriculture (aerial application of herbicides to rights-of-
way), are authorized.

(gg) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred
ninety-one, modified by the commissioner of agriculture
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-fourth day of September, one thousand nine
hundred ninety-one, relating to the commissioner of
agriculture (frozen desserts and imitation frozen
desserts), are authorized, with the amendment set forth
below:

On page twelve, by striking out all of section 15 and
substituting a new section 15, to read as follows:


15.1. The commissioner may assess a violation of W.
Va. Code §19-11B-1 et seq. or of these rules against the
manufacturer of product and/or the distributor of the
mix used to manufacture the product.

15.2. The commissioner will assess any violations of W.
Va. Code §19-11B-1 et seq. or of this rule to the
distributor for mix sampled from unopened containers.
The company will not be assessed additional cumulative
notices of violations until the commissioner has deter-
mined that the firm has had adequate notice of the
previous notice, generally 10 days from the mailing of
the notice of violation.
15.3. Whenever one of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded, the commissioner shall send a written “First Notice” to the manufacturer or distributor whichever is appropriate. This notice shall notify the manufacturer or distributor of the violation of W. Va. Code §19-11B-1 et seq. or of these rules and the enforcement policy established by this section of the rule.

15.4. Whenever two of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written “Second Notice” to the manufacturer or distributor whichever is appropriate.

15.4.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of a Second Notice to the manufacturer or distributor, but shall not collect product samples before the lapse of 7 days from the sending of a Second Notice.

15.5. Whenever three of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written “Third Notice” to the manufacturer or distributor whichever is appropriate.

15.5.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of the Third Notice to the manufacturer or distributor, but shall not collect additional product samples before the lapse of 7 days from the date of sending of the notice.

15.6. The commissioner will issue a “Shut-down Order” for a period of 24 hours to a manufacturer or distributor when the record of the firm indicates that effective action has not been taken to correct the causes of the violations, for instance when three out of the last five samples from the same machine are violative. The “Shut-down Order” will normally be issued with the “Third Notice”. The “Shut-down Order” will give the reasons for the order, state the portion of the manufac-
turing or distributing operation that is prohibited from operating while the order is in effect, give conditions of the order, state the length of time that the Shut-down Order will be in effect and specify a time and place for a hearing to be held in this matter. Except that in the case where the public health, safety or welfare is at risk, the commissioner will issue an immediate Shut-down Order and give notice to the manufacturer or distributor under the provisions of subdivision 15.6.a. of this rule.

15.6.a. The commissioner will issue an immediate Shut-down Order without giving the manufacturer or distributor the opportunity to be heard where there is a hazard to the public health, safety or welfare. In these cases, the manufacturer or distributor will be given the opportunity to request a hearing before the commissioner after the notification of the order is received by the manufacturer or distributor. All Shut-down Orders issued due to noncompliance with subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are considered to involve a risk to the public health, safety or welfare.

15.6.b. The manufacturer or distributor will be responsible for causing all operations covered by the Shut-down Order to cease and follow all other conditions of the order. At the end of the period of the order, the manufacturer or distributor may resume operations without further action by the commissioner.

15.7. If after a Shut-down Order has been issued the commissioner finds that effective corrective action has not been taken, he may issue a suspension of the Frozen Desserts Manufacturer Permit. The suspension shall state the time that the suspension will become effective, give the reasons for the suspension and specify a time and place for a hearing to be held in this matter. Except that in the case of a summary suspension the commissioner will give the manufacturer the opportunity to request a hearing in this matter subsequent to the notification of the suspension.

15.7.a. All suspensions due to nonconformance to subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule are summary suspensions.
15.7.b. A suspension of the Frozen Desserts Manufacturer Permit remains in effect until the manufacturer submits and the commissioner accepts a written plan of correction and a request for a reinstatement of the permit.

15.7.c. The commissioner has seven days from the date of receipt of this application to respond to a suspension in the case of violations of subdivisions 8.1.c., 8.1.d. or 8.1.g. of this rule and fourteen days to respond for all other violations of W. Va. Code §19-11B-1 et seq. or these rules. The commissioner will accept or deny the application for a reinstatement of the permit and will give the terms and conditions under which the permit will be reinstated.

15.8. If the commissioner finds that after the firm has resumed production following a suspension of their Frozen Desserts Manufacturer Permit that effective corrective action has not been taken, then the commissioner will hold a hearing to determine if the Frozen Desserts Manufacturer Permit should be revoked.

15.9. Persons who manufacture a product on an intermittent or infrequent basis, so that the standard enforcement policy cannot apply, will enter into a consent agreement with the commissioner for correction of all items found to be not in conformance with W. Va. Code §19-11B-1 et seq. or these rules.

15.10. Whenever an antibiotic or pesticide residue test is found to be above tolerance, the commissioner shall notify the manufacturer and/or distributor immediately of this fact and shall begin an investigation to determine the cause of the residue. The commissioner shall require that any person found to be responsible for the residue shall correct the cause of the residue prior to the resumption of the manufacturing or distribution of the product.

15.11. A person who performs a recall by voluntarily removing product from sale and distribution in an effective manner so as to limit the potential harm to the health and well-being of the public may be eligible for exemptions from the normal enforcement policy. The
commissioner shall consider the facts of each case when making a decision on an exemption.

15.12. The commissioner may apply the enforcement policy in a liberal manner in cases where all official product sample results that involve a product in the form actually sold to the public have been found to be in conformance with W. Va. Code §19-11B-1 et seq. or these rules.

15.13. The commissioner may suspend the standard enforcement policy in cases where such action is necessary to protect the public health, safety or welfare.

15.14. Resamples will only be taken from machines that were shown to be producing violative product the previous visit, except for resamples needed to check that the nonviolative status is being maintained according to the following schedule:

15.14.a. After a first notice and one nonviolative sample, resamples will be taken between 5 to 6 months after the nonviolative sample.

15.14.b. After a second notice and one nonviolative sample, resamples will be taken between 3-4 months after the nonviolative sample.

15.14.c. Other resamples may be considered necessary to determine that the nonviolative status is being maintained.”

(hh) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (West Virginia apiary law of 1991), are authorized.

(ii) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making
On page two, section two, by adding a new subsection to read as follows:

"2.8 "Disposal pit" means an opening dug in the ground to a minimum depth of six feet, containing a minimum capacity of 150 cubic feet, covered with a minimum of 12 inches of dirt, and provided with one or more openings for the introduction of poultry. The openings shall be a minimum size of eight inches square and equipped with tight lids. A disposal pit shall be located in a site which will prevent contamination of the groundwater or the surface water. This site should conform to the standards established in this rule."

On page two, subsection 3.1 after the word "incinerator," by adding the words “disposal pit,”

And,

On page two, by adding a new section, designated section 4, to read as follows:

“§61-1C-4. Standards for Site Location for Disposal Pits.

4.1 No part of a disposal pit system shall be located in a poorly drained or filled area, or in any area where seasonal flooding occurs.
4.2 No part of a disposal pit system shall be located within 10 feet of a building, foundation or property line.
4.3 No part of a disposal pit system shall be located within 50 feet of a public water supply line or within 10 feet of a private water supply system.
4.4 A disposal pit shall be located at least 50 feet from a private well or groundwater supply.
4.5 There shall be a minimum of three feet between the bottom of a disposal pit and seasonal groundwater or rock, shale or any other impermeable layer.
4.6 The evaluation of the site for installation of a disposal pit shall be based upon percolation test results. Percolation tests shall be performed in the following manner:

4.6.1 Location - At least two holes shall be placed over the selected site. The results of these two test holes will be averaged.

4.6.2 Holes shall be dug or bored from six to eight inches in diameter at the site where the disposal pit will be installed. The holes should be at least 24 inches in depth.

4.6.3 The bottom and sides of the holes shall be scratched with a sharp pointed instrument or wire brush to remove any smeared soil surfaces which interfere with the absorption of water into the soil.

4.6.4 Loose dirt shall be removed from the bottom of the test holes and two inches of coarse sand or fine gravel shall be placed into the holes to prevent sealing.

4.6.5 An eight or ten penny nail shall be placed in the wall of each hole exactly six inches above the level of sand or gravel.

4.6.6 The test hole shall be completely filled with water to ground level. Water in the hole shall be kept to a depth of at least 12 inches for a minimum period of four hours before beginning the percolation rate measurement.

4.7 Percolation rate measurement - Upon completion of the above, the water depth in the holes shall be adjusted to the level of the nail. The number of minutes it takes for this six inches of water (all the water) to be absorbed into the soil shall be accurately determined. This time in minutes, divided by six, gives the rate of fall per inch. The average rate of fall must be between five minutes and 60 minutes."

(jj) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making
review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (licensing of livestock dealers), are authorized.

(kk) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-two, relating to the commissioner of agriculture (commercial feed), are authorized.

(ii) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (general groundwater protection rules for fertilizers and manures), are authorized.

(mm) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (primary and secondary containment of fertilizers), are authorized with the amendments set forth below:

"On page five, by striking out all of subsection 5.5 and inserting in lieu thereof a new subsection 5.5 to read as follows: 'The operator or his licensed representative shall sign and date each application under oath.'; and

On page eighteen, by striking out all of subsection 14.1 and inserting in lieu thereof a new subsection 14.1 to read as follows:
All moneys for the purpose of the enforcement and administration of this rule shall come from general revenue funds appropriated by the legislature for that purpose. The net proceeds of civil penalties collected pursuant to W.Va. Code §20-5M-10a or any civil administrative penalties collected pursuant to W.Va. Code §20-5M-10c will be deposited in the groundwater remediation fund established in W.Va. Code §20-5M-1 et. seq.

The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (general groundwater protection rules for pesticides), are authorized.

The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (bulk pesticide operational rules), are authorized.

The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (non-bulk pesticide rules for permanent operational areas), are authorized.

§64-9-12. West Virginia state board of registration for professional engineers.

(a) The legislative rules filed in the state register on the twenty-ninth day of November, one thousand nine
three hundred eighty-five, modified by the West Virginia state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia state board of registration for professional engineers (legislative rules governing the West Virginia state board of registration for professional engineers), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of December, one thousand nine hundred eighty-seven, modified by the West Virginia state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of January, one thousand nine hundred eighty-eight, relating to the West Virginia state board of registration for professional engineers (rules of the West Virginia state board of registration for professional engineers), are authorized.

(c) The legislative rules filed in the state register on the first day of October, one thousand nine hundred ninety, modified by the West Virginia board of registered professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred ninety-one, relating to the West Virginia board of registered professional engineers (regulations governing the board of registration for registered professional engineers), are authorized.

(d) The legislative rules filed in the state register on the twelfth day of November, one thousand nine hundred ninety-two, modified by the board of registration for registered professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred ninety-three, relating to the board of registration for professional engineers (West Virginia board of registration for professional engineers), are authorized with the amendment set forth below:
"On page thirty-five, by striking out all of subsection 19.6 and inserting in lieu thereof a new subsection 19.6 to read as follows:

"19.6 The fees for various services provided by the Board are:

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<th>Service</th>
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<th>Professional Engineer</th>
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<td>Board's Administration Charge:</td>
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<tr>
<td>NCEES' Examination Charge:</td>
<td>As charged by NCEES</td>
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<td>Registration Fee:</td>
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<td>Annual Renewal Fee For:</td>
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<td>a Professional Engineer-Retired:</td>
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<td>Certificate of Authorization:</td>
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<td>Application Fee for Firms or</td>
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§64-9-16. Board of medicine.

(a) The legislative rules filed in the state register on
the twelfth day of May, one thousand nine hundred eighty-three, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants), are authorized with the modifications set forth below:

§24.12.

(b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before Type A physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.

§24.16.

(a) No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant.”

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred eighty-six, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants), are authorized.

(c) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, modified by the West Virginia board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-five, relating to the West Virginia board of medicine (rules governing the approval of medical schools not accredited by the liaison committee on medical education), are authorized.

(d) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-seven, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.
(e) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the board of medicine (dispensing of legend drugs by physicians and podiatrists), are authorized with the following amendments:

Section 2.6 to read as follows: "Dispense means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a physician or podiatrist, including the prescribing, packaging, labeling, administering or compounding necessary to prepare the drug for that delivery."

And,

Section 3.3 to read as follows: "Physicians or podiatrists who are not registered with the Board as dispensing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of sections 3 through 8 applicable to dispensing physicians:

a. Legend drugs administered to the patient, which are not controlled substances when an appropriate record is made in the patient's chart;

b. Professional samples distributed free of charge by a physician or podiatrist or certified physician assistant under his or her supervision to the patient when an appropriate record is made in the patient's chart; or

c. Legend drugs which are not controlled substances provided by free clinics or under West Virginia state authorized programs, including the Medicaid, family planning, maternal and child health, and early and periodic screening and diagnosis and treatment programs: Provided, That all labeling provisions of section 8 shall be applicable except the requirements of section 8.3 (a)."

(f) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred
ninetynine, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of October, one thousand nine hundred ninety, relating to the board of medicine (fees for services rendered by the board of medicine), are authorized.

(g) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-one, relating to the board of medicine (licensing and disciplinary and complaint procedures: physicians; podiatrists), are authorized.

(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-one, relating to the board of medicine (certification, disciplinary and complaint procedures: physician assistants), are authorized.

(i) The legislative rules filed in the state register on the tenth day of July, one thousand nine hundred ninety-one, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of September, one thousand nine hundred ninety-one, relating to the board of medicine (continuing education for physicians and podiatrists), are authorized.

(j) The legislative rules filed in the state register on the twenty-fifth day of March, one thousand nine hundred ninety-two, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of May, one thousand nine hundred ninety-two, relating to the board of medicine (licensing, disciplinary and complaint procedures: physicians,
podiatrists), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of September, one thousand nine hundred ninety-two, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of November, one thousand nine hundred ninety-two, relating to the board of medicine (certification, disciplinary and complaint procedures, continuing education, physician assistants), are authorized, with the following amendment:

On page six, section 11-1B-2, subsection 2.8 (c), after the words “in writing” and the comma, by striking out the words “prior to” and inserting in lieu thereof the words “within ten days of”.

§64-9-18. Board of examiners for registered professional nurses.

(a) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-three, relating to the board of examiners for registered professional nurses (qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination), are authorized.

(b) The legislative rules filed in the state register on the third day of August, one thousand nine hundred ninety, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of September, one thousand nine hundred ninety, relating to the board of examiners for registered professional nurses (announcement of advanced nursing practice), are authorized.

(c) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred ninety-two, modified by the board of examiners for registered professional nurses to meet the objections of the legislative rule-making review committee and
refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety-three, relating to the board of examiners for registered professional nurses (limited prescriptive authority for nurses in advanced practice), are authorized.

§64-9-20. Board of pharmacy.

(a) The legislative rules filed in the state register on the second day of October, one thousand nine hundred eighty-four, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of pharmacy (parenteral/enteral compounding), are authorized.

(b) The legislative rules filed in the state register on the twelfth day of September, one thousand nine hundred eighty-nine, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred eighty-nine, relating to the board of pharmacy (board of pharmacy), are authorized.

(c) The legislative rules filed in the state register on the sixth day of May, one thousand nine hundred ninety, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of June, one thousand nine hundred ninety, relating to the board of pharmacy (continuing education for the licensure of pharmacists), are authorized.

(d) The legislative rules filed in the state register on the eleventh day of March, one thousand nine hundred ninety-one, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of May, one thousand nine hundred ninety-one, relating to the board of pharmacy (computer regulations), are authorized.

(e) The legislative rules filed in the state register on
the twenty-eighth day of August, one thousand nine hundred ninety-one, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-two, relating to the board of pharmacy (licensure of wholesale drug distributors), are authorized.

(f) The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-one, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-two, relating to the board of pharmacy (mail order house), are authorized.

(g) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred ninety-two, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred ninety-three, relating to the board of pharmacy (board of pharmacy), are authorized with the amendments set forth below:

On page forty-nine, subsection (f), after the words 'who presents a' by inserting the word 'new';

And,

On page fifty, subdivision (1), after the words 'who presents a' by inserting the word 'new'".


(a) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-four, relating to the board of examiners of psychologists (examination fee), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of examiners of psychologists to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-third day of November,
one thousand nine hundred eighty-eight, relating to the
board of examiners of psychologists (penalties and fees),
are authorized.

(c) The legislative rules filed in the state register on
the first day of October, one thousand nine hundred
ninety-one, modified by the board of examiners of
psychologists to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the eleventh day of December, one thousand
nine hundred ninety-two, relating to the board of
examiners of psychologists (penalties and fees), are
authorized.

(d) The legislative rules filed in the state register on
the first day of October, one thousand nine hundred
ninety-one, modified by the board of examiners of
psychologists to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the sixth day of August, one thousand nine
hundred ninety-two, relating to the board of examiners
of psychologists (qualifications for licensure as a
psychologist), are authorized.

§64-9-23. Real estate commission.

(a) The legislative rules filed in the state register on
the fourth day of December, one thousand nine hundred
eighty-nine, modified by the real estate commission to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the eighth
day of January, one thousand nine hundred ninety,
relating to the real estate commission (renewal of license
- continuing education), are authorized.

(b) The legislative rules filed in the state register on
the twenty-fifth day of July, one thousand nine hundred
ninety-one, modified by the real estate commission to
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 real estate commis-
sion (requirements in licensing real estate brokers and
salesmen and the conduct of brokerage businesses), are authorized.

(c) The legislative rules filed in the state register on the fourth day of September, one thousand nine hundred ninety-two, modified by the real estate commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of November, one thousand nine hundred ninety-two, relating to the real estate commission (requirements in licensing real estate brokers and salesmen and the conduct of brokerage business), are authorized.


(a) The legislative rules filed in the state register on the fifteenth day of April, one thousand nine hundred eighty-five, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of October, one thousand nine hundred eighty-five, relating to the secretary of state (standard size and format for rules and related documents filed in the secretary of state's office), are authorized.

(b) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-seven, relating to the secretary of state (standard size and format for rules and procedures for publication of the state register or parts of the state register), are authorized.

(c) The legislative rules filed in the state register on the first day of September, one thousand nine hundred eighty-nine, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred eighty-nine, relating to the secretary of state (West Virginia farm product lien central filing system), are authorized.
(d) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, relating to the secretary of state (guidelines for the use of nicknames and other designations on the ballot), are authorized.

(e) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred ninety, relating to the secretary of state (absentee voting by military voters who are members of reserve units called to active duty), are authorized.

(f) The legislative rules filed in the state register on the seventh day of October, one thousand nine hundred ninety-one, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of May, one thousand nine hundred ninety-two, relating to the secretary of state (filing fee for credit service organizations), are authorized.

(g) The legislative rules filed in the state register on the seventh day of October, one thousand nine hundred ninety-one, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of May, one thousand nine hundred ninety-two, relating to the secretary of state (combined voter registration and driver licensing programs), are authorized.


(a) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred ninety, modified by the West Virginia cable television advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the West Virginia cable television advisory board (franchising procedures), are authorized.

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine
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12 hundred ninety, modified by the West Virginia cable television advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the West Virginia cable television advisory board (implementing regulations), are authorized.

19 (c) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-two, modified by the West Virginia cable television advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of February, one thousand nine hundred ninety-three, relating to the West Virginia cable television advisory board (implementing regulations), are authorized.

§64-9-31. Real estate appraiser licensing and certification board.

1 (a) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (rules and regulations of the real estate appraiser licensing and certification board), are authorized.

12 (b) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

22 (c) The legislative rules filed in the state register on
the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (renewal of licensure or certification), are authorized.

(d) The legislative rules filed in the state register on the seventh day of July, one thousand nine hundred ninety-two, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred ninety-two, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

§64-9-34. Board of occupational therapy.

The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred ninety-two, modified by the board of occupational therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of February, one thousand nine hundred ninety-three, relating to the board of occupational therapy (administrative rules of the board of occupational therapy), are authorized.

§64-9-35. Board of social work examiners.

The legislative rules filed in the state register on the thirtieth day of October, one thousand nine hundred ninety-two, modified by the board of social work examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of February, one thousand nine hundred ninety-three, relating to the board of social work examiners (qualifications for licensure as a social worker), are authorized.
CHAPTER 6
(H. B. 110—By Delegates Phillips, Manuel and Collins)

[Passed May 26, 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 one-a, relating to authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the operation of coal preparation plants and coal handling operations.

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 one-a, to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-1a. Air pollution control commission—Operation of coal preparation plants and coal handling operations.

The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred ninety-two, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee, refiled in the state register on the nineteenth day of February, one thousand nine hundred ninety-three, and refiled in the state register on the twentieth day of May, one thousand nine hundred ninety-three, relating to the air pollution control commission (regulations to prevent and control air pollution from the operation of coal preparation plants and coal handling operations), are authorized.
AN ACT to repeal sections five, six and eight, article four-b, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections nine, ten and twelve, article four-c of said chapter; to repeal sections twenty-two, twenty-three and twenty-four, article thirteen-a, chapter eleven of said code; to repeal section eighteen, article twenty-six of said chapter; to amend and reenact section thirteen, article fifteen, chapter seven of said code; to amend article two, chapter nine of said code by adding thereto three new sections, designated sections nine, ten and eleven; to amend and reenact sections two and three, article four-a of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact sections one, two and four, article four-b of said chapter; to amend and reenact sections one, two, five and seven, article four-c of said chapter; to amend and reenact section eleven, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections eleven-a, eleven-b and seventeen; to amend and reenact section eighteen-a, article ten, chapter eleven of said code; to further amend said article by adding thereto a new section, designated section eighteen-b; to amend and reenact sections three and six, article twelve-b of said chapter; to amend and reenact sections one, two, three, seven, eight, nine, ten, nineteen and twenty, article thirteen-a of said chapter; to further amend said article by adding thereto six new sections, designated sections three-a, three-b, three-c, nine-a, twenty-a and twenty-five; to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty; to further amend said chapter by adding thereto a new article, designated article twenty-seven; to amend article six, chapter twelve of said code by adding thereto
a new section, designated section nine-f; to amend and reenact section fifteen-a, article one, chapter sixteen of said code; and to amend and reenact section five, article two-d of said chapter, all relating generally to this state's medicaid program and taxes funding that program; repealing the physician provider medicaid enhancement fund; repealing physician providers' hold harmless provision; repealing abrogation provisions of physician provider medicaid act; repealing other provider medicaid enhancement funds; repealing other providers' hold harmless provision; repealing abrogation provisions of health care provider medicaid act; repealing provisions of severance tax relating to credit for coking facilities, credit for payment of consumers sales and use taxes, rules for filing returns and paying tax and obsolete requirement to file information returns; repealing abrogation rules of the medicaid enhancement tax; requiring county ambulance authorities to pay privilege tax on emergency ambulance services; requiring development of medicaid monitoring and case management systems and implementation of other reforms; limiting use of funds for abortion; requiring providers to collect copayments and providing for reports and civil penalties; eliminating requirement for pro rata reimbursement from medicaid uncompensated care fund; creating a medical services trust fund; identifying source of funds and permitted expenditures with respect to said fund; changing criteria for disproportionate share hospitals; requiring department of health and human resources to file state medicaid plan amendment; defining terms used in physician/medical practitioner provider medicaid act; amending powers and duties of physician/medical practitioner provider board; defining terms used in health care provider medicaid act; changing composition of general provider medicaid enhancement board; replacing outpatient hospital provider medicaid enhancement board with the facility providers' medicaid enhancement board; amending powers and duties of certain boards; requiring that department of health and human resources be fully subrogated to the rights of recipients of medical assistance; clarifying rules as to effect of subrogation;
providing for notice of actions or claims by medical assistance recipients or the department of health and human resources; providing for release of information related to right of subrogation and requiring insurance commissioner to establish guidelines therefor; requiring nonprofit organizations receiving medicaid reimbursement payments to provide annual accounting of receipts and disbursements; limiting application of current addition to tax for failure to pay estimated tax to the income and business franchise taxes and conforming annualization of income rules for individuals to federal law; imposing a new addition to tax for failure to make required installment payments of other taxes; making technical corrections in the imposition of minimum severance tax; requiring monthly remittance of estimated minimum severance tax; changing name of the "Severance Tax Act" to the "Severance and Business Privilege Tax Act of 1993"; defining terms; extending tax to providers of certain health care services; moving tax on privilege of severing natural gas or oil into a new section; moving tax on privilege of severing timber into a new section; moving tax on privilege of severing certain other natural resources into a new section; providing for accounting periods and methods of accounting, filing of annual returns and other documents, and rules for payment of taxes in periodic installment payments; specifying time for paying tax; providing for allowance of annual tax credit; providing rules on extensions of time for filing returns and other documents or paying tax; providing for administration, collection and enforcement of tax and application of criminal penalties; specifying effective dates; dedicating tax collected from health care providers to the medicaid program and requiring deposit of such tax into a special revenue fund created in state treasurer’s office; requiring tax commissioner to account separately for amount of tax collected from each class of health care provider; providing transition rules for termination of medicaid enhancement tax; requiring providers to pay tax on estimated medicaid reimbursement payments for services rendered before the first day of June, one thousand nine hundred ninety-three, regardless of
whether payment for such services is received prior to that date; imposing civil penalty on health care providers who owe delinquent medicaid enhancement tax after specified date; creating the "West Virginia Health Care Provider Tax Act of 1993"; making legislative findings; providing short title and rules regarding arrangement and classification; defining terms; imposing broad-based health care related taxes on specified providers of health care items or services, at various rates of tax, based on the respective classifications of such providers; specifying the measure of tax for each classification; permitting temporary increase in rates of providers of inpatient hospital services effective upon filing of claim for temporary relief with health care cost review authority and providing requirements and procedures; permitting hospitals which provide nursing facility services to adjust nursing facility rates to compensate for the tax without first obtaining approval from the health care cost review authority and providing limitations; prohibiting double taxation; providing for filing of returns and other documents and payment of estimated tax in installment payments; specifying time and place for filing returns and paying tax; providing rules regarding extensions of time and the signing of returns and other documents; requiring taxpayers to keep records adequate to verify their liability for tax; making administration, collection and enforcement of these taxes subject to the West Virginia tax procedure and administration act; making the West Virginia crimes and penalties act applicable to these taxes; dedicating taxes collected to funding of medicaid program; requiring taxes collected to be deposited into special revenue fund created in state treasurer's office; requiring tax commissioner to keep records which account separately for the amount of tax paid by each class of health care provider; allowing tax commissioner certain costs of administration and collection; providing rules for abrogation and severability; specifying effective dates; specifying various effective dates throughout the bill; providing legislative findings regarding need for and source of loan from consolidated fund for medicaid; authorizing loan from consolidated fund for prompt
medicaid payments; establishing rate of interest on said loan; requiring the repayment of loan from collections of tax on state share of medicaid reimbursements and any civil penalties collected for nonpayment of tax; creating a "Medicaid Prompt Payment Fund" and requiring the deposit of loan proceeds and repayments into said fund; requiring board of investments to manage said fund; requiring board of investments to transfer loan proceeds to medical services fund upon request of the governor; providing for transfers by intergovernmental transfer from hospital services revenue account to medical services trust fund; and permitting approval by health care cost review authority of up to sixty beds for a demonstration project providing nursing services to patients with alzheimer's disease and providing requirements and limitations.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
11. Taxation.

CHAPTER 7.
COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.


1. It is hereby found, determined and declared that the creation of any authority and the carrying out of its purposes is in all respects for the benefit of the people of this state in general and of the participating governments in particular and is a public purpose; and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by the provisions of this article. Accordingly, each authority and, without limitation, its revenues, properties, operations and activities shall be exempt from the payment of any taxes or fees to the
state or any of its political subdivisions: Provided, That this exemption shall not apply to the tax imposed by section seven, article twenty-seven, chapter eleven of this code on gross receipts derived from transporting patients. Interest on obligations and all evidences of indebtedness of any such authority shall be exempt from taxation, except inheritance and transfer taxes.

CHAPTER 9. HUMAN SERVICES.

Article
2. Department of Health and Human Resources, and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.
4A. Medicaid Uncompensated Care Fund.
4B. Physician/Medical Practitioner Provider Medicaid Act.
4C. Health Care Provider Medicaid Act.

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-9. Secretary to develop medicaid monitoring and case management.
§9-2-10. Collection of copayments by health care providers; penalties.
§9-2-11. Limitation on use of funds.

§9-2-9. Secretary to develop medicaid monitoring and case management.

(a) On or before the first day of January, one thousand nine hundred ninety-four, the secretary of the department of health and human resources shall:

(1) Develop a managed care system to monitor the services provided by the medicaid program to individual clients;

(2) Develop an independent referral service, including the review of individual cases for abuses of the program; and

(3) Develop a schedule for implementation of the managed care and independent referral system. The managed care system shall focus on, but not be limited to, the behavioral health and mental health services.
(b) In addition thereto, and in accordance with applicable federal medicaid laws, the secretary shall prepare recommendations, to be submitted to the joint committee on government and finance on or before the first day of January, one thousand nine hundred ninety-four. In developing recommendations the secretary shall consider as options the following:

(1) Review of medicaid services which are optional under federal medicaid law and identification of services to be retained, reduced or eliminated;

(2) The elimination, reduction or phase-out of: (i) Services which are not generally available to West Virginia citizens not covered under the state’s medicaid program; or (ii) services which are not generally covered under group policies of insurance made available to employees of employers within the state;

(3) The elimination or reduction of services, or reduction of provider reimbursement rates, for identified services of marginal utility;

(4) Higher reimbursement rates for primary and preventive care;

(5) Changes in fee structure, which may include a system of prospective payments, and may include establishment of global fees for identified services or diagnoses including maternity care;

(6) Utilization caps for certain health care procedures;

(7) Restriction of coverage for cosmetic procedures;

(8) Identification of excessive use of certain health care procedures by individuals and a policy to restrict excessive use;

(9) Identification of services which reduce the need for more costly options for necessary care and retention or expansion of those programs;

(10) Identification of services for which preauthorization should be requirement for medicaid reimbursement;

(11) Recommendations relating to the development of
a demonstration project on long-term care, which demonstration project may be limited to patients with alzheimer's disease;

(12) A policy concerning the department's procedures for compliance, monitoring and inspection; and

(13) Such other options as may be developed.

(c) The secretary shall utilize in-state health care facilities for inpatient treatment when such facilities are available. Prior authorization, consistent with applicable federal law, shall be required for out-of-state inpatient treatment.

(d) The secretary shall report to the joint committee on government and finance on the development and implementation of medicaid programs that provide incentives to working persons. The secretary shall consider: Subsidies for low income working persons; individual or small employer buy-ins to the state medicaid fund; prospective payment systems for primary care physicians in underserved areas; and a system to improve monitoring of collections, expenditures, service delivery and utilization.

(e) The secretary shall report quarterly to the joint committee on government and finance regarding provider and facility compliance with federal and state medicaid laws, including, but not limited to, the following: The number of inspections conducted during the previous quarter; description of programs, services and facilities reviewed; findings; and recommendations for corrections.

§9-2-10. Collection of copayments by health care providers; penalties.

(a) The secretary is directed to institute a program by the first day of January, one thousand nine hundred ninety-four, which requires the payment and collection of copayments. Such program shall conform with Section 447.53, Chapter 42 of the Code of Federal Regulations, and the amount of such copayments shall be determined in accordance with the provisions of Sections 447.54 and 447.55, Chapter 42 of the Code of...
Federal Regulations. The secretary shall complete all federal requirements necessary to implement this section, including the submission of any amendment to the state medicaid plan, immediately following the effective date of this section.

(b) Any individual or entity receiving reimbursement from this state under the medical assistance program of the Social Security Act is required to collect such copayments: Provided, That in accordance with Section 447.15, Chapter 42 of the Code of Federal Regulations, no such individual or entity shall refuse care or services to any medicaid-eligible individual because that individual is unable to pay such copayment. The amount of copayments collected shall be reported to the secretary.

(c) After the first day of February, one thousand nine hundred ninety-four, any person, firm, corporation or other entity who willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, device or artifice on behalf of himself, itself or others, fails to attempt to collect copayments as required by this section, shall be liable for payment to the department of health and human resources of a civil money penalty in the amount of one hundred dollars for each occurrence of willful failure to collect a required copayment.

(d) If it comes to the attention of the secretary that a person or other entity is failing to attempt to collect copayments as mandated, the matter shall be referred to the medicaid fraud control unit for investigation and referral for prosecution pursuant to the provisions of article seven of this chapter.

§9-2-11. Limitation on use of funds.

(a) No funds from the medicaid program accounts may be used to pay for the performance of an abortion by surgical or chemical means unless:

(1) On the basis of the physician's best clinical judgment, there is:

(i) A medical emergency that so complicates a pregnancy as to necessitate an immediate abortion to
avert the death of the mother or for which a delay will
create grave peril of irreversible loss of major bodily
function or an equivalent injury to the mother: Provided,
That an independent physician concurs with the
physician’s clinical judgment; or

(ii) Clear clinical medical evidence that the fetus has
severe congenital defects or terminal disease or is not
expected to be delivered; or

(2) The individual is a victim of incest or the
individual is a victim of rape when the rape is reported
to a law-enforcement agency.

(b) The Legislature intends that the state’s medicaid
program not provide coverage for abortion on demand
and that abortion services be provided only as expressly
provided for in this section.

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.


§9-4A-2a. Medical services trust fund.

§9-4A-3. Disproportionate share hospitals.


(a) There is hereby created in the state treasury a
special revolving fund known as the medicaid uncompensated care fund. All moneys deposited or accrued in
this fund shall be used exclusively:

(1) To provide the state’s share of the federal medicaid
program funds in order to improve inpatient payments
to disproportionate share hospitals; and

(2) To cover administrative cost incurred by the
department of health and human resources and associ-
ated with the medicaid program and this fund: Provided, That no expenditures may be made to cover
said administrative costs for any fiscal year after one
thousand nine hundred ninety-two, except as approp-
riated by the Legislature.

(b) Moneys from the following sources may be placed
into the fund:

(1) All public funds transferred by any public agency
to the department of health and human resources medicaid program for deposit in the fund as contemplated or permitted by applicable federal medicaid laws;

(2) All private funds contributed, donated or bequeathed by corporations, individuals or other entities to the fund as contemplated and permitted by applicable federal medicaid laws;

(3) Interest which accrued on amounts in the fund from sources identified in subdivisions (1) and (2) of this subsection; and

(4) Federal financial participation matching the amounts referred to in subdivisions (1), (2) and (3) of this subsection, in accordance with Section 1902 (a) (2) of the Social Security Act.

(c) Any balance remaining in the medicaid uncompensated care fund at the end of any state fiscal year shall not revert to the state treasury but shall remain in this fund and shall be used only in a manner consistent with this article.

(d) Moneys received into the fund shall not be counted or credited as part of the legislative general appropriation to the state medicaid program.

(e) The fund shall be administered by the department of health and human resources. Moneys shall be disbursed from the fund on a quarterly basis. The secretary of the department shall implement the provisions of this article prior to the receipt of any transfer, contribution, donation or bequest from any public or private source.

(f) All moneys expended from the fund after receipt of federal financial participation shall be allocated to reimbursement of inpatient charges and fees of eligible disproportionate share hospitals. Except for the payment of administrative costs as provided for in this section, appropriation from this fund for any other purposes is void.

§9-4A-2a. Medical services trust fund.
(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's medicaid program and providing services for future federally mandated population groups in conjunction with federal reform.

(b) There is hereby created a special account within the department of health and human resources, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, designated the medical services trust fund. Funds paid into the account shall be derived from the following sources:

1. Transfers, by intergovernmental transfer, from the hospital services revenue account provided for in section fifteen-a, article one, chapter sixteen of this code;

2. All interest or return on investment accruing to the fund;

3. Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation; and

4. Any appropriations by the Legislature which may be made for this purpose.

(c) Expenditures from the fund are limited to the following:

1. Payment of backlogged billings from providers of medicaid services when cash-flow problems within the medical services fund do not permit payment of providers within federally required time limits; and

2. Funding for services to future federally mandated population groups in conjunction with federal health care reform: Provided, That other medicaid funds have been exhausted for the federally mandated expansion; Provided, however, That new optional services for which a state medicaid plan amendment is submitted after the first day of May, one thousand nine hundred ninety-three, which are not cost effective for the state, are eliminated prior to expenditure of any moneys from this fund for medicaid expansion.
(d) Expenditures from the fund solely for the purposes set forth in subsection (c) of this section shall be authorized in writing by the governor, who shall determine in his or her discretion whether any expenditure shall be made, based on the best interests of the state as a whole and its citizens, and shall designate the purpose of the expenditure. Upon authorization signed by the governor, funds may be transferred to the medical services fund: Provided, That all expenditures from the medical services trust fund shall be reported forthwith to the joint committee on government and finance.

(e) Notwithstanding the provision of section two, article two, chapter twelve of this code, moneys within the medical services trust fund may not be redesignated for any purpose other than those set forth in subsection (c) of this section, except that, upon elimination of the medicaid program in conjunction with federal health care reform, moneys within the fund may be redesignated for the purpose of providing health care coverage or services in coordination with federal reform.

§9-4A-3. Disproportionate share hospitals.

(a) Unless otherwise noted, all disproportionate share hospitals must meet the following criteria in order to be eligible for reimbursement from the medicaid uncompensated care fund:

(1) The hospital must be licensed by the department of health and human resources and participate in the medicaid program; and

(2) The hospital must have at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services by the approved state medicaid plan. In the case of a hospital located in a rural area, the term "obstetrician" includes any physician with staff privileges at the hospital who performs nonemergency obstetric procedures. The requirements of this subsection do not apply to hospitals who did not offer routine obstetrical services to the general public as of the twenty-first day of December, one thousand nine hundred eighty-seven.
Notwithstanding the provisions of this section, should federal requirements outlined in this subsection change, the department is to comply with federal law.

(b) Additionally, all disproportionate share hospitals must meet one of the following criteria:

(1) The hospital provided in excess of three thousand medicaid inpatient days of service during the most recent fiscal year of the hospital;

(2) For the same time period, the sum of the following factors must exceed eight percent:

   (i) Total medicaid inpatient days divided by total inpatient days; and

   (ii) Total medicare supplemental security insurance inpatient days divided by total medicare inpatient days; and

   (iii) Total days of care provided to eligible medicaid patients whose care was not paid by West Virginia medicaid divided by total inpatient medicaid days; or

(3) The hospital is a psychiatric, rehabilitation or acute care hospital owned and operated by the state of West Virginia, which hospital shall be exempt from the requirements of subdivision (1), subsection (a) of this section.

(c) The dollar value of contributions, bequests or donations made by any hospital to the fund shall not be included as a reimbursable cost in the medicaid cost report of that hospital.

(d) Immediately following the effective date of this section, and in no event later than the thirtieth day of June, one thousand nine hundred ninety-three, the department of health and human resources shall submit to the federal health care finance administration a state medicaid plan amendment in order to effectuate the purposes of subdivision (3), subsection (b) of this section.

ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PROVIDER MEDICAID ACT.

§9-4B-1. Definitions.
§9-4B-1. Definitions.

1 The following words when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) “Board” means the physician/medical practitioner provider medicaid enhancement board created to develop, review and recommend the physician/medical practitioner provider fee schedule.

(b) “Physician provider” means an allopathic or osteopathic physician, rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) “Nurse practitioner” means a registered nurse qualified by virtue of his or her education and credentials and approved by the West Virginia board of examiners for registered professional nurses to practice as an advanced practice nurse independently or in a collaborative relationship with a physician.

(d) “Nurse-midwife” means a qualified professional nurse registered with the West Virginia board of examiners for registered professional nurses who by virtue of additional training is specifically qualified to practice nurse-midwifery according to the statement of standards for the practice of nurse-midwifery as set forth by the American college of nurse-midwives.

(e) “Physician assistant” means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master’s degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician.

(f) “Secretary” means the secretary of the department
§9-4B-2. Physician/medical practitioner provider medicaid enhancement board; creation and composition.

There is hereby created the West Virginia physician/medical practitioner provider medicaid enhancement board to consist of eleven members. The board shall consist of ten members, appointed by the governor, and the secretary, or his or her designee, who shall serve as an ex officio, nonvoting member. The members appointed by the governor shall include five allopathic physicians, one osteopathic physician, one nurse practitioner, one nurse-midwife, one physician assistant and one lay person. The governor shall select four allopathic physician board members from a list of eight recommendations submitted to the governor by the state medical association, one allopathic physician board member from a list of three recommendations submitted to the governor by the state academy of family physicians, the osteopathic physician board member from three recommendations submitted to the governor by the state osteopathic society, the nurse practitioner from three recommendations submitted to the governor by the advanced nursing practice conference group of the West Virginia nurses association, the nurse-midwife from three recommendations submitted to the governor by the West Virginia chapter of the American college of nurse midwives, the physician assistant from three recommendations submitted to the governor by the state physician assistant association and the lay board member, at his or her discretion. The respective associations shall submit their recommendations to the governor within five days of the effective date of this article. The governor shall make all appointments within fifteen days from the receipt of all recommendations. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, made in the same manner as the initial appointment, and the terms of all members expire on
the first day of July, one thousand nine hundred ninety-four. The board shall select a member to act as chairperson. The chairperson shall be the chief administrative officer and shall preside over official transactions of the board.


(a) The board shall:

(1) Develop and recommend a reasonable physician/medical practitioner provider fee schedule that conforms with federal medicaid laws and remains within the limits of annual funding available to the single state agency for the medicaid program. In developing the fee schedule, the board may refer to a nationally published regional specific fee schedule selected by the secretary of the department of health and human resources. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal medicaid laws and may recommend higher reimbursement rates for basic primary and preventive health care services than for other services. In identifying basic primary and preventive health care services and in accordance with applicable federal medicaid laws, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year one thousand ninety-two; and minimum benefits and coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three of this code and section four, article sixteen-c of said chapter and rules of the insurance commissioner promulgated thereunder. If the single state agency approves the fee schedule, it shall implement the physician/medical practitioner provider fee schedule;

(2) Review the fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of the board's recommendations, it shall immediately implement those adjustments and shall
(3) Meet and confer with representatives from each medical specialty area so that equity in reimbursement increases or decreases be achieved to the greatest extent possible;

(4) Assist and enhance communications between participating physician and medical practitioner providers and the department of health and human resources;

and

(5) Review reimbursements in relation to those physician and medical practitioner providers who provide early and periodic screening diagnosis and treatment.

(b) The board may carry out any other powers and duties as prescribed for it by the secretary.

(c) Nothing in this section gives the board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's medicaid plan are met and shall report the same to the joint committee on government and finance on a quarterly basis. The purpose of the board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the medicaid provider community and the agency.

(d) On a quarterly basis, the single state agency and the board shall report to the joint committee on government and finance the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider group identified in section one of this article.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ACT.
§9-4C-1. Definitions.
§9-4C-2. General medicaid enhancement board.
§9-4C-5. Facility providers' medicaid enhancement board.
§9-4C-7. Powers and duties.

§9-4C-1. Definitions.

The following words when used in this article have the meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Ambulance service provider" means a person rendering ambulance services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(b) "General health care provider" means an audiologist, a behavioral health center, a chiropractor, a community care center, an independent laboratory, an independent X-ray service, an occupational therapist, an optician, an optometrist, a physical therapist, a podiatrist, a private duty nurse, a psychologist, a rehabilitative specialist, a respiratory therapist and a speech therapist rendering services within this state and receiving reimbursement, directly as an individual provider or indirectly as an employee or agent of a medical clinic, partnership or other business entity.

(c) "Inpatient hospital services provider" means a provider of inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

(d) "Intermediate care facility for the mentally retarded services provider" means a provider of intermediate care facility services for the mentally retarded for purposes of Section 1903(w) of the Social Security Act.

(e) "Nursing facility services provider" means a provider of nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(f) "Outpatient hospital service provider" means a hospital providing preventative, diagnostic, therapeutic,
rehabilitative or palliative services that are furnished to outpatients.

(g) "Secretary" means the secretary of the department of health and human resources.

(h) "Single state agency" means the single state agency for medicaid in this state.

§9-4C-2. General medicaid enhancement board.

(a) The general medicaid enhancement board created by this section is hereby continued in all respects, except as otherwise provided in this section. Current members of the board who represent groups not represented on the board on and after the effective date of this article shall not serve on the board after such date. The governor shall appoint new members to the board to represent groups not previously represented on the board within thirty days after the effective date of this article.

(b) This board shall consist of eighteen members appointed by the governor, including two lay persons and one representative from each of the following sixteen groups: Audiologists, behavioral health centers, chiropractors, community care centers, independent laboratory services, independent X-ray services, occupational therapists, opticians, optometrists, physical therapists, podiatrists, private duty nurses, psychologists, rehabilitative specialists, respiratory therapists and speech therapists. In addition to the members appointed by the governor, the secretary, or his or her designee, shall serve as an ex officio, nonvoting member of the board.

(c) After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only and shall be made in the same manner as the initial appointment.

(d) The terms of all members expire on the first day of July, one thousand nine hundred ninety-four.

§9-4C-5. Facility providers' medicaid enhancement board.

(a) The outpatient hospital medicaid enhancement
board created by this section shall cease to exist on the
effective date of this article.

(b) There is hereby created the facility providers’
medicaid enhancement board to consist of seven
members. In order to carry out the purpose of this
article, the board shall represent ambulatory surgical
centers, inpatient hospital service providers, outpatient
hospital service providers, nursing facility service
providers and intermediate care facility for the mentally
retarded service providers.

c) The board shall consist of one representative from
each of the aforementioned classes of health care
providers, one lay person and the secretary, or his or her
designee, who shall serve as an ex officio, nonvoting
member. The governor shall make all appointments
within thirty days after the effective date of this article.

d) After initial appointment of the board, any
appointment to fill a vacancy shall be for the unexpired
term only, shall be made in the same manner as the
initial appointment, and the terms of all members shall
expire on the first day of July, one thousand nine
hundred ninety-four.

§9-4C-7. Powers and duties.

(a) Each board created pursuant to this article shall:

(1) Develop, recommend and review reimbursement
methodology where applicable, and develop and recom-
mand a reasonable provider fee schedule, in relation to
its respective provider groups, so that the schedule
conforms with federal medicaid laws and remains
within the limits of annual funding available to the
single state agency for the medicaid program. In
developing the fee schedule the board may refer to a
nationally published regional specific fee schedule, if
available, as selected by the secretary in accordance
with section eight of this article. The board may
consider identified health care priorities in developing
its fee schedule to the extent permitted by applicable
federal medicaid laws, and may recommend higher
reimbursement rates for basic primary and preventa-
tive health care services than for other services. In identifying basic primary and preventative health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year one thousand nine hundred ninety-two; and minimum benefits and coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three of this code and section four, article sixteen-c of said chapter and rules of the insurance commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the provider fee schedule;

(2) Review its respective provider fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of the board’s recommendations, it shall immediately implement those adjustments and shall report the same to the joint committee on government and finance on a quarterly basis;

(3) Assist and enhance communications between participating providers and the department of health and human resources;

(4) Meet and confer with representatives from each specialty area within its respective provider group so that equity in reimbursement increases or decreases may be achieved to the greatest extent possible and when appropriate to meet and confer with other provider boards; and

(5) Appoint a chairperson to preside over all official transactions of the board.

(b) Each board may carry out any other powers and duties as prescribed to it by the secretary.

(c) Nothing in this section gives any board the authority to interfere with the discretion and judgment given to the single state agency that administers the state’s medicaid program. If the single state agency
disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's medicaid plan are met and shall report such modifications to the joint committee on government and finance on a quarterly basis. The purpose of each board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the health care provider community and the agency.

(d) In addition to the duties specified in subsection (a) of this section, the ambulance service provider medicaid board shall work with the health care cost review authority to develop a method for regulating rates charged by ambulance services. The health care cost review authority shall report its findings to the Legislature by the first day of January, one thousand nine hundred ninety-four. The costs of the report shall be paid by the health care cost review authority. In this capacity only, the chairperson of the health care cost review authority shall serve as an ex officio, nonvoting member of the board.

(e) On a quarterly basis, the single state agency and the board shall report the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider identified in section two of this article to the joint committee on government and finance.

ARTICLE 5. MISCELLANEous PROVISIONS.

§9-5-11. Right of subrogation by department of health and human resources to the rights of recipients of medical assistance: rules as to effect of subrogation.

§9-5-11a. Notice of action or claim.


§9-5-17. Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.
§9-5-11. Right of subrogation by department of health and human resources to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) If medical assistance is paid or will be paid to a provider of medical care on behalf of a recipient of medical assistance because of any sickness, injury, disease or disability, and another person is legally liable for such expense, either pursuant to contract, negligence or otherwise, the department of health and human resources shall have a right to recover full reimbursement from any award or settlement for such medical assistance from such other person, or from the recipient of such assistance if he has been reimbursed by the other person. The department shall be legally subrogated to the rights of the recipient against the person so liable, but only to the extent of the reasonable value of the medical assistance paid and attributable to the sickness, injury, disease or disability for which the recipient has received damages. When an action or claim is brought by a medical assistance recipient or by someone on his or her behalf against a third party who may be liable for the injury, disease, disability or death of a medical assistance recipient, any settlement, judgment or award obtained is subject to the claim of the department of health and human resources for reimbursement of an amount sufficient to reimburse the department the full amount of benefits paid on behalf of the recipient under the medical assistance program for the injury, disease, disability or death of the medical assistance recipient. The subrogation claim of the department of health and human resources shall not exceed the amount of medical expenses for the injury, disease, disability or death of the recipient paid by the department on behalf of the recipient. The right of subrogation created in this section includes all portions of the cause of action, by either settlement, compromise, judgment or award, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to subrogation. Any settlement, compromise, judgment or award that excludes or limits the cost of medical services or care shall not preclude...
the department of health and human resources from enforcing its rights under this section. The secretary may compromise, settle and execute a release of any such claim in whole or in part.

(b) Nothing in this section shall be construed so as to prevent the recipient of medical assistance from maintaining an action for injuries received by him against any other person and from including therein, as part of the compensatory damages sought to be recovered, the amount or amounts of his medical expenses, even though such person received medical assistance in the payment of such medical expenses, in whole or in part.

If the action be tried by a jury, the jury shall not be informed as to the interest of the department of health and human resources, if any, and such fact shall not be disclosed to the jury at any time. The trial judge shall, upon the entry of judgment on the verdict, direct that an amount equal to the amount of medical assistance given be withheld and paid over to the department of health and human resources. Irrespective of whether the case be terminated by judgment or by settlement without trial, from the amount required to be paid to the department of health and human resources there shall be deducted the attorney fees attributable to such amount in accordance with and in proportion to the fee arrangement made between the recipient and his attorney of record so that the department shall bear the pro rata portion of such attorney fees. Nothing in this section shall preclude any person who has received medical assistance from settling any cause of action which he may have against another person and delivering to the department of health and human resources, from the proceeds of such settlement, the sums received by him from the department or paid by the department for his medical assistance. Any release given by a person who has received medical assistance to another person releasing such other person of liability with respect to any cause of action shall be binding upon the department of health and human resources if the person for whose benefit the release inures is unaware of, or has
not been informed of, the interest of the department therein. If such other person is aware of or has been informed of the interest of the department of health and human resources in the matter, it shall be the duty of the person to whose benefit the release inures to withhold so much of the settlement as may be necessary to reimburse the department to the extent of its interest in the settlement. No judgment, award of or settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease or disability, in which the department of health and human resources has interest, shall be satisfied without first giving the department notice and reasonable opportunity to establish its interest. If, after being notified in writing of a subrogation claim and possible liability of the recipient, guardian, attorney or personal representative for failure to subrogate the department, a recipient, his or her guardian, attorney or personal representative disposes of the funds representing the judgment, settlement or award, without the written approval of the department, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department. In the event that a controversy arises concerning the subrogation claims by the department, an attorney shall interplead, pursuant to rule twenty-two of the rules of civil procedure, the portion of the recipient's settlement that will satisfy the department exclusive of attorneys fees and costs regardless of any contractual arrange-ment between the client and the attorney.

§9-5-11a. Notice of action or claim.

If either the medical assistance recipient or the department of health and human resources brings an action or claim against a third person, the recipient, his attorney or such department shall, within thirty days of filing the action, give to the other written notice of the action or claim by certified mail. This notice shall contain the name of the third person and the court in which the action is brought. If the department of health and human resources institutes said action, the notice shall advise the recipient of their right to bring such
action in their own name, in which they may include as a part of their claim the sums claimed by such department. Proof of such notice shall be filed in said action. If an action or claim is brought by either the recipient or the department of health and human resources, the other may, at any time before trial, become a party to the action, or shall consolidate his action or claim with the other if brought independently: Provided, That this consolidation or entry as a party does not delay the proceedings.


(a) All recipients of medical assistance under the medicaid program shall be deemed to have authorized all third parties including, but not limited to, insurance companies and providers of medical care, to release to the department of health and human resources information needed by the department to secure or enforce its rights as assignee under this chapter.

(b) Every insurer and provider of medical care shall furnish records or information pertaining to the coverage of any individual or the medical benefits paid or claims made under a policy or obligation, if the department of health and human resources:

(1) Requests the information in writing; and

(2) Certifies that the individual is an applicant for or recipient of medical assistance or is an individual who is legally responsible for an applicant or recipient. The department of health and human resources may request only the records or information necessary to determine if insurance benefits have been or should have been claimed or paid with respect to items of medical care and services that were received by a particular individual and or which medical assistance coverage would otherwise be available.

(c) The insurance commissioner shall establish guidelines for information requests pursuant to this section.
§9-5-17. **Nonprofit agency or facility, in receipt of medicaid moneys, shall provide annual accounting of gross receipts and disbursements including salaries.**

Any nonprofit health care agency or facility which receives medicaid moneys shall, as a condition of the receipt of same, provide an annual accounting of that facility's or provider's receipts and disbursements, including the total salaries of all employees and administrators, with one copy of same to be submitted to the joint committee on government and finance and one copy submitted to the health care cost review authority on or before the fifteenth day of the first month of the year for the preceding year.

**CHAPTER 11. TAXATION.**

Article
10. Procedure and Administration.
12B. Minimum Severance Tax on Coal.
13A. Severance and Business Privilege Taxes.
27. Health Care Provider Taxes.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-18a. Additions to tax for failure to pay estimated income or business franchise tax.

§11-10-18b. Additions to tax for failure to pay any other estimated tax.

§11-10-18a. **Additions to tax for failure to pay estimated income or business franchise tax.**

(a) *Additions to tax.* — Except as otherwise provided in this section, in the case of any underpayment of estimated tax, there shall be added to the tax due for the taxable year, under article twenty-one, twenty-three or twenty-four of this chapter, an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(b) *Amount of underpayment.* — For purposes of subsection (a), the amount of the underpayment shall be
the excess of the amount determined under subdivision
(1) of this subsection over the amount determined under
subdivision (2) of this subsection.

(1) The amount of the installment required to be paid
on or before the due date for the installment, if the
estimated tax due for the taxable year were an amount
equal to ninety percent of the tax shown on the annual
return for the taxable year divided by the number of
installments taxpayer was required to make for the
taxable year, or, if no return was filed, ninety percent
of the tax for such year divided by the number of
installment payments taxpayer was required to make
for the taxable year.

(2) The amount, if any, of the installment paid on or
before the last date prescribed for payment of that
installment.

(c) Period of underpayment. — The period of under-
payment of an installment shall run from the date the
installment was required to be paid (due date) to
whichever of the following dates is the earlier:

(1) The due date of the annual return following the
close of the taxable year for which the installment was
due (determined without regard to any extension of time
for filing such annual return); or

(2) With respect to any portion of the underpayment,
the date on which such portion is paid. For purposes of
this subdivision, a payment of estimated tax shall be
credited against unpaid required installments in the
order in which such installments are required to be
paid.

(d) Exception. — Notwithstanding the provisions of
the preceding subsections, the additions to tax with
respect to any underpayment of any installment shall
not be imposed if the total amount of all payments of
estimated tax made on or before the last date prescribed
for the payment of such installment equals or exceeds
the amount which would have been required to be paid
on or before such date if the estimated tax were
whichever of the following is lesser:
(1) **Prior year's tax.** — One hundred percent of the tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months;

(2) **Annualized tax.** — In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection and under subsection (b) of this section, then the amount of such required installment shall be the annualized income installment. For purposes of this subdivision, there shall be four required installments for each taxable year and the "annualized income installment" is the difference (if any) determined by subtracting the amount determined under paragraph (B) of this subdivision from the amount determined under the appropriate clause of paragraph (A) of this subdivision. When making these computations, the rules in paragraph (C) of this subdivision shall be followed:

(A) (i) **Corporations.** — An amount equal to the applicable percentage of the tax of a corporation for the taxable year computed by placing on an annualized basis its taxable income:

(I) For the first three months of the taxable year, in the case of the first installment;

(II) For the first three months or the first five months of the taxable year, in the case of the second installment;

(III) For the first six months or the first eight months of the taxable year, in the case of the third installment; and

(IV) For the first nine months or for the first eleven months of the taxable year, in the case of the fourth installment.

(ii) **Individuals.** — An amount equal to the applicable percentage of the tax of an individual for the taxable year computed by placing on an annualized basis the
taxable income of the individual for months in the taxable year ending before the due date for the installment.

(B) The aggregate amount of any prior required installments for the taxable year.

(C) **Special rules.** — For purposes of this subdivision:

(i) **Annualization.** — Taxpayer's taxable income shall be placed on an annualized basis in the same manner that taxable income is annualized for federal income tax purposes for the taxable year.

(ii) **Applicable percentage.** — The applicable percentage shall be determined from the following table:

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<th>In the case of the following required installments:</th>
<th>The applicable percentage is:</th>
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<td>2nd</td>
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<td>3rd</td>
<td>67.5</td>
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<td>4th</td>
<td>90</td>
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</table>

(e) **Additional exceptions.** —

(1) **Where tax amount is small.** — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable for withheld tax, is less than two hundred fifty dollars.

(2) **Where individual has no personal income tax liability for preceding taxable year.** — No addition to tax shall be imposed under subsection (a) of this section for any taxable year if:

(A) The individual's preceding taxable year was a taxable year of twelve months;

(B) The individual did not have any West Virginia personal income tax liability for the preceding taxable year;

(C) The individual was a citizen or resident of the United States throughout the preceding taxable year; and
(D) The individual's West Virginia personal income tax liability for the current taxable year is less than five thousand dollars.

(3) 

Waiver in certain cases. — No addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment if and to the extent the tax commissioner determines that by reason of casualty, disaster or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(f) Tax computed after application of credits against tax. — For purposes of this section, the term “tax” means the amount of any annual tax or fee administered under this article that is generally payable in two or more installment payments during the taxable year, minus the amount of credits allowable against such tax or fee, other than taxes withheld from the taxpayer under section seventy-one or seventy-one-a, article twenty-one of this chapter (relating to taxes withheld on wages, or from distributions of pass-through income to nonresident partners, S corporation shareholders or beneficiaries of an estate or trust).

(g) Application of section in case of personal income tax withheld on wages. —

(1) In general. — For purposes of applying this section, the amount of the credit allowed under section seventy-one, article twenty-one of this chapter, for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed to have been paid on each installment payment due date for such taxable year, unless the taxpayer establishes the specific dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application. — The taxpayer may apply subdivision (1) of this subsection separately with respect to:

(A) Wage withholding; and
(B) All other amounts withheld for which credit is allowed under section seventy-one, article twenty-one of this chapter.

(h) Application of section in case of income tax withheld by pass-through entities from distributions to nonresidents. — For purposes of applying this section, the amount of credit allowed under section seventy-one-a, article twenty-one of this chapter to a nonresident distributee of a pass-through entity, shall be deemed to be a payment of estimated income tax for the taxable year of the nonresident distributee, and an equal part of such amount shall be deemed (only for purposes of this section) to have been paid on each installment due date for the taxable year of the distributee, unless the distributee establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(i) Special rule where personal income tax return filed on or before the thirty-first day of January. — If on or before the last day of the first month following the end of the taxable year, the taxpayer files his or her annual personal income tax return for that taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) of this section with respect to any underpayment of the fourth required installment for that taxable year.

(j) Special rules for farmers. — For purposes of this section, if an individual is a farmer for any taxable year:

(1) There is only one required installment for that taxable year;

(2) The due date for such installment is the fifteenth day of January of the following taxable year;

(3) The amount of such installment shall be equal to the required annual payment determined under subsection (b) of this section by substituting “sixty-six and two-thirds percent” for “ninety percent”; and
(4) Subsection (h) of this section shall be applied:

(A) By substituting “the first day of March” for the phrase “the thirty-first day of January”; and

(B) By treating the required installment described in subdivision (1) of this subsection as the fourth required installment.

(k) Fiscal years and short years. —

(1) Fiscal years. — In applying this section to a taxable year beginning on any date other than the first day of January, there shall be substituted, for the months specified in this section, the months of the fiscal year that correspond thereto.

(2) Short taxable year. — The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

(l) Reserved.

(m) Estates and trusts. —

(1) In general. — Except as otherwise provided in this subsection, this section shall apply to any estate or trust.

(2) Exception for certain estates and certain trusts. — With respect to any taxable year ending before the date two years after the date of the decedent’s death, this section shall not apply to:

(A) The estate of such decedent; or

(B) Any trust all of which was treated for federal income tax purposes as owned by the decedent and to which the residue of the decedent’s estate will pass under his or her will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes and expenses of administration).

(3) Special rule for annualizations. — In the case of any estate or trust to which this section applies, paragraph (A), subdivision (2), subsection (d) of this section shall be applied by substituting “ending before
the date one month before the due date of the install-
ment” for the phrase “ending before the due date for
the installment”.

(n) Regulations. — The tax commissioner may pres-
cribe such regulations as the commissioner deems
necessary to carry out the purpose of this section. This
includes, but is not limited to, equitable regulations
allowing payment of adjusted seasonal installments in
lieu of annualized income installments when the
commissioner determines, based on known facts and
circumstances, that payment of the annualized income
installment will result in significant hardship to the
taxpayer due to the seasonal nature of taxpayer's
business, and equitable regulations for payment of
estimated personal income tax by an individual who is:
(1) An employee; (2) employed in another state for some
portion or all of the taxable year; and (3) required to
pay personal income taxes to such other state on (or
measured by) wages earned in that state, for which
credit is allowed under section twenty, article twenty-
one of this chapter.

(o) Effective date. —

(1) This section as amended in the year one thousand
nine hundred ninety-two shall apply to taxable years
beginning after the thirtieth day of June, one thousand
nine hundred ninety-two, and this section as in effect on
the first day of January, one thousand nine hundred
ninety-two, is preserved and shall apply to taxable years
beginning before the first day of July, one thousand nine
hundred ninety-two.

(2) This section as amended in the year one thousand
nine hundred ninety-three shall apply to taxable years
ending after the thirtieth day of June, one thousand nine
hundred ninety-three. For taxable years ending on or
before such dates, the provisions of this section as in
effect for such years are fully preserved.

§11-10-18b. Additions to tax for failure to pay any other
estimated tax.

1 (a) General rule. — If a person required to make
monthly or quarterly installment payments of any annual tax administered under this article, except the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter fails to timely remit any installment payment of such tax or remits less than the amount of the required installment payment of such tax, there shall be added to the tax due for the taxable year an amount determined by applying the rate established under section seventeen or seventeen-a of this article, as appropriate for the taxable year, to the amount of the underpayment of estimated tax, for the period of the underpayment.

(1) Quarterly installment payments. — If a person required to make quarterly installment payments of estimated tax timely pays estimated tax during the taxable year equal to seventy-five percent or more of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one fourth of the tax due for the taxable year is paid by the due date of each installment for that year.

(2) Monthly installment payments. — If a person required to make monthly installment payments of estimated tax timely pays estimated tax during the taxable year equal to at least eleven twelfths of such person's actual liability for such tax for that taxable year, no additions to tax shall be imposed under this section with respect to such payments. Estimated tax is paid timely if at least one twelfth of the tax due for the taxable year is paid by the due date of each installment for that year.

(b) Amount of underpayment. — For purposes of subsection (a) of this section, the amount of the underpayment shall be the excess of the amount that should have been paid by the due date of the required installment payment over the amount taxpayer remitted by the due date of the required installment payment.

(c) Period of underpayment. — The period of underpayment of any installment shall run from the date the
installment was required to be paid (due date) to whichever of the following dates is the earlier:

1. The due date of the annual return following the close of the taxable year for which the installment was due (determined without regard to any extension of time for filing such annual return); or

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(d) Waiver in certain cases. — No addition to tax shall be imposed under this section with respect to any underpayment of estimated tax if and to the extent the tax commissioner determines that:

1. By reason of casualty, disaster or other unusual circumstances the imposition of such addition would be against equity and good conscience; or

2. The amount of the installment payment remitted was determined using the statutory measure of the particular tax, as received or accrued under taxpayer's method of accounting during the period to which the installment payment relates, and the applicable rate of tax.

(e) Burden of proof. — The tax commissioner shall make his or her determination under subsection (d) of this section based upon relevant facts and circumstances established by the taxpayer through such proof or proofs as the tax commissioner may require.

(f) Short tax years. — This section shall apply to short tax years under rules promulgated by the tax commissioner.

(g) Effective date. — This section shall apply to taxable years ending after the thirtieth day of June, one thousand nine hundred ninety-three.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.
§11-12B-3. Imposition of tax, credit.

§11-12B-6. Periodic installment payments of estimated tax.

§11-12B-3. Imposition of tax, credit.

1 (a) Imposition of tax. — Upon every person exercising the privilege of engaging within this state in severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an annual minimum severance tax equal to fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use during the taxable year: Provided, That for taxable years ending after the thirty-first day of May, one thousand nine hundred ninety-three, the minimum severance tax imposed on coal produced by the taxpayer for sale, profit or commercial use during such taxable year shall be seventy-five cents per ton, with such rate increase to apply only to tons of coal produced after the thirty-first day of May, one thousand nine hundred ninety-three.

(b) Credit against article thirteen-a tax. — A person who pays the minimum severance tax imposed by this article shall be allowed a credit against the severance tax imposed on the privilege of producing coal by section three, article thirteen-a of this chapter, but not including the additional severance tax on coal imposed by section six of said article. The amount of credit allowed shall be equal to the liability of the taxpayer for the taxable year for payment of the minimum severance tax on coal imposed by this article: Provided, That the amount of credit allowed by this section shall not exceed the severance tax liability of the taxpayer for the taxable year determined under section three of said article exclusive of the additional tax on coal imposed by section six of said article after application of all credits to which the taxpayer may be entitled except any credit allowed pursuant to chapter five-e of this code, any credit for installment payments of estimated tax paid pursuant to section six of this article during the taxable year and any credit for overpayment of article thirteen-a tax. Notwithstanding anything herein to the contrary, in no event shall the credit allowed under chapter five-e of this code be allowed as a credit against
§11-12B-6. Periodic installment payments of estimated tax.

(a) General rule. — The annual tax levied under this article shall be due and payable in monthly installments during the taxable year. Installment payments shall be due and payable on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subsection on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.

(b) Remittance form. — Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, in the form prescribed by the tax commissioner, sign the same and mail it together with a remittance of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this section on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(c) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than that prescribed in said subsection.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAXES.

§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services: effective dates therefor.
§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.
§11-13A-3b. Imposition of tax on privilege of severing timber.
§11-13A-3c. Imposition of tax on privilege of severing other natural resources.
§11-13A-8. Time for filing annual returns and other documents.
§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article.
§11-13A-9a. Periodic installment payments of tax imposed by section three of this article.
§11-13A-10. Paying tax; annual tax credit.
§11-13A-20a. Dedication of tax.
§11-13A-25. Effective date.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the “Severance and Business Privilege Tax Act of 1993”. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection, subdivision or paragraph of this article.


(a) General rule. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used, or by specific definition.

(b) General terms defined. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

(1) “Business” includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: Provided, That “business” does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the business of the employer, or partnership, or other business entity,
as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

(3) "Delegate" in the phrase "or his delegate", when used in reference to the tax commissioner, means any officer or employee of the state tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(4) "Fiduciary" means and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind.

(6) "Includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

(8) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised, and which is not within the meaning of this article a trust or estate or corporation. "Partnership" includes a limited liability company which is treated as a partnership for federal income tax purposes.
(9) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. "Sale" includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. "Sale" also includes rendering services for a consideration, whether direct or indirect.

(11) "Service" includes all activities engaged in by a person for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property: Provided, That "service" does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) "Tax" means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(13) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia, or his or her delegate.

(14) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. In the case of a return made under this article, or regulations of the tax commissioner, for a fractional part of a year, the term "taxable year" means the period for which such return is made.

(15) "Taxpayer" means any person subject to any tax imposed by this article.
"This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

"This state" means the state of West Virginia.

"Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the tax commissioner.

(c) Specific definitions for producers of natural resources. —

(1) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by Section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(3) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(4) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.
(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the amount of any federal energy tax imposed upon the taxpayer after the first day of June, one thousand nine hundred ninety-three, but shall not be reduced by any state or federal taxes, royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(H) For limestone or sandstone quarried or mined,
177 gross value is the value of such stone immediately upon
178 severance from the earth.
179
(5) "Mining" includes not merely the extraction of ores
180 or minerals from the ground but also those treatment
181 processes necessary or incidental thereto.
182
(6) "Natural resources" means all forms of minerals
183 including, but not limited to, rock, stone, limestone, coal,
184 shale, gravel, sand, clay, natural gas, oil and natural gas
185 liquids which are contained in or on the soils or waters
186 of this state, and includes standing timber.
187
(7) "Processed" or "processing" as applied to:
188
(A) Oil and natural gas shall not include any conver-
189 sion or refining process; and
190
(B) Limestone or sandstone quarried or mined shall
191 not include any treatment process or transportation
192 after the limestone or sandstone is severed from the
193 earth.
194
(8) "Related parties" means two or more persons,
195 organizations or businesses owned or controlled directly
196 or indirectly by the same interests. Control exists if a
197 contract or lease, either written or oral, is entered into
198 whereby one party mines or processes natural resources
199 owned or held by another party and the owner or lessor
200 participates in the severing, processing or marketing of
201 the natural resources or receives any value other than
202 an arm's length passive royalty interest. In the case of
203 related parties, the tax commissioner may apportion or
204 allocate the receipts between or among such persons,
205 organizations or businesses if he determines that such
206 apportionment or allocation is necessary to more clearly
207 reflect gross value.
208
(9) "Severing" or "severed" means the physical
209 removal of the natural resources from the earth or
210 waters of this state by any means: Provided, That
211 "severing" or "severed" shall not include the removal of
212 natural gas from underground storage facilities into
213 which the natural gas has been mechanically injected
214 following its initial removal from earth: Provided,
215 however, That "severing" or "severed" oil and natural
gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(10) "Stock" includes shares in an association, joint-stock company or corporation.

(11) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) **Specific definitions for persons providing health care items or services.** —

(1) "Behavioral health services" means health care related services provided by a behavioral health center as defined in section one, article two-a, chapter twenty-seven of this code or section one, article nine of said chapter.

(2) "Community care services" means home and community care services furnished by a provider pursuant to an individual plan of care, which also includes senior citizens groups that provide such services, but does not include services of home health agencies.

§11-13A-3. **Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services; effective dates therefor.**

(a) **Imposition of tax.** — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to
possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article. In the case of coal, this five percent rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(c) “Certain health care services” defined. — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services and community care services.

(d) Tax in addition to other taxes. — The tax imposed by this section shall apply to all persons severing or processing (or both severing and processing) in this state natural resources enumerated in subsection (a) of this section, and to all persons providing certain health care services in this state as enumerated in subsection (c) of this section, and shall be in addition to all other taxes imposed by law.

(e) Effective date. — This section, as amended in the year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of this section, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross proceeds, shall be fully and completely preserved.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.
1 (a) Imposition of tax. — For the privilege of engaging
2 or continuing within this state in the business of
3 severing natural gas or oil for sale, profit or commercial
4 use, there is hereby levied and shall be collected from
5 every person exercising such privilege an annual
6 privilege tax.

7 (b) Rate and measure of tax. — The tax imposed in
8 subsection (a) of this section shall be five percent of the
9 gross value of the natural gas or oil produced, as shown
10 by the gross proceeds derived from the sale thereof by
11 the producer, except as otherwise provided in this
12 article.

13 (c) Tax in addition to other taxes. — The tax imposed
14 by this section shall apply to all persons severing gas
15 or oil in this state, and shall be in addition to all other
16 taxes imposed by law.

17 (d) Effective date. — This section, as enacted in the
18 year one thousand nine hundred ninety-three, shall
19 apply to gross proceeds derived after the thirty-first day
20 of May of such year. The language of section three of
21 this article, as in effect on the first day of January of
22 such year, shall apply to gross proceeds derived prior
23 to the first day of June of such year and, with respect
24 to such gross proceeds, shall be fully and completely pre-
25 served.

§11-13A-3b. Imposition of tax on privilege of severing
timber.

1 (a) Imposition of tax. — For the privilege of engaging
2 or continuing within this state in the business of
3 severing timber for sale, profit or commercial use, there
4 is hereby levied and shall be collected from every person
5 exercising such privilege an annual privilege tax.

6 (b) Rate and measure of tax. — The tax imposed in
7 subsection (a) of this section shall be three and twenty-
8 two hundredths percent of the gross value of the timber
9 produced, as shown by the gross proceeds derived from
10 the sale thereof by the producer, except as otherwise
11 provided in this article.

12 (c) Tax in addition to other taxes. — The tax imposed
by this section shall apply to all persons severing timber
in this state, and shall be in addition to all other taxes
imposed by law.

(d) Effective date. — This section, as amended in the
year one thousand nine hundred ninety-three, shall
apply to gross proceeds derived after the thirty-first day
of May of such year. The language of section three of
this article, as in effect on the first day of January of
such year, shall apply to gross proceeds derived prior
to the first day of June of such year and, with respect
to such gross income, shall be fully and completely
preserved.

§11-13A-3c. Imposition of tax on privilege of severing
other natural resources.

(a) Imposition of tax. — For the privilege of engaging
or continuing within this state in the business of
severing, extracting, reducing to possession and produc-
ing for sale, profit or commercial use any other natural
resource product or product not taxed under section
three, three-a, three-b or four of this article, there is
hereby levied and shall be collected from every person
exercising this privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be four percent of the
gross value of the natural resource produced, as shown
by the gross proceeds derived from the sale thereof by
producer, except as otherwise provided in this article:
Provided, That beginning the first day of July, one
thousand nine hundred ninety-three, the tax imposed by
this section shall be levied and collected at the rate of
four and one-half percent, and beginning the first day
of July, one thousand nine hundred ninety-four, the tax
imposed by this section shall be levied and collected at
the rate of five percent.

(c) Tax in addition to other taxes. — The tax imposed
by this section shall apply to all persons severing other
natural resources in this state, and shall be in addition
to all other taxes imposed by law.

(d) Effective date. — This section, as amended in the
year one thousand nine hundred ninety-three, shall apply to gross proceeds derived after the thirty-first day of May of such year. The language of section three of this article, as in effect on the first day of January of such year, shall apply to gross proceeds derived prior to the first day of June of such year and, with respect to such gross proceeds, shall be fully and completely preserved.


(a) General rule. — For purposes of the taxes imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. — If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with taxpayer's annual return for the taxable year filed under this article.

(c) Methods of accounting same as federal. — (1) Same as federal. — A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used, unless the tax commissioner, in writing, consents to the use of another method. Accrual basis taxpayers may deduct bad debts only in the year to which they relate, and accrual basis health care providers may not deduct bad debts attributable to services rendered before the first day of June, one thousand nine hundred ninety-three.

(2) Change of accounting methods. — If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this article shall similarly be changed. The
taxpayer shall provide a copy of the authorization for
such change from the Internal Revenue Service with its
annual return for the taxable year filed under this
article.

(d) Adjustments. — In computing a taxpayer's liability
for tax for any taxable year under a method of
accounting different from the method under which the
taxpayer's liability for tax under this article for the
previous year was computed, there shall be taken into
account those adjustments which are determined, under
regulations prescribed by the tax commissioner, to be
necessary solely by reason of the change in order to
prevent amounts from being duplicated or omitted.

§11-13A-8. Time for filing annual returns and other
documents.

On or before the expiration of one month after the end
of the taxable year, every taxpayer subject to a tax
imposed by this article shall make and file an annual
return for the entire taxable year showing such
information as the tax commissioner may require and
computing the amount of taxes due under this article
for the taxable year. Returns made on the basis of a
calendar year shall be filed on or before the thirty-first
day of January following the close of the calendar year.
Returns made on the basis of a fiscal year shall be filed
on or before the last day of the first month following the
close of the fiscal year.

§11-13A-9. Periodic installment payments of taxes im­
posed by sections three-a, three-b and
three-c of this article.

(a) General rule. — Taxes levied under section three-
a, three-b or three-c of this article shall be due and
payable in periodic installments as follows:

(1) If a person's annual tax liability under this article
is reasonably expected to be fifty dollars or less per
month, no installment payments of tax are required
under this section during that taxable year.

(2) Tax of more than one thousand dollars per month.
— For taxpayers whose estimated tax liability under
this article exceeds one thousand dollars per month, the
tax shall be due and payable in monthly installments on
or before the last day of the month following the month
in which the tax accrued: Provided, That the installment
payment otherwise due under this subdivision on or
before the thirtieth day of June each year shall be
remitted to the tax commissioner on or before the
fifteenth day of June each year, beginning the fifteenth
day of June, one thousand nine hundred eighty-eight:

(A) Each such taxpayer shall, on or before the last day
of each month, make out an estimate of the tax for which
the taxpayer is liable for the preceding month, sign the
same and mail it together with a remittance, in the form
prescribed by the tax commissioner, of the amount of
tax due to the office of the tax commissioner: Provided,
That the installment payment otherwise due under this
paragraph on or before the thirtieth day of June each
year shall be remitted to the tax commissioner on or
before the fifteenth day of June, beginning the fifteenth
day of June, one thousand nine hundred eighty-eight.

(B) In estimating the amount of tax due for each
month, the taxpayer may deduct one twelfth of any
applicable tax credits allowable for the taxable year,
and one twelfth of any annual exemption allowed for
such year.

(3) Tax of one thousand dollars per month or less. —
For taxpayers whose estimated tax liability under this
article is one thousand dollars per month or less, the tax
shall be due and payable in quarterly installments on
or before the last day of the month following the quarter
in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day
of the fourth, seventh and tenth months of the taxable
year, make out an estimate of the tax for which the
taxpayer is liable for the preceding quarter, sign the
same and mail it together with a remittance, in the form
prescribed by the tax commissioner, of the amount of
tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each
quarter, the taxpayer may deduct one fourth of any
applicable tax credits allowable for the taxable year, and one fourth of any annual exemption allowed for such year.

(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in said subsection.

§11-13A-9a. Periodic installment payments of tax imposed by section three of this article.

(a) General rule. — Taxes levied under section three of this article shall be due and payable in periodic installments as follows:

(1) If a person’s annual liability under this article can reasonably be expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.

(2) If a person’s annual tax liability under section three of this article can reasonably be expected to exceed fifty dollars per month, the tax imposed by said section shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June, beginning the fifteenth day of June, one thousand nine hundred eighty-eight.
(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year and one twelfth of any annual exemption allowed for such year.

(b) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in said subsection.

§11-13A-10. Paying tax; annual tax credit.

Every taxpayer subject to any tax imposed under this article shall be allowed one annual credit of five hundred dollars against the taxes due under this article, to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state during the taxable year exercising a privilege taxable under this article. Persons providing health care items or services who become subject to the tax imposed by section three of this article beginning the first day of June, one thousand nine hundred ninety-three, shall be allowed a proportional credit under this section based on the number of months in their tax year that begin on or after the first day of June, one thousand nine hundred ninety-three.


Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if said act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.


Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the taxes imposed by this article with like effect as if said act were applicable only
§11-13A-20a. Dedication of tax.

(a) The amount of taxes collected under this article from providers of health care items or services, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the special revenue fund created in the state treasurer's office and known as the medicaid state share fund. Said fund shall have separate accounting for those health care providers as set forth in articles four-b and four-c, chapter nine of this code.

(b) Notwithstanding the provisions of subsection (a) of this section, for the remainder of fiscal year one thousand nine hundred ninety-three and for each succeeding fiscal year, no expenditures from taxes collected from providers of health care items or services are authorized except in accordance with appropriations by the Legislature.

(c) The amount of taxes collected under this article from all other persons, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds and any interest payable with respect to such refunds, shall be deposited into the general revenue fund.

§11-13A-25. Effective date.

 Amendments to this article made by this act of the Legislature shall take effect the first day of June, one thousand nine hundred ninety-three.

ARTICLE 26. HEALTH CARE PROVIDER MEDICAID TAX.

§11-26-20. Transition rules; penalties; effective date.

(a) The tax imposed by this article shall not apply to medicaid reimbursement payments received by health care providers after the thirty-first day of May, one thousand nine hundred ninety-three.
(b) All persons subject to the tax imposed by this article prior to the first day of June, one thousand nine hundred ninety-three, shall make and file a final return with the tax commissioner, on or before the fifteenth day of June, one thousand nine hundred ninety-three, reporting such information as the tax commissioner may require. This return shall be in lieu of the return otherwise due under this article on the fifteenth day of June, one thousand nine hundred ninety-three. With this return, the provider shall remit the balance of tax due under this article with respect to medicaid services rendered before the said first day of June.

(c) For purposes of subsection (b) of this section, and notwithstanding any provision of this article to the contrary, the balance of tax due under this article shall be the sum of the following components: (1) The tax due on the state share of medicaid reimbursement payments received by the provider before the said first day of June and upon which tax was not previously paid by the provider; and (2) the tax due on the state share of medicaid reimbursement payments for services rendered before the said first day of June that will be received on or after that date either because the charges for such service were not being billed to the department of health and human resources before the said first day of June, or the bill for such services was not paid by that department before the said first day of June. Providers who keep their records on a cash basis for federal income tax purposes and who are required by this subsection to pay tax on medicaid reimbursement payments they did not receive before the said first day of June may deduct the amount of such reimbursement payments, when they are actually received, when determining their tax liability under article thirteen-a or twenty-seven of this chapter after said first day of June.

(d) Any medicaid tax owed to the tax commissioner which is not remitted by the fifteenth day of June, one thousand nine hundred ninety-three, becomes delinquent as of the sixteenth day of June, one thousand nine hundred ninety-three, notwithstanding any provision of
(e) Any person required to pay medicaid tax under this article who fails to pay the amount due by the twentieth day of June, one thousand nine hundred ninety-three, shall be subject to a civil penalty equal to two hundred percent of the delinquent medicaid tax owed by such person. Such penalty shall be assessed and collected as provided in article ten of this chapter. The amount of penalty collected shall be deposited into the state share fund established in the treasurer's office.

(f) The provisions of this section shall take effect on the first day of June, one thousand nine hundred ninety-three.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-1. Legislative findings.
§11-27-2. Short title; arrangement and classification.
§11-27-4. Imposition of tax on ambulatory surgical centers.
§11-27-5. Imposition of tax on providers of chiropractic services.
§11-27-6. Imposition of tax on providers of dental services.
§11-27-7. Imposition of tax on providers of emergency ambulance service.
§11-27-8. Imposition of tax on providers of independent laboratory or X-ray services.
§11-27-9. Imposition of tax on providers of inpatient hospital services.
§11-27-10. Imposition of tax on providers of intermediate care facility services for the mentally retarded.
§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.
§11-27-12. Imposition of tax on providers of nursing services.
§11-27-13. Imposition of tax on providers of opticians' services.
§11-27-15. Imposition of tax on providers of outpatient hospital services.
§11-27-16. Imposition of tax on providers of physicians' services.
§11-27-17. Imposition of tax on providers of podiatry services.
§11-27-18. Imposition of tax on providers of psychological services.
§11-27-19. Imposition of tax on providers of therapists' services.
§11-27-25. Time for paying tax.
§11-27-1. Legislative findings.

The Legislature finds and declares that:

(a) Medicaid provides access to basic medical care for our citizens who are not physically, mentally or economically able to provide for their own care.

(b) Inadequate compensation of health care providers rendering medicaid services is a barrier to indigent persons obtaining access to health care services.

(c) Without adequate compensation for the provision of medicaid services, this state cannot attract or retain a sufficient number of health care providers necessary to serve our indigent population.

(d) While participation by a state in the medicaid program created by Title XIX of the Social Security Act is voluntary, the reality is that states, and particularly this state, have no choice but to participate. The alternative is to deprive indigent citizens and particularly the children of indigent families of basic medical services.

(e) The federal government sets the criteria for eligibility to obtain medicaid services. The federal government also requires that certain services be provided as part of a state's medicaid program.

(f) Enactment by the United States Congress in 1991 of Public Law 102-234, amending Section 1903 of the Social Security Act, places limitations and restrictions on the flexibility states have to raise state share for its medical assistance program.

(g) The tax enacted in this article is intended to conform with the requirements of Public Law 102-234.

§11-27-2. Short title; arrangement and classification.
This article may be cited as the "West Virginia Health Care Provider Tax Act of 1993". No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article. No legal effect shall be given to any descriptive matter or heading relating to any part, section, subdivision or paragraph of this article.


(a) General. — When used in this article, words defined in subsection (b) of this section have the meaning ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the word is used clearly indicates that a different meaning is intended.

(b) Definitions. —

(1) "Business" includes all health care activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: Provided, That "business" does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership, and services by a member of any other business entity on behalf of that entity, are the business of the employer, or partnership, or other business entity, as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) "Broad-based health care related tax" means a broad-based health care related tax as defined in Section 1903 of the Social Security Act.

(3) "Corporation" includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engaged in activities taxable under this article.

(4) "Includes" and "including" when used in a definition contained in this article shall not be deemed...
to exclude other things otherwise within the meaning of
the term being defined.

(5) “Partner” includes a member in a “partnership”,
as defined in this section.

(6) “Partnership” includes a syndicate, group, pool,
joint venture or other unincorporated organization
through or by means of which any privilege taxable
under this article is exercised, and which is not within
the meaning of this article a trust or estate or corpo-
ration. It includes a limited liability company when such
company is treated as a partnership for federal income
tax purposes.

(7) “Person” means any individual, partnership,
association, company, corporation or other entity
engaging in a privilege taxed under this article.

(8) “Social Security Act” means the Social Security
Act of the United States, as amended by Public Law
102-234, and codified in Title 42, Section 1396b of the
United States Code.

(9) “Tax” means any tax imposed by this article and,
for purposes of administration and collection of such tax,
includes any interest, additions to tax or penalties
imposed with respect thereto under article ten of this
chapter.

(10) “Taxable year” means the calendar year, or the
fiscal year ending during such calendar year, upon the
basis of which the tax imposed by this article is
computed. In the case of a return made under this
article, or regulations of the tax commissioner, for a
fractional part of a year, the term “taxable year” means
the period for which such return is made.

(11) “Taxpayer” means any person subject to any tax
imposed by this article.

(12) “This code” means the code of West Virginia, one
thousand nine hundred thirty-one, as amended.

(13) “This state” means the state of West Virginia.

§11-27-4. Imposition of tax on ambulatory surgical
centers.
(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of providing ambulatory surgical center services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing ambulatory surgical center services in this state.

(c) **Definitions.** —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for ambulatory surgical center services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Ambulatory surgical center services” means those services of an ambulatory surgical center as defined in Section 1832(a)(2)(F)(1) of the Social Security Act.

(d) **Effective date.** — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-5. **Imposition of tax on providers of chiropractic services.**
(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of providing chiropractic services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing chiropractic services in this state.

(c) **Definitions.** —

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for chiropractic services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Chiropractic services" means those services furnished in the practice of chiropractic by a person entitled to practice chiropractic in this state.

(d) **Effective date.** — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-6. **Imposition of tax on providers of dental services.**

(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of...
providing dental services, there is hereby levied and
shall be collected from every person rendering such
service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be one and three-
fourths percent of the gross receipts derived by the
taxpayer from furnishing dental services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or
receivable, whether in cash or in kind, from patients,
third-party payors and others for dental services
furnished by the provider, including retroactive adjust-
ments under reimbursement agreements with third-
party payors, without any deduction for any expenses of
any kind: Provided, That accrual basis providers shall
be allowed to reduce gross receipts by their contractual
allowances, to the extent such allowances are included
therein, and by bad debts, to the extent the amount of
such bad debts was previously included in gross receipts
upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference
between revenue (gross receipts) at established rates
and amounts realizable from third-party payors under
contractual agreements.

(3) “Dental services” means those services furnished
in the practice of dentistry by a person entitled to
practice dentistry or dental surgery in this state.

(d) Effective date. — The tax imposed by this section
shall apply to gross receipts received or receivable by
providers after the thirty-first day of May, one thousand
nine hundred ninety-three.

§11-27-7. Imposition of tax on providers of emergency
ambulance service.

(a) Imposition of tax. — For the privilege of engaging
or continuing within this state in the business of
providing emergency ambulance service, there is hereby
levied and shall be collected from every person render-
(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer from furnishing emergency ambulance service in this state.

(c) **Definitions.** —

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for emergency ambulance service furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Ambulance" means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified, equipped or maintained, and operated for the transportation of patients.

(4) "Emergency ambulance service" means the transportation by ambulance, and the emergency medical services rendered at the site of pickup and en route, of a patient to or from a place where medical, hospital or clinical service is normally available.

(5) "Emergency medical services" means emergency medical services as defined in section three, article four-c, chapter sixteen of this code.

(d) **Effective date.** — The tax imposed by this section
shall apply to gross receipts received or receivable by
providers after the thirty-first day of May, one thousand
nine hundred ninety-three.

§11-27-8. Imposition of tax on providers of independent
laboratory or X-ray services.

(a) *Imposition of tax.*—For the privilege of engaging
or continuing within this state in the business of
providing independent laboratory or X-ray services,
there is hereby levied and shall be collected from every
person rendering such service an annual broad-based
health care related tax.

(b) *Rate and measure of tax.*—The tax imposed in
subsection (a) of this section shall be five percent of the
gross receipts derived by the taxpayer from furnishing
independent laboratory or X-ray services in this state.

(c) *Definitions.*—

(1) “Gross receipts” means the amount received or
receivable, whether in cash or in kind, from patients,
third-party payors and others for independent labora-
tory or X-ray services furnished by the provider,
including retroactive adjustments under reimbursement
agreements with third-party payors, without any
deduction for any expenses of any kind: *Provided,* That
accrual basis providers shall be allowed to reduce gross
receipts by their contractual allowances, to the extent
such allowances are included therein, and by bad debts,
to the extent the amount of such bad debts was
previously included in gross receipts upon which the tax
imposed by this section was paid.

(2) “Contractual allowances” means the difference
between revenue (gross receipts) at established rates
and amounts realizable from third-party payors under
contractual agreements.

(3) “Independent laboratory or X-ray services” means
those services provided in a licensed, free standing
laboratory or X-ray facility. It does not include labor-
atory or X-ray services provided in a physician’s office,
hospital inpatient department, or hospital outpatient
department.
35 (d) Effective date. — The tax imposed by this section
36 shall apply to gross receipts received or receivable by
37 providers after the thirty-first day of May, one thousand
38 nine hundred ninety-three.

§11-27-9. Imposition of tax on providers of inpatient
hospital services.

1 (a) Imposition of tax. — For the privilege of engaging
2 or continuing within this state in the business of
3 providing inpatient hospital services, there is hereby
4 levied and shall be collected from every person render-
5 ing such service an annual broad-based health care
6 related tax: Provided, That a hospital which meets all
7 the requirements of section twenty-one, article twenty-nine-b, chapter sixteen of this code and regulations
8 thereunder may change or amend its schedule of rates
9 to the extent necessary to compensate for the tax in
10 accordance with the following procedures:

12 (1) The health care cost review authority shall allow
13 a temporary change in a hospital's rates which may be
14 effective immediately upon filing and in advance of
15 review procedures when a hospital files a verified claim
16 that such temporary rate changes are in the public
17 interest, and are necessary to prevent insolvency, to
18 maintain accreditation or for emergency repairs or to
19 relieve undue financial hardship. The verified claim
20 shall state the facts supporting the hospital’s position,
21 the amount of increase in rates required to alleviate the
22 situation and shall summarize the overall effect of the
23 rate increase. The claim shall be verified by either the
24 chairman of the hospital’s governing body or by the
25 chief executive officer of the hospital.

26 (2) Following receipt of the verified claim for
27 temporary relief, the health care cost review authority
28 shall review the claim through its usual procedures and
29 standards; however, this power of review does not affect
30 the hospital’s ability to place the temporary rate
31 increase into effect immediately. The review of the
32 hospital’s claim shall be for a permanent rate increase
33 and the health care cost review authority may include
34 such other factual information in the review as may be
necessary for a permanent rate increase review. As a result of its findings from the permanent review, the health care cost review authority may allow the temporary rate increase to become permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.

(3) When any change affecting an increase in rates goes into effect before a final order is entered in the proceedings, for whatever reasons, where it deems it necessary and practicable, the health care cost review authority may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third-party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the health care cost review authority may order the hospital to refund with interest to each affected purchaser and/or third-party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the health care cost review authority, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that portion of the increase in rates which was subsequently held to be excessive or unreasonable.

(4) The health care cost review authority, upon a determination that a hospital has overcharged purchasers or charged purchasers at rates not approved by the health care cost review authority or charged rates which were subsequently held to be excessive or unreasonable, may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the overcharge.

(5) The rate adjustment provided for in this section is limited to a single adjustment during the initial year of the imposition of the tax provided for in this section.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient hospital services in this state.
(c) Definitions. —

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for inpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Inpatient hospital services" means those services that are inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-10. Imposition of tax on providers of intermediate care facility services for the mentally retarded.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing intermediate care facility services for the mentally retarded, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer from furnishing intermediate care facility services in this state to the mentally retarded.
(c) Definitions. —

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for intermediate care facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Intermediate care facility services for the mentally retarded" means those services that are intermediate care facility services for the mentally retarded for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for the mentally retarded, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax: Provided, That hospitals which provide nursing facility services may
adjust nursing facility rates to the extent necessary to compensate for the tax without first obtaining approval from the health care cost review authority: Provided, however, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment shall be exempt from prospective review by the health care cost review authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The health care cost review authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review shall be subject to the penalties imposed under article twenty-nine-b, chapter sixteen of the code.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for the mentally retarded.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Nursing facility services” means those services that are nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. — The tax imposed by this section
shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-12. Imposition of tax on providers of nursing services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing nursing services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing nursing services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Nursing services” means all nursing acts performed by a registered or practical nurse entitled to provide nursing services in this state, including services of nurse-midwives, nurse practitioners and private duty nurses.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by
providers after the thirty-first day of May, one thousand
nine hundred ninety-three.

§11-27-13. Imposition of tax on providers of opticians’
services.

(a) *Imposition of tax.* — For the privilege of engaging
or continuing within this state in the business of
providing opticians’ services, there is hereby levied and
shall be collected from every person rendering such
service an annual broad-based health care related tax.

(b) *Rate and measure of tax.* — The tax imposed in
subsection (a) of this section shall be one and three-
fourths percent of the gross receipts derived by the
taxpayer from furnishing opticians’ services in this
state.

(c) *Definitions.* —

(1) “Gross receipts” means the amount received or
receivable, whether in cash or in kind, from patients,
third-party payors and others for opticians’ services
furnished by the provider, including retroactive adjust-
ments under reimbursement agreements with third-
party payors, without any deduction for any expenses of
any kind: *Provided,* That accrual basis providers shall
be allowed to reduce gross receipts by their contractual
allowances, to the extent such allowances are included
therein, and by bad debts, to the extent the amount of
such bad debts was previously included in gross receipts
upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference
between revenue (gross receipts) at established rates
and amounts realizable from third-party payors under
contractual agreements.

(3) “Optician” means a maker or dealer in optical
items or instruments; or a person who grinds and
dispenses prescription spectacle lenses but who is not an
ophthalmologist or an optometrist.

(4) “Opticians’ services” means those services fur-
nished by a person trained and engaged in business as
an optician in this state.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing optometric services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing optometric services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for optometric services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Optometric services” means those services furnished in the practice of optometry by a person entitled to practice optometry in this state.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by
providers after the thirty-first day of May, one thousand
nine hundred ninety-three.

§11-27-15. Imposition of tax on providers of outpatient
hospital services.

(a) Imposition of tax. — For the privilege of engaging
or continuing within this state in the business of
providing outpatient hospital services, there is hereby
levied and shall be collected from every person render-
ing such service an annual broad-based health care
related tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be two and one-half
percent of the gross receipts derived by the taxpayer
from furnishing outpatient hospital services in this
state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or
receivable, whether in cash or in kind, from patients,
third-party payors and others for outpatient hospital
services furnished by the provider, including retroactive
adjustments under reimbursement agreements with
third-party payors, without any deduction for any
expenses of any kind: Provided, That accrual basis
providers shall be allowed to reduce gross receipts by
their contractual allowances, to the extent such allowan-
ces are included therein, and by bad debts, to the extent
the amount of such bad debts was previously included
in gross receipts upon which the tax imposed by this
section was paid.

(2) “Contractual allowances” means the difference
between revenue (gross receipts) at established rates
and amounts realizable from third-party payors under
contractual agreements.

(3) “Outpatient hospital services” means those services
that are outpatient hospital services for purposes of
Section 1903(w) of the Social Security Act.

(d) Effective date. — The tax imposed by this section
shall apply to gross receipts received or receivable by
§11-27-16. Imposition of tax on providers of physicians' services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing physicians' services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be two percent of the gross receipts derived by the taxpayer from furnishing physicians' services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for physicians' services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Physicians' services” means those services that are physicians' services for purposes of Section 1903(w) of the Social Security Act.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.
§11-27-17. Imposition of tax on providers of podiatry services.

(a) Imposition of tax. — For the privilege of engaging or continuing within this state in the business of providing podiatry services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing podiatry services in this state.

(c) Definitions. —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for podiatry services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Podiatry services” means those services furnished in the practice of podiatry by a person entitled to practice podiatry in this state.

(d) Effective date. — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-18. Imposition of tax on providers of psychological services.

(a) Imposition of tax. — For the privilege of engaging
or continuing within this state in the business of providing psychological services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax.

(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be one and three-fourths percent of the gross receipts derived by the taxpayer from furnishing psychological services in this state.

(c) **Definitions.** —

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for psychological services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided,* That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) "Psychological services" means those services furnished in the practice of psychology by a person entitled to practice psychology in this state.

(d) **Effective date.** — The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.

§11-27-19. **Imposition of tax on providers of therapists' services.**

(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of providing therapists' services, there is hereby levied and
shall be collected from every person rendering such
service an annual broad-based health care related tax.

(b) Rate and measure of tax. — The tax imposed in
subsection (a) of this section shall be one and three-
fourths percent of the gross receipts derived by the
taxpayer from furnishing therapy services in this state.

(c) Definitions. —

(1) "Gross receipts" means the amount received or
receivable, whether in cash or in kind, from patients,
third-party payors and others for therapy services
furnished by the provider, including retroactive adjust-
ments under reimbursement agreements with third-
party payors, without any deduction for any expenses of
any kind: Provided, That accrual basis providers shall
be allowed to reduce gross receipts by their contractual
allowances, to the extent such allowances are included
therein, and by bad debts, to the extent the amount of
such bad debts was previously included in gross receipts
upon which the tax imposed by this section was paid.

(2) "Contractual allowances" means the difference
between revenue (gross receipts) at established rates
and amounts realizable from third-party payors under
contractual agreements.

(3) "Therapy services" includes physical therapy,
speech therapy, occupational therapy, respiratory
therapy, audiological services and rehabilitative special-
ist furnished by a person trained to furnish such therapy
and, where a license to practice is required by law, such
person is entitled to practice such therapy in this state.

(d) Effective date. — The tax imposed by this section
shall apply to gross receipts received or receivable by
providers after the thirty-first day of May, one thousand
nine hundred ninety-three.


(a) No health care provider shall be required to report
gross receipts derived from furnishing a health care
item or service under more than one section of this
article which imposes a tax.
(b) Gross receipts derived from furnishing a health care item or service to a patient shall be taxed only one time under this article.


When a service is rendered partially in this state and partially in another state, gross receipts attributable to such service shall be allocated or apportioned in accordance with uniform rules promulgated by the tax commissioner.


(a) General rule. — For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as taxpayer's taxable year for federal income tax purposes. If taxpayer has no taxable year for federal income tax purposes, then the calendar year shall be taxpayer's taxable year under this article.

(b) Change of taxable year. — If a taxpayer's taxable year is changed for federal income tax purposes, taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall be provided a copy of the authorization from the Internal Revenue Service for such change with taxpayer's annual return for the taxable year filed under this article.

(c) Method of accounting. — A taxpayer's method of accounting under this article shall be the same as taxpayer's method of accounting for federal income tax purposes. Accrual basis taxpayers may deduct bad debts only in the year to which they relate.

(d) Change of accounting methods. — If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its annual return for the taxable year filed under this article.

(e) Adjustments. — In computing a taxpayer's liability
for tax for any taxable year under a method of accounting different from the method under which the taxpayer's liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the tax commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.


(a) Annual return. — Every person subject to a tax imposed by this article shall file an annual return with the tax commissioner. Returns made on the basis of a calendar year shall be filed on or before the thirty-first day of January following the close of the calendar year. Returns made on the basis of a fiscal year shall be filed on or before the last day of the first month following the close of the fiscal year.

(b) Extension of time for filing return. — The tax commissioner may, upon written request received on or before the due date of the annual return or other document, grant a reasonable extension of time for filing any return, declaration or statement, or other document required to be filed by this article or by regulations, upon such terms as the commissioner may by rule prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer. No such extension shall be for more than six months.


(a) General rule. — Every person subject to a tax imposed by this article must make estimated tax payments for a taxable year in which such person's tax liability can reasonably be expected to exceed fifty dollars per month. Eleven twelfths of such person's estimated tax liability must be remitted in monthly installment payments during that tax year. Installment payments are due on the fifteenth day of the second through the twelfth months of the tax year for gross receipts received or receivable during the preceding month. The balance of tax due must be paid by the last
day of the first month following the close of taxpayer's tax year.

(b) Remittance form. — With each installment payment, taxpayer shall file a remittance form executed as provided in section sixteen of this article. This form shall be prescribed by the tax commissioner and require such information as the commissioner deems necessary for the efficient administration of this article.

(c) Exception. — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if the commissioner deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than that required in said subsection.

§11-27-25. Time for paying tax.

(a) General rule. — The person required to make an annual return under this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the annual return, determined without regard to any extension of time for filing such return.

(b) Extension of time for paying tax. — The tax commissioner may extend the time for payment of the amount of tax shown, or required to be shown, on any annual return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed by statute for the payment thereof.

(c) Amount determined as deficiency. — Under rules prescribed by the tax commissioner, the commissioner may extend the time for payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the due date of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. The tax commissioner may grant an extension of time under this subsection only where it is shown to the tax commissioner's satisfaction that payment of a deficiency upon the date fixed for payment...
thereof will result in undue hardship to the taxpayer.

(d) No extension in certain circumstances. — The tax commissioner may not grant an extension of time under this section if the failure to timely pay tax, or if the deficiency in payment of tax, is due to negligence, to intentional disregard of rules or regulations, or to fraud.


Tax returns, statements or other documents, or copies thereof, required by this article or by rules shall be filed with the tax commissioner by delivery, in person or by mail, postage prepaid, to the tax commissioner's office in Charleston, West Virginia: Provided, That the tax commissioner may, by rule, prescribe the place for filing such returns, statements or other documents, or copies thereof, at one or more other locations.


(a) General. — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns. — The president, vice president, treasurer, assistant treasurer, chief accounting officer or any other duly authorized officer shall sign the return of a corporation. In the case of a return made for a corporation by a fiduciary, the fiduciary shall sign the return. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns. — Any one of the partners shall sign the return of a partnership. The fact that a partner's name is signed on the return is prima facie evidence that that partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic. — The fact that an individual's name is signed to a return, statement or other document is prima facie evidence for all purposes that the return, statement or other document was
actually signed by him or her.

(e) Verification of returns. — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.


(a) Every person liable for reporting or paying any tax under this article shall keep such records, receipts, invoices and other pertinent papers in such forms as the tax commissioner may require.

(b) Every person liable for reporting or paying any tax under this article shall keep such records for not less than three years after the annual return required under this article is filed, unless the tax commissioner, in writing, authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

§11-27-29. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter applies to the taxes imposed by this article, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes imposed by this article and were set forth in extenso in this article.


Notwithstanding the provisions of section five-d, article ten of this chapter, or any other provision of this code to the contrary, the tax commissioner and the commissioner of the bureau of administration and finance of the department of health and human resources, or any successor agency thereto, may, by written agreement, provide for the exchange of information
from their respective files, data bases, or audits of
health care providers, which the tax commissioner
deems relevant to determining provider compliance
with the provisions of this article, in a cost effective and
efficient manner. Such agreement may provide for the
sharing, or reimbursement, of costs incurred by either
party to gather or provide information under this
section.


Each and every provision of the "West Virginia Tax
Crimes and Penalties Act" set forth in article nine of
this chapter applies to the taxes imposed by this article
with like effect as if that act were applicable only to the
taxes imposed by this article and were set forth in
extenso in this article.

§11-27-32. Dedication of tax.

(a) The amount of taxes collected under this article,
including any interest, additions to tax and penalties
collected under article ten of this chapter, less the
amount of allowable refunds, the amount of any interest
payable with respect to such refunds, and costs of
administration and collection, shall be deposited into the
special revenue fund created in the state treasurer's
office and known as the medicaid state share fund. The
tax commissioner shall have separate accounting for
those health care providers as set forth in articles four-
b and four-c, chapter nine of this code, except that taxes
paid by hospitals may be combined and reported as a
single item. The tax commissioner shall retain from the
taxes collected during each fiscal year the amount of two
hundred thousand dollars to be used for administration
and collection of these taxes.

(b) Notwithstanding the provisions of subsection (a) of
this section, for the remainder of fiscal year one
thousand nine hundred ninety-three and for each
succeeding fiscal year, no expenditures from any of the
several health care provider funds are authorized except
in accordance with appropriations by the Legislature.

This tax abrogates and is of no further force and effect, without any further action by the Legislature, upon the earliest of the following dates:

(a) The date upon which an act of Congress becomes effective which prohibits the inclusion of revenue from these broad-based health care related taxes in state share when obtaining matching federal dollars: Provided, That: (1) If such act specifies a later date on which such prohibition takes effect, that later effective date controls; and (2) if such act prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(b) The date upon which a judgment or order of a court of competent jurisdiction becomes final prohibiting the inclusion of revenue from these broad-based health care related taxes when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars: Provided, That: (1) If such judgment or order specifies a later date on which the prohibition takes effect, that later effective date controls; and (2) if such judgment or order prohibits the inclusion revenue from some but not all of the broad-based health care related taxes imposed by this article, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

(c) The date upon which any federal administrative rule or regulation promulgated in conformity with federal law becomes effective which negates the effect or purposes of this article: Provided, That: (1) If such rule or regulation specifies a later date on which the prohibition takes effect, that later effective date controls; and (2) if such rule or regulation prohibits the inclusion of revenue from some but not all of the broad-based health care related taxes imposed by this article
when determining the amount of state expenditures that are claimable as medical assistance for purposes of obtaining federal matching dollars, then only those sections of this article imposing taxes which cannot be used to obtain federal matching dollars shall abrogate on such date, and the remaining tax or taxes shall remain in effect.

§11-27-34. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-27-35. Effective date.

This act of the Legislature shall take effect upon its passage in the year one thousand nine hundred ninety-three: Provided, That the taxes imposed by this article shall not be levied on gross receipts received or accrued before the first day of June, one thousand nine hundred ninety-three, and shall be levied on gross receipts received or accrued on or after that date.

CHAPTER 12.
PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9f. Legislative findings; loans for the prompt payment of medicaid reimbursements; administration of funds; conditions for repayment; creation of special account in state treasury.

(a) The Legislature hereby finds and declares that there is a large amount of investable funds in the consolidated fund established in subsection (b), section eight of this article; that loans made under commercially reasonable terms to promptly reimburse persons
who have provided medicaid services to the citizens of this state and to eradicate the backlog of accounts payable to providers of medicaid services is in the best interest of this state; and that loans from the consolidated fund will assist in financing the need to promptly reimburse medicaid services providers at the end of the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, without in any way impairing the solvency or financial soundness of the consolidated fund. The Legislature further specifically finds that in no event may any of the funds borrowed pursuant to the provisions of this section be utilized for any purpose other than those specified within this section. This section is enacted in view of these findings.

(b) On or before the thirty-first day of May, one thousand nine hundred ninety-three, the state board of investments shall transfer moneys, as a loan, from the consolidated fund to the special sinking fund account created in the state treasury by subsection (d) of this section, in an amount not to exceed thirty million dollars to meet payments for services rendered by medicaid providers prior to the first day of June, one thousand nine hundred ninety-three, and to reduce the backlog in reimbursements that exists in accounts payable related to that time period. On the date the loan is transferred to the special sinking fund created in said subsection, interest shall accrue at the current interest rate of the fund from which the loan originated, plus one fourth of one percent and the current interest rate shall be recalculated daily.

(c) Notwithstanding any provision of any prior enactments of articles four-b and four-c, chapter nine of this code, repayment of moneys transferred, with interest, shall be made to the board of investments not later than the thirtieth day of August, one thousand nine hundred ninety-three, from the proceeds of the tax on the state share of medicaid reimbursement imposed by article twenty-six, chapter eleven of this code and from any civil penalties imposed pursuant to section twenty, article twenty-six, chapter eleven of this code to the full extent necessary to ensure repayment of the loan by the
due date: Provided, That, immediately following the effective date of this section, funds from the proceeds of the tax on the state share of medicaid reimbursement may first be used for the purpose of maximizing the receipt of federal matching funds during fiscal year one thousand nine hundred ninety-three.

(d) There is hereby created in the state treasury a special account, designated the “Medicaid Prompt Payment Fund”, which is a sinking fund for the deposit, withdrawal and repayment of moneys transferred pursuant to this section. Management of such fund shall be a responsibility of the board of investments.

(e) Upon the written request of the governor, the board of investments shall transfer to the medical services fund created pursuant to section two, article four, chapter nine of this code, from the funds available in the medicaid prompt payment fund, those funds necessary for the timely payment of medicaid reimbursements and accounts payable in the medicaid program for services rendered prior to the first day of June, one thousand nine hundred ninety-three.

CHAPTER 16. PUBLIC HEALTH.

Article
2D. Certificate of Need.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-15a. Hospital services revenue account; health facilities long-range plans.

(a) Subject to the provisions set forth in section two, article two, chapter twelve of this code, there is continued in the state treasury a separate account which shall be designated the “hospital services revenue account”. The secretary of the department of health and human resources shall deposit promptly into the account any fees received by a facility owned and operated by the department of health and human resources from whatever source including the federal government, state government or other third-party payer or personal payment.
(b) A five-year health facilities long-range plan shall be developed by the secretary and shall be adopted as regulation in accordance with this chapter and chapter twenty-nine-a of this code. The health facilities long-range plan shall be updated and revised at least every two years.

(c) The secretary is authorized to expend the moneys deposited in the hospital services revenue account in accordance with federal laws and regulations and with the laws of this state as is necessary for the development of the five-year health facilities long-range plan and subsequent revisions.

The secretary is authorized to expend the moneys deposited in the hospital services revenue account as provided for in the health facilities long-range plan at such times and in such amounts as the secretary determines to be necessary for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility: Provided, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in section two-a, article four-a, chapter nine of this code, except for funds appropriated by the Legislature for other purposes within the annual budget bill: Provided, however, That during any fiscal year in which the secretary anticipates spending any money from such account, he or she 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, his or her recommended capital investments, recommended priorities and estimated costs, as well as requests of appropriations for the purpose of improving the delivery of health and mental health services or for the purpose of maintaining or obtaining certification at a state health or mental health facility in such amounts as the secretary determines to be necessary for the development of, and as provided for in, the five-year
health facilities long-range plan and subsequent revisions.

The secretary shall make an annual report to the Legislature on the status of the health services revenue account, including the previous year's expenditures and projected expenditures for the next year.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-5. Powers and duties of state agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the health care planning commission in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) Notwithstanding the provisions of section seven of
this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section must incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. No extensions shall be granted beyond the twelve-month period: Provided, however, That a maximum of sixty beds may be approved, as a demonstration project, by the state agency for a unit to provide nursing services to patients with alzheimer's disease if: (1) The unit is located in an existing facility which was formerly owned and operated by the state of West Virginia and is
presently owned by a county of the state of West Virginia; (2) the facility has provided health care services, including personal care services, within one year prior to the effective date of this section; (3) the facility demonstrates that awarding the certificate of need and operating the facility will be cost effective for the state; and (4) that any applicable lease, lease-purchase or contract for operating the facility was awarded through a process of competitive bidding consistent with state purchasing practices and procedures: Provided further, That an application for said demonstration project shall be filed with the state agency on or before the twenty-first day of October, one thousand nine hundred ninety-three.

(h) No additional intermediate care facility for the mentally retarded (ICF/MR) beds shall be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of the third day of August, one thousand nine hundred eighty-nine, civil action number MISC-81-585 issued in the case of E. H. v. Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted. In converting beds, the hospital must convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care cost review authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed. The health care cost...
review authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ee), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital must demonstrate a need for the project.

(4) The hospital must use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital must notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(j) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled
nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this subsection which shall include:

(1) A requirement that the one hundred eighty beds are to be distributed on a statewide basis;

(2) There shall be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(3) The unit developed by the retirement life care center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(4) The retirement center must demonstrate a need for the project;

(5) The retirement center must offer personal care, home health services and other lower levels of care to its residents; and

(6) The retirement center must demonstrate both short and long-term financial feasibility.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.
CHAPTER 8
(Com. Sub. for H. B. 104—By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed May 26, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article nine, chapter six of said code; to amend and reenact section six, article three, chapter eleven of said code; to amend and reenact sections six-f, six-g, twelve-a and sixteen, article eight of said chapter; to amend and reenact sections five and eleven-a, article fourteen of said chapter; to amend and reenact section twenty-six, article two, chapter eighteen of said code; to amend and reenact section one-a of said chapter; to amend and reenact section four, article two-e of said chapter; to amend and reenact section two, article four of said chapter; to amend and reenact sections eighteen and eighteen-a, article five of said chapter; to further amend article five of said chapter by adding thereto a new section, designated section fifteen-e; to amend and reenact sections fourteen and eighteen, article seven-a of said chapter, to amend and reenact section ten, article seven-b of said chapter; to amend and reenact sections two, four, five, eight-a, ten, eleven and twelve, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section three-b; to amend and reenact section seventeen, article four, chapter eighteen-a of said code; and to further amend article four of said chapter by adding thereto a new section, designated section seven-b, all relating to public education and the financing thereof; increasing the maximum amount of employer premiums that county boards are required to pay for covered employees; requiring the tax commissioner to conduct an audit of county boards in certain instances; specifying penalty for false swearing in an examination by chief tax inspector; requiring that property valuations be furnished to state board by
March third; providing that county board regular levy rate calculated for fiscal year one thousand nine hundred ninety-three be the levy rate for fiscal year one thousand nine hundred ninety-four; authorizing reduction of special levy rates under certain circumstances until first day of July, one thousand nine hundred ninety-five; for this year only minimizing or eliminating procedure required in event revenues exceed stated amount; extending time for boards of education to enter their levies for this year only; validating delays and actions taken prior to the effective date of this section in setting levy rates; stating numerically amount of special levy which may be imposed; allowing exemptions or reimbursements of the gasoline and special fuel excise tax by county boards of education; authorizing a RESA feasibility study to be commissioned by LOCEA; extending the deadline for county boards to participate in the computer information system, prohibiting expansion of noncompatible computer systems, and authorizing the state superintendent to grant additional time extensions in certain instances; setting reimbursement for travel, meals and lodging of RESA employees at level under Travel Management Office; requiring RESA boards to hold one half of regular meetings outside school day; changing textbook adoption cycle from six to eight years with exceptions; restricting textbook adoptions for next school year; providing for additional items to be published in the school report cards; providing for alternate certification for county board superintendents; requiring county boards to conduct a funding and program study; allowing full-day on alternating days or full-day everyday kindergarten programs beginning with the 1994-1995 school year and requiring full-time programs beginning with the 1996-1997 school year; phasing-out the class size waivers for grades one, two and three; allowing an incremental increase in employer contributions for retirement; redefining 'levies for general current expense' to accommodate changes in school board levy rate and deleting obsolete provisions; defining total state basic foundation program; defining 'permanent substitute' and requiring that they be counted as professional
educators but not as instructional personnel for purposes of basic state aid; relocating certain report card provisions; decreasing the base used for calculating RESA funding; reallocating certain step seven funds, providing a gain/loss limit and authorizing additional utilizations of these funds; delaying certain application dates relating to step seven; providing for an increase in appropriations for SBA debt service in certain instances; redefining method of computing local share; providing certain adjustments in basic foundation program; adding to or clarifying provisions regarding accrual and calculation of seniority for professional personnel; extending to and prorating seniority for part-time professional personnel; and providing minimum salary rate equivalents and requirements for those teachers providing services to residents of certain state facilities including the state division of vocational rehabilitation services.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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


11. Taxation.

18. Education.

18A. School Personnel.

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.

1 All employers operating from state general revenue or special revenue funds or federal funds or any combination thereof shall budget the cost of insurance coverage provided by the public employees insurance agency to current and retired employees of the employer as a separate line item, titled "PEI", in its respective annual budget and are responsible for the transfer of funds to the director for the cost of insurance for employees covered by the plan. Each spending unit shall pay to the director its proportionate share from each source of funds. Any agency wishing to charge general revenue funds for insurance benefits for retirees under section thirteen of this article must provide documentation to the director that the benefits cannot be paid for by any special revenue account or that the retiring
employee has been paid solely with general revenue funds for twelve months prior to retirement.

If the general revenue appropriation for any employer, including a county board of education, is insufficient to cover the cost of insurance coverage for the employer's participating employees, retired employees and surviving dependents, the employer shall pay the remainder of the cost from its "personal services" or "unclassified" line items or, in the case of a county board of education, from other funds: Provided, That local excess levy funds shall be used only for the purposes for which they were raised: Provided, however, That after approval of its annual financial plan but in no event later than the thirty-first day of December of each year, the finance board shall notify the Legislature and county boards of education of the maximum amount of employer premiums that the county boards of education will be required to pay for covered employees during the following fiscal year: Provided further, That the amount shall not exceed five million, five hundred thousand dollars during fiscal year one thousand nine hundred ninety-four: And provided further, That the finance board and department of education shall determine the extent to which state school aid appropriations are being used by the county school boards to pay employer premiums for employees whose positions are not funded by state revenues and shall develop and implement a plan to minimize the expenditures.

All other employers not operating from the state general revenue fund shall pay to the director their share of premium costs from their respective budgets. The finance board shall establish the employers' share of premium costs to reflect and pay the actual costs of the coverage including incurred but not reported claims.

The contribution of the other employers (namely: A county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental
function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code) for their employees shall be such percentage of the cost of the employees' insurance package as the employers deem reasonable and proper under their own particular circumstances.

The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from the employee's salary or wages as and when paid and the sums shall be forwarded to the director with such supporting data as the director may require.

All moneys received by the public employees insurance agency shall be deposited in a special fund or funds as are necessary in the state treasury and the treasurer of the state shall be custodian of the fund or funds and shall administer the fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The treasurer shall pay all warrants issued by the state auditor against the fund or funds as the director may direct in accordance with the provisions of this article.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF PUBLIC OFFICES.

§6-9-7. Examinations into affairs of local public officers.

(a) The chief inspector shall have power by himself or herself, or by any person appointed by him or her to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and shall make an examination at least once a year, if
practicable: Provided, That when required for compliance with regulations for federal funds received by county boards of education, the chief inspector shall conduct the audits of all county boards of education within twelve months after the end of the fiscal year and issue the reports within thirty days after completion of the audit work or assign the work to a certified public accountant in a timely manner so that the work is completed within the specified time limits. On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe. He or she or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths. If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months. A person convicted of willful false swearing in an examination is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months. A report of each examination shall be made in duplicate, one copy to be filed in the office of the state tax commissioner and one in the auditing department of the agency. If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be filed with the proper legal authority of the
agency, the prosecuting attorney of the county wherein
the agency is located and with the attorney general for
such legal action as is proper. At the time of the filing
of such certified audit, the chief inspector shall notify
the proper legal authority, the prosecuting attorney and
the attorney general in writing of his or her recommen-
dation as to the legal action that the chief inspector
considers proper, whether criminal prosecution or civil
action to effect restitution, or both. If the proper legal
authority or prosecuting attorney, within nine months of
the receipt of the certified audit and recommendations,
refuses, neglects or fails to take efficient legal action by
a civil suit to effect restitution or by prosecuting
criminal proceedings to a final conclusion, in accordance
with the recommendations, the chief inspector may
institute the necessary proceedings or participate
therein and prosecute the proceedings in any court of
the state to a final conclusion.

(b) When requested by the governing body of a
municipality, the chief inspector shall take bids on the
audit of that municipality, and, if he or she finds that
a reputable certified public accountant or registered
public accountant outside the state tax department can
conduct the audit at a cost lower than if the department
did it, and if the accountant meets all criteria set forth
by the chief inspector, he or she shall contract with the
accountant for the audit: Provided, That the chief
inspector may elect to conduct the audit of a municipali-
ity with one or more members of his or her audit staff
where, in the opinion of the chief inspector, a special or
unusual situation exists.

CHAPTER 11. TAXATION.

Article.
3. Assessments Generally.
8. Levies.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-6. Statements of assessed valuations for municipal-
ities and boards of education; extension of levies.
The assessor shall annually, not later than the third day of March, furnish to the recorder or clerk of the city or town council of every incorporated city and town in the county and also to the secretary of the board of education of the county and to the state board of education, a certified statement, showing in separate amounts the aggregate value of all property, real and personal, and of all property within each class as provided in section five, article eight of this chapter, and the clerk of the county commission shall, in like fashion, certify the aggregate value of all property assessed by the board of public works, or other board in lieu thereof, in such city or district, as ascertained from the land and personal property books and from the statement furnished by the auditor to the county clerk of the value of property assessed in such county by the board for the current year.

The statement so furnished shall be taken, by the council of such city or town, as the proper valuation of all property situated therein and liable for taxation for municipal purposes notwithstanding any provisions which may be contained in the charter of any city or town. Upon receiving such statement, the recorder or clerk of the council, shall present the same to the council at a meeting to be held for the purpose of making the estimate and laying the levy as hereinafter required; and, as soon as the rate shall have been determined upon, the recorder, or secretary of the council, shall furnish the officer whose duty it is to make out the land and personal property books a certified copy of the order of such city or town council fixing the rate of tax, and such officer shall thereupon extend the tax against the property situated in such city or town, in the land books and the personal property book of the county, in separate columns in such books, which columns shall be headed with the words: "Town, or city, tax for the town, or city, of ____________.”

ARTICLE 8. LEVIES.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase.
§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearing.

§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for permanent improvement fund, then for current expenses.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of one percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five, article eight of this chapter for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Class III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred one percent: Provided, That the one hundred one percent figure shall be increased by the amount the
boards of educations' increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3), above, by the total weighted net assessed value as calculated in paragraph two of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision: Provided, however, That the rate of levy for county boards of education for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three shall be equal to the rate of levy calculated for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, pursuant to the provisions of this subsection.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if any such increase is deemed to be necessary.

(c) This section shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.
§11-8-6g.   Effect on special levy rates when appraisal results in tax revenue increase; public hearings.

(a) Until the first day of July, one thousand nine hundred ninety-five, as to any special levy in effect prior to that date, and notwithstanding any other provision of law to the contrary, where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of four percent or more in the total projected property tax revenues that would be realized were the special levy rates then in effect by the county commission, the municipalities or the county board of education to be imposed, the local levying body shall comply with subsection (b) of this section and may reduce the rate of special levy in accordance with the provisions of subsection (d) of this section until the first day of July, one thousand nine hundred ninety-five. After the first day of July, one thousand nine hundred ninety-five, each levying body shall adopt only the levy rate which is specified and approved in the levy ballot: Provided, That if the special levy ballot provision authorizes the levying body to reduce the rate of special levy, such rate may be reduced in accordance with the special levy ballot provision.

An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section.

(b) Any local levying body projected to realize such increase greater than four percent shall conduct a public hearing no later than the twentieth day of March in the years one thousand nine hundred ninety-four and one thousand nine hundred ninety-five, which hearing may be held at the same time and place as the annual budget hearing. Notice of the public hearing and the meeting in which the levy rate shall be on the agenda
shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: Provided, That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

HEARING REGARDING SPECIAL LEVY RATES

The (name of the local levying body) hereby gives notice that the special levy rate imposed by the (local levying body) causes an increase in property tax revenues due to increased valuations.

1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year's total assessed value of property by ____ percent.

2. Current Year's Revenue Produced Under Special Levy:

3. Projected Revenue Under Special Levy for Next Tax Year:

4. Revenue Projected from New Property or Improvements: $_______.
5. General areas in which new revenue is to be allocated:

A public hearing on the issue of special levy rates will be held on (date and time) at (meeting place). A decision regarding the special levy rate will be made on (date and time) at (meeting place).

Notwithstanding any other provision of this subsection to the contrary, for the year one thousand nine hundred ninety-three only, any local levying body required to conduct a public hearing due to a four-percent increase as set forth in this subsection projected for the next fiscal year shall hold the public hearing prior to the sixth day of May, shall only be required to publish a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, and need not provide such notice at least seven days before the date of the hearing as required in this subsection: Provided, That a Class IV town or village may provide notice as otherwise set forth in this subsection: Provided, however, That any public hearings held pursuant to the provisions of this section in the year one thousand nine hundred ninety-three prior to the effective date of this section are hereby ratified and confirmed as having full force and effect: Provided further, That no county commission or municipality shall be required to hold a public hearing as required by this section during the year one thousand nine hundred ninety-three for the fiscal year one thousand nine hundred ninety-four.

(c) All hearings are open to the public, and the local levying body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as are determined by the governing body. A decision regarding the special levy rate shall be made within ten days of the hearing.

(d) For the fiscal years beginning on the first day of July, one thousand nine hundred ninety-three, ninety-four and ninety-five, as to any special levy in effect prior to the first day of July, one thousand nine hundred ninety-five, a local levying body may reduce the rate of
the special levy for all classes of property for the
forthcoming tax year so as to cause such rate of special
levy to produce no more than one hundred four percent
of the previous year's projected property tax revenues
from extending such special levy rates or such lesser
reduction the local levying body considers adequate:
Provided, That no levying body shall reduce any special
levy if such levy rate has been covenanted or otherwise
dedicated and is necessary to the payment of bonds or
other obligations existing as of the effective date of this
section: Provided, however, That nothing contained in
this subsection shall be construed to limit the reduction
of the levy rate when the terms of the special levy
permit a lower reduction: Provided further, That this
provision shall not restrict the ability of a local levying
body to enact excess levies as authorized under existing
statutory or constitutional provisions.

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

§11-8-12a. Adjourned session of board of education to
hear objections to proposed levies; appro-
val of estimate and levy by tax commis-
sioner; first levy for bonded and other
indebtedness and indebtedness not bonded,
second for permanent improvement fund,
then for current expenses.

Each board of education when it reconvenes on the
third Tuesday in April shall proceed in a manner
similar in all respects to that provided for in section ten-
a of this article. The board shall not finally enter any
levy until it has been approved in writing by the tax
commissioner. After receiving the approval, the board
shall enter the statement as approved in its record of
proceedings, together with the written approval:
Provided, That for the fiscal year one thousand nine
hundred ninety-three only, each board of education may
delay its final entry of the levy until no later than the
first Thursday in May, by which time each board shall have entered the statement as approved in its record of proceedings, together with the written approval: Provided, however, That any delay by a county board of education in the entry of its final levy pursuant to the provisions of this section in the fiscal year one thousand nine hundred ninety-three and any action taken prior to the effective date of this section that is not inconsistent with the provisions of this section or other applicable levy rate sections of this code are hereby ratified and confirmed as having full force and effect.

The board shall levy as many cents per hundred dollars' assessed valuation on each class of property in the county or in the area of a pre-existing school district, as the case may be, as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of any school district of the county existing prior to twenty-second day of May, one thousand nine hundred thirty-three, and incurred prior to the adoption of the Tax Limitation Amendment;

Second, for the permanent improvement fund;

Third, for general current expenses.

The rates of levy for each purpose shall not exceed the amounts fixed by section six-c unless another rate is authorized by the tax commissioner or set by the Legislature in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

A local levying body may provide for an election to increase the levies, by entering on its record of proceedings an order setting forth:
(1) The purpose for which additional funds are needed;
(2) The amount for each purpose;
(3) The total amount needed;
(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
(5) The proposed additional rate of levy in cents on each class of property;
(6) The proposed number of years, not to exceed three, to which the additional levy applies, except that in the case of county boards of education the proposed number of years shall not exceed five;
(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision, the question of the additional levy at either a general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: Provided, That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each one hundred dollars of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of section six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class
III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than three years in the case of county commissions and municipalities and five years in the case of county boards of education without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided for in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply: Provided, That nothing contained in this section shall conflict with the provisions of article X, section 8 of the constitution of West Virginia.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-5. Exemptions from tax.

§11-14-11a. Refund of tax on gasoline or special fuel paid by any county board of education, volunteer fire department, nonprofit ambulance service and emergency rescue service.

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:
(1) All gallons of gasoline or special fuel exported from this state to any other state or nation.

(2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency thereof when delivered in bulk quantities of five hundred gallons or more.

(3) All gallons of gasoline or special fuel sold to and purchased by a county board of education when delivered in bulk quantities of five hundred gallons or more.

(4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense or emergency service program, or to any person on whom is imposed a requirement to maintain an inventory of gasoline or special fuel for the purpose of any such program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to such exemption.

(5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter.

(6) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines.

(7) All gallons of special fuel for heating any public or private dwelling, building or other premises.

(8) All gallons of special fuel for boilers.

(9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent.

(10) All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or compound.
(11) All gallons of gasoline or special fuel sold to any municipality or agency thereof for use in vehicles or equipment owned and operated by such municipality or agency thereof and when purchased for delivery in bulk quantities of five hundred gallons or more.

(12) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system.

(13) All gallons of gasoline or special fuel sold for use as aircraft fuel.

(14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft.

(15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives.

§11-14-11a. Refund of tax on gasoline or special fuel paid by any county board of education, volunteer fire department, nonprofit ambulance service and emergency rescue service.

The tax imposed by this article and paid by county boards of education shall be refunded to the county board of education.

Upon certification by the county commission to the state tax commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by the organization shall be refunded.

The tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing the purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of the gasoline or special fuel purchased and consumed by the user, and the commissioner upon
the receipt of the affidavit and the paid sales slips or
invoices shall cause to be refunded the tax paid on
gasoline or special fuel purchased and consumed as
provided in this section.

The right to receive any refund under the provisions
of this section is not assignable and any assignment
thereof is void and of no effect, nor shall any payment
be made to any person other than the original person
entitled thereto using gasoline or special fuel as set forth
in this section. The commissioner shall cause a refund
to be made under the authority of this section only when
the application for the refund is filed with the commis-
sioner, upon forms prescribed by the commissioner, no
later than the thirty-first day of August for purchases
of fuel made during the preceding fiscal year ending the
thirtieth day of June. Any claim for a refund not timely
filed shall not be construed to be or constitute a moral
obligation of the state of West Virginia for payment. The
claim for refund is also subject to the provisions of
section fourteen, article ten of this chapter.

CHAPTER 18. EDUCATION.

2. State Board of Education.
2A. Adoption of Textbooks, Instructional Materials and Learning
   Technologies.
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ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-26. Establishment of multicounty regional educa-
tional service agencies; purposes; authority
to implement regional services.

(a) In order to consolidate and administer more
effectively existing educational programs and services
so individual districts will have more discretionary
moneys for educational improvement and in order to
equalize and extend educational opportunities, the state
board of education shall establish multicounty regional
educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of such agencies: Provided, That the Legislative Oversight Commission on Education Accountability shall commission a comprehensive feasibility study of the regional educational service agencies which shall be completed and reported to the Legislative Oversight Commission on Education Accountability no later than the 10th day of January, one thousand nine hundred ninety-four.

(b) In furtherance of these purposes, it is the duty of the board of directors of each regional educational service agency to continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services would be among the types of services appropriate for delivery on a regional basis.

(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When said vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board shall promulgate rules requiring a county board that declines to participate in such programs or services to show just
cause for not participating and the estimated savings accruing to the county therefrom. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county's foundation allowance for administrative cost the lesser of the amount of the estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where such delivery method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service, transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional educational service agency shall submit the study to the state board, to the standing committees on education and finance of the West Virginia senate and house of delegates, and to the secretary of education and the arts: Provided, That in the event such study is implemented those individuals employed prior to the
effective date thereof shall not have their employment terminated as a result of the study.

(f) Each regional educational service agency shall commence implementation of a uniform integrated regional computer information system as recommended by the state board of education on or before the first day of January, one thousand nine hundred ninety-one. Each county board of education shall use the computer information system for data collection and reporting to the state department of education beginning no later than the first day of July, one thousand nine hundred ninety-four. County boards of education shall bear the cost of and fully participate in the implementation of the system: Provided, That no county shall expand any system either through the purchase of additional software or hardware that does not advance the goals and implementation of the uniform integrated regional computer information system as recommended by the state board: Provided, however, That nothing contained herein shall prevent the state superintendent from granting an extension to those counties projected to have budget deficits for the school year beginning on the first day of July, one thousand nine hundred ninety-four.

(g) Each regional educational service agency shall submit a report and evaluation of the services provided and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school’s plan as to development of new programs and enhancement of existing programs. The reports shall be due by the first day of January of each year commencing with the year one thousand nine hundred ninety-one and shall be made available to the state board of education, standing committees on education of the West Virginia senate and house of delegates and to the secretary of education and the arts.

(h) A regional board shall be empowered to receive and disburse funds from the state and federal govern-
ments, member counties, gifts and grants.

(i) Notwithstanding any other provision of the code to the contrary, employees of regional educational service agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

(j) Regional educational service agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day.

ARTICLE 2A. ADOPTION OF TEXTBOOKS, INSTRUCTIONAL MATERIALS AND LEARNING TECHNOLOGIES.

§18-2A-1. Definition; adoption groups; adoption schedule.

"Textbooks" includes books, instructional materials and learning technologies. "Instructional materials" means and includes systems of instructional materials, or combinations of books and supplementary materials which convey information to the pupil. "Learning technologies" include, but are not limited to, applications using computer software, computer assisted instruction, interactive videodisc; other computer courseware and magnetic media.

Textbooks adopted on the state multiple list must substantially cover the required content and skills for the subject as approved by the state board of education. Adopted materials must be current and information presented accurately.

On or before the first day of July, one thousand nine hundred ninety-two, the state board of education shall classify the elementary and secondary school subjects required to be taught in the schools of our state into adoption groups by related subject fields as nearly as possible. A schedule for the periods of adoption shall be determined by the state board of education: Provided, That magazines, newspapers and other periodicals may be purchased by a county board of education for classroom use to supplement those items adopted on the state multiple list without having to comply with the
adoption procedures provided in this article: \textit{Provided, however}, That magazines, newspapers and periodicals are considered to be textbooks for purposes of special excess levies subject to the provisions of section sixteen, article eight, chapter eleven of this code when the described purpose under that section is for textbooks. The state adoption cycle as to science and health textbooks shall not exceed six years and the adoption cycle as to all other textbooks shall not exceed eight years: \textit{Provided further}, That the county textbook adoption committees may request a waiver of the maximum adoption cycles from the state board of education: \textit{And provided further}, That during the school year beginning on the first day of July, one thousand nine hundred ninety-three, the state board of education shall make additional adoptions only in the subject of science, and if the county boards of education make additional adoptions and purchases, then those county boards may make purchases only in the subjects of science and health.

\textbf{ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.}

\textbf{§18-2E-4. Better schools accountability; school, school district and statewide school report cards.}

\begin{enumerate}
  \item\textit{(a)} For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.

  \item\textit{(b)} The school report cards shall include:

  \begin{enumerate}
    \item The following indicators of student performance at
(2) The following indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable: average class size; percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percent of enrollments in college preparatory, general education and vocational education programs; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school.

(3) Every county board of education shall annually determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The
(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and shall also include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each school district board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of any child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them.

The report cards shall be completed and disseminated prior to the first day of January, one thousand nine hundred eighty-nine, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list (1) the names of the members of the district school board, the dates upon which their terms expire and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia school board association or other approved organizations, and other school board member training programs, and (2) the names of the district school superintendent and every assistant and
associate superintendent and any training programs related to their area of school administration which they have attended. The information shall also be reported by district in the statewide school report card.

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

Superintendents employed prior to the twenty-eighth day of June, one thousand nine hundred eighty-eight shall hold a certificate valid in West Virginia and an approved master’s degree including at least twelve semester hours in school administration and supervision, and at least five years experience in public school teaching and/or supervision.

Any superintendent appointed as superintendent after the twenty-seventh day of June, one thousand nine hundred eighty-eight, shall meet requirements for the professional administrative certificate endorsed for superintendent by the first day of July, one thousand nine hundred ninety-three. Any new superintendent appointed as of the thirtieth day of August, one thousand nine hundred ninety, shall hold a professional administrative certificate endorsed for superintendent: Provided, That any candidate for superintendent who possesses an earned doctorate from an accredited institution of higher education, has completed three successful years of teaching in public education and has the equivalent of three years of experience in management or supervision, upon employment by the county board of education shall be granted a permanent administrative certificate and shall be a licensed county superintendent. Any person employed as assistant superintendent or educational administrator prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, and who was previously employed as superintendent shall not be required to hold the
professional administrative certificate endorsed for superintendent.

Before entering upon the discharge of his or her duties the superintendent shall file with the president of the board a health certificate from a reputable physician, on a form prescribed by the state department of education, certifying that he or she is physically fit for the duties of his or her office and that he or she has no infectious or contagious disease; and if the superintendent, due to accident or illness, should become incapacitated to an extent that could lead to a prolonged absence, the board, upon unanimous vote, has the authority to enter an order declaring the incapacity and it shall appoint an acting superintendent until such time as a majority of the members of the board determine that the incapacity no longer exists. However, an acting superintendent shall not serve as such for more than one year, or later than the expiration date of the superintendent’s term, whichever is less, without being reappointed by the board of education.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15e. Study on school equity.

§18-5-18. Kindergarten programs.


§18-5-15e. Study on school equity.

County boards shall conduct a comprehensive study to determine equality of funding and programs among the various schools within each county. Such study shall consider issues including, but not limited to, cost per pupil and availability of curriculum and programs.

County boards shall submit a report to the legislative oversight commission on education accountability by the first day of October, one thousand nine hundred ninety-three.

§18-5-18. Kindergarten programs.

County boards of education shall provide by the school year one thousand nine hundred eighty-three—eighty-four, and continue thereafter, kindergarten programs for all children who shall have attained the age of five
prior to September first of the school year in which the pupil enters such kindergarten program and may establish kindergarten programs designed for children below the age of five: Provided, That beginning with the school year one thousand nine hundred ninety-four—ninety-five, such programs shall be full-day and may be every day or on alternating days; beginning with the school year one thousand nine hundred ninety-six—ninety-seven, such programs shall be full-day everyday. Before the first day of November, one thousand nine hundred ninety-three, the state board shall develop cost estimates and report to the legislative oversight commission on education accountability on the feasibility of implementing a full-time kindergarten program.

Persons employed as kindergarten teachers, as distinguished from paraprofessional personnel, shall be required to hold a certificate valid for teaching at the assigned level as prescribed by regulations established by the state board of education. The state board of education shall establish and prescribe guidelines and criteria setting forth the minimum requirements for all paraprofessional personnel employed in kindergarten programs established pursuant to the provisions of this section and no such paraprofessional personnel shall be employed in any kindergarten program unless he meets such minimum requirements.

The state board of education with the advice of the state superintendent of free schools shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of kindergarten programs in accordance with the other provisions of this section. Guidelines and criteria so established and prescribed are also intended to serve for the establishment and operation of nonpublic kindergarten programs and shall be used for the evaluation and approval of such programs, provided application for such evaluation and approval is made in writing to the state board by proper authorities in control of such programs. The state superintendent of free schools at intervals not to exceed two years shall publish a list of nonpublic kindergarten programs that have been
approved in accordance with the provisions of this section and a list of Montessori kindergartens established and operated in accordance with usual and customary practices for the use of the Montessori method. Teachers who have training or experience in the use of the Montessori method of instruction for kindergartens shall be deemed to be approved to teach in such kindergartens using the Montessori method without additional certification.

Pursuant to such guidelines and criteria, and only pursuant to such guidelines and criteria, the county boards may establish programs taking kindergarten to the homes of the children involved, using educational television, paraprofessional personnel in addition to and to supplement regularly certified teachers, mobile or permanent classrooms and other means developed to best carry kindergarten to the child in its home and enlist the aid and involvement of its parent or parents in presenting the program to the child; or may develop programs of a more formal kindergarten type, in existing school buildings, or both, as such county board may determine, taking into consideration the cost, the terrain, the existing available facilities, the distances each child may be required to travel, the time each child may be required to be away from home, the child's health, the involvement of parents and such other factors as each county board may find pertinent. Such determinations by any county board shall be final and conclusive.

Funds for implementing the kindergarten programs during the fiscal year one thousand nine hundred seventy-two, and thereafter, shall be allocated to counties from a special appropriation to the state department of education from the general revenue fund: Provided, That except for expenditures from the general revenue funds for regional kindergarten demonstration centers, in no event shall any state money from the general fund be expended under the provisions of this section unless federal funds are available for the purposes of this section.

Allocations to counties will be made on the basis of
approved kindergarten programs. The West Virginia board of education shall establish criteria and standards necessary to guide counties in developing approvable kindergarten programs and shall determine funding levels of said programs on local operating costs.

An additional appropriation shall be made to the state department of education from the general revenue fund to establish and operate during the fiscal year one thousand nine hundred seventy-two, regional kindergarten demonstration centers in educational regions three, four, five, six and seven, and thereafter in regions one through seven. Said funds shall be allocated to said regions for establishing and operating regional demonstration centers in accordance with criteria and standards established by the West Virginia board of education. Said regional centers shall be established to provide exemplary and innovative kindergarten programs, to provide laboratory experiences for preservice and in-service education for professional personnel and staff development programs for training paraprofessional personnel, to establish organizational and administrative machinery designed to promote cooperation between and among all agencies involved in the education and development of young children, and to promote cooperation between counties in providing high cost supervisory, developmental, research and evaluative services not currently available to individual counties.


1 County boards of education shall provide, by the school year one thousand nine hundred eighty-three—eighty-four, and thereafter, sufficient personnel, equipment and facilities as will ensure that each first and second grade classroom, or classrooms having two or more grades that include either the first or second grades shall not have more than twenty-five pupils for each teacher of the grade or grades and shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefore by a county board.
County boards shall provide by the school year one thousand nine hundred eighty-four—eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and sixth grade classroom, or classrooms having two or more grades that include one or more of the third, fourth, fifth and sixth grades, shall not have more than twenty-five pupils for each teacher of the grade or grades.

Beginning with the school year one thousand nine hundred eighty-six—eighty-seven, and thereafter, no county shall maintain a greater number of classrooms having two or more grades that include one or more of the grade levels referred to in this section than were in existence in said county as of the first day of January, one thousand nine hundred eighty-three: Provided, That for the prior school years, and only if there is insufficient classroom space available in the school or county, a county may maintain one hundred ten percent of such number of classrooms.

During the school year one thousand nine hundred eighty-four—eighty-five, and thereafter, the state superintendent is authorized, consistent with sound educational policy, (a) to permit on a statewide basis, in grades four through six, more than twenty-five pupils per teacher in a classroom for the purposes of instruction in physical education, and (b) to permit more than twenty pupils per teacher in a specific kindergarten classroom and twenty-five pupils per teacher in a specific classroom in grades one through six during a school year in the event of extraordinary circumstances as determined by the state superintendent after application by a county board of education.

The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

The requirement for approval of an exception to exceed the twenty pupils per kindergarten teacher per session limit or the twenty-five pupils per teacher limit
in grades one through six is waived in schools where the
schoolwide pupil-teacher ratio is twenty-five or less in
grades one through six: Provided, That a teacher shall
not have more than three pupils above the teacher/pupil
ratio as set forth in this section. Any kindergarten
teacher who has more than twenty pupils per session
and any classroom teacher of grades one through six
who has more than twenty-five pupils shall be paid
additional compensation based on the affected classroom
teacher’s average daily salary divided by twenty for
kindergarten teachers or twenty-five for teachers of
grades one through six for every day times the number
of additional pupils enrolled up to the maximum pupils
permitted in the teacher’s classroom. All such additional
compensation shall be paid from county funds
exclusively.

Notwithstanding any other provision of this section to
the contrary, commencing with the school year begin-
ing on the first day of July, one thousand nine hundred
ninety-four, a teacher in grades one, two or three or
classrooms having two or more such grade levels, shall
not have more than two pupils above the teacher/pupil
ratio as set forth in this section: Provided, That
commencing with the school year beginning on the first
day of July, one thousand nine hundred ninety-five, such
teacher shall not have more than one pupil above the
teacher/pupil ratio as set forth in this section: Provided
however, That commencing with the school year begin-
ing on the first day of July, one thousand nine hundred
ninety-six, such teacher shall not have any pupils above
the teacher/pupil ratio as set forth in this section.

No provision of this section is intended to limit the
number of pupils per teacher in a classroom for the
purpose of instruction in choral, band or orchestra
music.

Each school principal shall assign students equitably
among the classroom teachers, taking into consideration
reasonable differences due to subject areas and/or grade
levels.

The state board shall collect from each county board
of education information on class size and the number of pupils per teacher for all classes in grades seven through twelve. The state board shall report such information to the legislative oversight commission on education accountability before the first day of January of each year.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members.

At the end of each month every member of the retirement system shall contribute six percent of that member's monthly earnable compensation to the retirement board: Provided, That any member employed by the West Virginia board of directors of the state college system or the board of trustees of the university system at an institution of higher education under its control shall contribute on the member's full earnable compensation, unless otherwise provided in section fourteen-a of this article.

Annually, the contributions of each member shall be credited to the member's account in the teachers accumulation fund. The contributions shall be deducted from the salaries of the members as herein prescribed, and every member shall be deemed to have given consent to such deductions. No deductions, however, shall be made from the earnable compensation of any member who retired because of age or service, and then resumed service unless as provided in section thirteen-a of this article.

The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the earnable compensation of members required by this section. Beginning the first day of July, one thousand nine hundred ninety-four, the rate shall be seven and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of
July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent.

Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be deemed to be a full discharge of the employer's contractual obligation as to earnable compensation.

Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing the contributor's date of birth and other data needed by the retirement board.

§18-7A-18. Funds created; fund transfers.

The funds created are the teachers accumulation fund, the employers accumulation fund, the benefit fund, the reserve fund and the expense fund. Each fund shall constitute a separate trust.

(a) The teachers accumulation fund shall be the fund in which the contributions of members shall be accumulated. The accumulated contributions of a member returned to the member upon that member's withdrawal, or paid to that member's estate or designated beneficiary in the event of death, shall be paid from the teachers accumulation fund. Any accumulated contributions forfeited by failure to claim such contributions shall be transferred from the teachers accumulation fund to the reserve fund.

(b) Beginning on the first day of July, one thousand nine hundred eighty-four, contributions of employers, shall be deposited in the employers accumulation fund through state appropriations, and such amounts shall be included in the budget bill submitted annually by the governor.

Beginning on the first day of July, one thousand nine hundred ninety-two and ninety-three, each county shall
deposit in the employers accumulation fund an amount equal to six percent of all salary paid in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code and any salary equity authorized in section five of said article or any county supplement equal to the amount distributed for salary equity among the counties; beginning on the first day of July, one thousand nine hundred ninety-four, the rate shall be seven and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent.

(c) The benefit fund shall be the fund from which annuities shall be paid. Upon the retirement of a member, that member's accumulated contributions shall be transferred from the teachers accumulation fund to the benefit fund; the accumulated employers' contribution shall be transferred from the employers accumulation fund to the benefit fund; and annually a sum for prior service pension and disability credits, if needed, shall be transferred from the reserve fund to the benefit fund. Any deficit occurring in the benefit fund which is not automatically met by payments to that fund, as provided for by this article, shall be met by additional transfers from the employers accumulation fund and, if necessary, by transfers from the teachers accumulation fund.

(d) The retirement board is hereby authorized to accept gifts and bequests. All gifts, bequests and interest earnings from investments received by the board shall be deposited in the reserve fund. Any funds that may come into possession of the retirement system in this manner or which may be transferred from the
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64 teachers accumulation fund by reason of the lack of a
65 claimant or because of a surplus in any of the funds, or
66 any other moneys the disposition of which is not
67 otherwise provided for, shall be credited to the reserve
68 fund. The retirement board shall allow interest on the
69 contributions in the teachers accumulation fund. Such
70 interest shall be paid from the reserve fund and credited
71 to the teachers accumulation fund. Any deficit occurring
72 in any fund which would not be automatically covered
73 by the payments to that fund as otherwise provided by
74 this article shall be met by transfers from the reserve
75 fund to such fund. In the reserve fund shall be accumu-
76 lated moneys from retirement board appropriations to
77 pay the accrued liabilities of the system, caused by the
78 granting of prior service, ad hoc increases granted prior
79 to the first day of July, one thousand nine hundred
80 eighty, and disability pensions. Costs associated with
81 board investments, such as premiums, accrued interest
82 and commissions, shall be paid from the reserve fund.
83 (e) The expense fund shall be the fund from which
84 shall be paid the expense incurred in the administration
85 of the retirement system. The retirement board is
86 herewith authorized to pay, from the expense fund,
87 membership fees in such voluntary organizations as the
88 national council on teacher retirement, anything in this
89 code to the contrary notwithstanding. Interest on loans
90 to members shall be deposited in the expense fund.
91 The retirement board is herewith given sole authority
92 to direct and approve the making of any and all fund
93 transfers as provided herein, anything in this code to the
94 contrary notwithstanding.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIRE-
MENT SYSTEM.

§18-7B-10. Employer contributions.

1 Each participating employer shall annually make a
2 contribution equal to seven and one-half percent of each
3 member's gross compensation whose employment
4 commenced on or after the first day of July, one
5 thousand nine hundred ninety-one: Provided, That
6 beginning on the first day of July, one thousand nine
hundred ninety-five, the rate shall be nine percent; beginning on the first day of July, one thousand nine hundred ninety-six, the rate shall be ten and one-half percent; beginning on the first day of July, one thousand nine hundred ninety-seven, the rate shall be twelve percent; beginning on the first day of July, one thousand nine hundred ninety-eight, the rate shall be thirteen and one-half percent; and beginning on the first day of July, one thousand nine hundred ninety-nine and thereafter, the rate shall be fifteen percent. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine of this article for credit to the member's annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made. In the case of an officer or employee of the state, any unpaid contribution shall be a state debt, contracted as a result of a casual deficit in state revenues, to be accorded preferred status over other expenditures.

In the event that any payment is not timely made, the participating employer shall immediately give to the employee and the state auditor notice in writing of the nonpayment, in such form and accompanied by such documentation as may be required by the auditor. Notice to the auditor shall operate in the manner of a requisition, and the auditor shall transmit a warrant to the treasurer. At such time as funds are available in the appropriate account, the treasurer shall pay the employer contribution, together with appropriate daily interest.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3b. Total state basic foundation program and foundation allowance for regional educational service agencies for fiscal year 1993-1994 only.
§18-9A-4. Foundation allowance for professional educators.
§18-9A-5. Foundation allowance for service personnel.
§18-9A-8a. Foundation allowance for regional educational service agencies.
§18-9A-10. Foundation allowance to improve instructional programs.
§18-9A-12. County basic foundation; total basic state aid allowance.

1 For the purpose of this article:

2 "State board" means the West Virginia board of education.

3 "County board" or "board" means a county board of education.

4 "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

5 "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code.

6 "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, counselor, attendance director, school psychologist or school nurse with a bachelors degree and who is licensed by the West Virginia board of examiners for registered professional nurses. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he is assigned and serves on a regular full-time basis in appropriate instruction, library, counseling, attendance, psychologist or nursing duties.

7 "Service personnel salaries" shall mean the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

8 "Service personnel" shall mean all personnel as provided for in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to adjusted enrollment, a service employee shall be counted as that number found by dividing his number of employment days in a fiscal year by two hundred: Provided, That the computation for any such person employed for three and one-half hours or less per day
as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one half an employment day.

"Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, net enrollment further shall include adults enrolled in regular secondary vocational programs existing as of the effective date of this section: Provided, That net enrollment shall include no more than one thousand such adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: Provided, however, That no tuition or special fees beyond that required of the regular secondary vocational student is charged for such adult students.

"Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education. Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, adjusted enrollment means the net enrollment plus twice the number of pupils enrolled for special education, including exceptional gifted, plus the number of pupils in grades nine through twelve enrolled for honors and advanced placement programs, plus the number of pupils enrolled on the first day of July, one thousand nine hundred eighty-nine, in the gifted program in grades nine through twelve: Provided, That commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, no more than four percent of net enrollment of grades one through eight may be counted as enrolled in gifted education and no more than six percent of net enrollment of grades nine through twelve may be counted as enrolled in gifted education, exceptional gifted education (subject to the limitation set forth in section one, article twenty of this chapter) and honors and advanced placement.
programs for the purpose of determining adjusted
enrollment within a county: Provided, however, That
nothing herein shall be construed to limit the number
of students who may actually enroll in gifted, honors or
advanced placement education programs in any county:
Provided further, That until the school year beginning
on the first day of July, one thousand nine hundred
ninety-two, the preceding percentage limitations shall
not restrict the adjusted enrollment definition for a
county to the extent that those limitations are exceeded
by students enrolled in gifted education programs on the
first day of July, one thousand nine hundred eighty-nine:
And provided further, That no pupil may be counted
more than three times for the purpose of determining
adjusted enrollment. Such enrollment shall be adjusted
to the equivalent of the instructional term and in
accordance with such eligibility requirements and rules
as established by the state board. No pupil shall be
counted more than once by reason of transfer within the
county or from another county within the state, and no
pupil shall be counted who attends school in this state
from another state.

“Levies for general current expense purposes” means
ninety-eight percent of the levy rate for county boards
of education calculated or set by the Legislature
pursuant to the provisions of section six-f, article eight,
chapter eleven of this code.

“Basic resources per pupil” for the state and the
several counties means the total of (a) ninety-five
percent of the property tax revenues computed at the
levy rate for county boards of education calculated or
set by the Legislature pursuant to the provisions of
section six-f, article eight, chapter eleven of this code,
but excluding revenues from increased levies as pro-
vided in section ten, article X of the Constitution of West
Virginia, and (b) basic state aid as provided in sections
twelve and thirteen of this article, but excluding the
foundation allowance to improve instructional programs
as provided in section ten of this article, and excluding
any funds appropriated for the purpose of achieving
salary equity among county board employees, this total
120 divided by the number of students in adjusted enrol-
121 lment: Provided, That beginning with the school year
122 commencing on the first day of July, one thousand nine
123 hundred ninety-one, and thereafter, the foundation
124 allowance for transportation costs as provided in section
125 seven of this article shall also be excluded and the total
126 shall be divided by the number of students in net
127 enrollment: Provided, however, That any year's alloca-
128 tions to the counties of the eighty percent portion of the
129 foundation allowance to improve instructional pro-
130 grams, as provided in section ten of this article, shall
131 be determined on the basis of the immediately preceding
132 school year's basic resources per pupil.

§18-9A-3b. Total state basic foundation program and
foundation allowance for regional educational service agencies for fiscal year 1993-
1994 only.

1 (a) Notwithstanding any other provision of this article
to the contrary, the total basic foundation program for
the state for the fiscal year one thousand nine hundred
ninety-three—ninety-four shall be the sum of the
following, less the county's local share:

6 (1) An allowance for professional educators in an
amount at least equal to six hundred twenty-three
million, five hundred fifteen thousand, seventy dollars;

9 (2) An allowance for service personnel in an amount
at least equal to one hundred ninety million, four
hundred forty-two thousand, three hundred eighty-two
dollars;

13 (3) An allowance for fixed charges in an amount
appropriated by the Legislature;

15 (4) An allowance for transportation costs in an amount
appropriated by the Legislature;

17 (5) An allowance for administrative costs in an
amount appropriated by the Legislature;

19 (6) An allowance for other current expense and
substitute employees in an amount appropriated by the
Legislature; and
(7) An allowance to improve instructional programs in an amount appropriated by the Legislature.

§18-9A-4. Foundation allowance for professional educators.

The basic foundation allowance to the county for professional educators shall be the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of this code, to the personnel employed: Provided, That in making this computation no county shall receive an allowance for the personnel which number is in excess of fifty-three and one-half professional educators to each one thousand students in adjusted enrollment: Provided, however, That any county not qualifying under the provision of section fourteen of this article is eligible for a growth rate in professional personnel in any one year not to exceed twenty percent of its total potential increase under this provision, except that in no case shall the limit be fewer than five professionals: Provided further, That the number of and the allowance for personnel paid in part by state and county funds shall be prorated: And provided further, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit: And provided further, That in the school year beginning the first day of July, one thousand nine hundred eighty-eight, and in each school year thereafter, each county board shall establish and maintain a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment: And provided further, That no permanent substitute shall be included in the minimum ratio for professional instructional personnel. Permanent substitutes may be included in the computation for professional educators. For the purposes of this section, permanent substitute means a full-time employee who performs the duties of a day-to-day substitute: And
provided further, That no county shall have less than a total of five principals and central office administrators. Any county board which does not establish and maintain this minimum ratio shall suffer a pro rata reduction in the allowance for professional educators under this section: And provided further, That no county shall be penalized if it has increases in enrollment during that school year: And provided further, That any county board which does not establish and maintain this minimum ratio shall utilize any and all allocations to it by provision of section fourteen of this article solely to employ professional instructional personnel until the minimum ratio is attained. Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section. It is the intent of the Legislature that in planning reductions in force to comply with reduced ratios of professional educators to students in adjusted enrollment, county boards shall consider positions for elimination in the following order: (1) Central office administrators, (2) assistant principals, and (3) principals.

No county shall increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts: Provided, That the governor shall submit a recommendation to the Legislature at the beginning of the regular session thereof in the year one thousand nine hundred ninety-one, which proposes a method for establishing a responsible level of administrative support for each county school system and a pay scale differentiation on a daily rate between classroom positions and administrative positions when all other factors are equal.

§18-9A-5. Foundation allowance for service personnel.
The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of this code, to such service personnel employed: Provided, That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment: Provided, however, That the state superintendent of schools is authorized in accordance with rules and regulations established by the state board and upon request of a county superintendent to waive the maximum ratio of thirty-four service personnel per one thousand students in adjusted enrollment and the twenty percent per year growth cap provided in this section, to the extent appropriations are provided, in those cases where the state superintendent determines that student population density and miles of bus route driven justify the waiver, except that no waiver shall be granted to any county whose financial statement shows a net balance in general current expense funds greater than three percent at the end of the previous fiscal year: Provided further, That on or before the first day of each regular session of the Legislature, the state board, through the state superintendent, shall make to the Legislature a full report concerning the number of waivers granted and the fiscal impact related thereto. Every county shall utilize methods other than reduction in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

For any county which has in excess of thirty-four service personnel per one thousand students in adjusted enrollment, the allowance shall be computed based upon the average state minimum pay scale salary of all service personnel in the county: Provided, That for any county having fewer than thirty-four service personnel per one thousand students in adjusted enrollment, in any one year, the number of service personnel used in making this computation may be increased the succeeding years by no more than twenty percent per year of its total potential increase under this provision, except
that in no case shall the limit be fewer than two service personnel until the county attains the maximum ratio set forth: Provided, however, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the service personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and that the personnel shall be considered within the above-stated limit.

§18-9A-8a. Foundation allowance for regional educational service agencies.

For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and for each fiscal year thereafter, the foundation allowance for regional educational service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three only, the foundation allowance for regional educational service agencies shall be at least equal to fifty-five one-hundredths percent of the allocation for professional educators as determined in section four of this article. The allowance shall be distributed to the regional educational service agencies in accordance with rules adopted by the state board. The allowance for regional educational service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) For the school year beginning on the first day of July, one thousand nine hundred ninety-three only, thirty-two million, five hundred twenty thousand, nine hundred ninety-four dollars, unless a greater amount is appropriated by the Legislature, in addition to funds which accrue from allocations due to increase in total local share above that computed for the school year beginning on the first day of July, one thousand nine
hundred ninety-three, from balances in the general school fund, or from appropriations for such purpose shall be allocated to increase state support of counties as follows: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three only, no county shall gain more than seventy-three and sixty-six one-hundredths percent or lose more than twenty-six and thirty-four one-hundredths percent over the previous year's allocation: Provided, however, That for the school year beginning on the first day of July, one thousand nine hundred ninety-four and thereafter, the sum of the allocations shall be in an amount at least equal to the amount appropriated by the Legislature, in addition to funds which accrue from allocations due to increase in total local share above that computed for the previous school year, from balances in the general school fund, or from appropriations for such purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county; and

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system.

(3) For the school year beginning on the first day of July, one thousand nine hundred ninety-three, up to
twenty-five percent of this allocation may be used to employ professional educators and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation, (2) efficiency and fiscal responsibility in staffing, and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds by the first day of May: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three only, district boards shall make application for available funds by the fifteenth day of June, one thousand nine hundred ninety-three. On or before the first day of June, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation: Provided, however, That for the school year beginning on the first day of July, one thousand nine hundred ninety-three only, the state superintendent shall review all applications and notify applying district boards of the distribution of the allocation on or before the first day of July, one thousand nine hundred ninety-three. Such funds shall be distributed during the fiscal year as appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county’s inability to meet the requirements of state law or state board policy: Provided further, That the funds available for personnel under this section may not be used to increase the total number of professional noninstructional personnel in the central office beyond four. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(b) Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-
three, thirty-five million, four hundred forty thousand, four hundred ninety-three dollars shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article nine-d: Provided, That in the event that additional money is authorized for expenditure for new construction bonds, then this appropriation shall be increased in an amount no less than the new debt service. In each fiscal year thereafter, fifty percent of the funds which accrue due to an increase in local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article nine-d: Provided, however, That if funds are available and appropriated in each such subsequent fiscal year, not less than seven million seven hundred thousand dollars shall be added to the amount of the prior year's appropriation for such fund.


1 (a) For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-three, and thereafter, on the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of article one-c and article three, chapter eleven of this code, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows:

1 (1) The state board shall first take ninety-five percent
of the amount ascertained by applying these rates to the
total assessed public utility valuation in each classifica-
tion of property in the county.

(2) The state board shall then apply these rates to the
assessed taxable value of other property in each
classification in the county as determined by the tax
commissioner and shall deduct therefrom five percent
as an allowance for the usual losses in collections due
to discounts, exonerations, delinquencies and the like.
All of the amount so determined shall be added to the
ninety-five percent of public utility taxes computed as
provided above, and this total shall be further reduced
by the amount due each county assessor's office pursuant
to the provisions of section eight, article one-c, chapter
eleven of this code, and this amount shall be the local
share of the particular county.

As to any estimations or preliminary computations of
local share that may be required prior to the report to
the Legislature by the tax commissioner, the state board
of education shall use the most recent projections or
estimations that may be available from the tax depart-
ment for such purpose.

(b) Whenever in any year a county assessor or a
county commission shall fail or refuse to comply with
the provisions of this section in setting the valuations of
property for assessment purposes in any class or classes
of property in the county, the state tax commissioner
shall review the valuations for assessment purposes
made by the county assessor and the county commission
and shall direct the county assessor and the county
commission to make such corrections in the valuations
as may be necessary so that they shall comply with the
requirements of chapter eleven of this code and this
section, and the tax commissioner shall enter the county
and fix the assessments at the required ratios. Refusal
of the assessor or the county commission to make such
corrections shall constitute ground for removal from
office.

§18-9A-12. County basic foundation; total basic state aid
allowance.
(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the state board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: Provided, That prior to such adjustment, the state tax commissioner shall provide the state board, by the fifteenth day of January of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order: Provided, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share:
Provided, however, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the tax commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the tax commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: Provided, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: Provided, however, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the tax commissioner: Provided, That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the general revenue fund of the state: Provided, however, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public
school basic foundation support plan state share at a level sufficient to cover the reduction in state share: Provided further, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county’s basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the state tax commissioner, by the first day of January of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The state tax commissioner then shall provide the state board, by the fifteenth day of January of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the state board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-7b. Calculation of seniority for professional personnel.
§18A-4-17. Health and other facility employee salaries.
§18A-4-7b. Calculation of seniority for professional personnel.

Notwithstanding any other provision of this code to the contrary, seniority for professional personnel as defined in section one, article one, chapter eighteen-a of this code shall be calculated pursuant to the provisions of section seven-a of this article as well as the following:

Provided, That any recalculation of seniority of a professional personnel employee that may be required in order to remain consistent with the provisions contained herein shall be calculated retroactively, but shall not be utilized for the purposes of reversing any decision that has been made or grievance that has been filed prior to the effective date of this section:

(a) A professional employee shall begin to accrue seniority upon commencement of the employee's duties.

(b) An employee shall receive seniority credit for each day the employee is professionally employed regardless of whether the employee receives pay for that day: Provided, That no employee shall receive seniority credit for any day the employee is suspended without pay pursuant to section eight, article two of this chapter: Provided, however, That an employee who is on an approved leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

(c) Any professional employee whose employment with a county board of education is terminated either voluntarily or through a reduction-in-force shall, upon reemployment with the same board of education in a regular full-time position, receive credit for all seniority previously accumulated with the board of education at the date the employee's employment was terminated.

(d) Any professional employee employed for a full employment term but in a part-time position shall receive seniority credit for each day of employment prorated to the proportion of a full employment day the employee is required to work: Provided, That nothing herein allows a regular full-time employee to be credited with less than a full day of seniority credit for each day
the employee is employed by the board: Provided, however, That this calculation of seniority for part-time professional personnel is prospective and does not reduce any seniority credit accumulated by any employee prior to the effective date of this section: Provided further, That for the purposes of this section a part-time employee shall be defined as an employee who is employed less than three and one-half hours per day.

§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide educational and support services to residents of state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders, and in the West Virginia schools for the deaf and the blind or professional personnel employed by the division of rehabilitation services facilities, shall be the same as set forth in sections two, three and eight-a of this article. Additionally, such personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board of education in the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid such advanced salary from the date such classification of training is earned: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, teachers employed at the state division of rehabilitation services facilities shall be required to be certified, licensed or trained and/or shall meet other eligibility classifications as may be required by the provisions of this chapter and by state board regulations for comparable instructional personnel who are employed by county boards of education, and shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board of education in
the county wherein each facility is located, as set forth
in section five-a of this article.
(b) Professional personnel employed by the depart-
ment to provide educational service to residents in state
department of health and human resources facilities,
corrections facilities providing services to juvenile and
youthful offenders, or in the West Virginia schools for
the deaf and the blind, or professional personnel
employed by the division of rehabilitation services
facilities, shall be afforded all the rights, privileges and
benefits established for such professional personnel
under this article: Provided, That such benefits shall
apply only within the facility at which employed:
Provided, however, That benefits shall exclude salaries
unless explicitly provided for under this or other
sections of this article: Provided further, That seniority
for such professional personnel shall be determined on
the basis of the length of time that the employee has
been professionally employed at the facility, regardless
of which state agency was the actual employer.
(c) Nothing contained in this section shall be
construed to mean that professional personnel and
service personnel employed by the department of
education to provide educational and support services to
residents in state department of health and human
resources facilities, corrections facilities providing
services to juvenile and youthful offenders and the West
Virginia schools for the deaf and the blind, or profes-
sional personnel employed to provide professional
education services in the division of rehabilitation
services facilities are other than state employees.

CHAPTER 9

(H. B. 106—(By Mr. Speaker, Mr. Chambers, and Delegate Burk
By Request of the Executive)

[Passed May 18, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section six, article nine-a, chapter sixteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the prohibition of
imposing more restrictive laws, rules or regulations on the use, sale or distribution of tobacco products.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§1. Repeal of section relating to the prohibition of imposing more restrictive laws, rules or regulations on the use, sale or distribution of tobacco products.

1 Section six, article nine-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 10

(H. B. 101—(By Mr. Speaker, Mr. Chambers, and Delegate Burk By Request of the Executive)

[Passed May 21, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT providing for the payment of the veterans bonus to veterans of the Persian Gulf, Panama, Grenada and Lebanon conflicts and for the administration thereof; definitions; prohibiting certain acts with respect thereto; and prescribing penalties for the violation of such provisions.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

§1. Division of veterans affairs to administer act; veterans advisory committee.
§2. Veterans entitled to bonus.
§3. Payment of bonus to relatives of deceased veterans.
§4. Amount of bonus.
§5. Limitation on time of filing application.
§6. Determination of director of the validity of claims.
§8. Court review of final orders of review board.
§9. Legislative appropriations paid into veterans bonus fund; expenditures; investment thereof; unexpended balance.
§10. Penalty for making false statements.
§11. Penalty for filing more than one application.
§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

§13. Collection of fees or charges; penalty.

§1. Division of veterans affairs to administer act; veterans advisory committee.

The West Virginia division of veterans affairs is hereby designated as the state agency to administer the provisions of this bill. The director of the division of veterans affairs shall do all things necessary for the proper administration thereof. The director, with the advice and consent of the veterans council, may adopt and promulgate such reasonable rules and regulations, not inconsistent herewith, as may be necessary to effect the purposes of this bill, including regulations concerning evidence or other data required to establish eligibility and qualifications for the bonus as herein provided. The director shall prepare and furnish all necessary forms which shall be distributed by him or her through such veterans and other organizations as he or she may deem most practicable.

The division of veterans affairs shall, insofar as possible, utilize the personnel, supplies and equipment of the division in the administration of this bill. The division may employ such additional personnel as may be necessary for the proper administration of this bill, subject, however, to the approval of the secretary of the department of military affairs and public safety who must also approve the salaries and other compensation for such personnel.

The governor may appoint a veterans advisory committee, consisting of representatives of veterans organizations chartered under acts of Congress and operating in this state, to advise and counsel with the director in the administration of this bill. Such committee shall meet on the call of the director at such times and places as he or she may specify.

§2. Veterans entitled to bonus.

In grateful recognition of their services in time of grave national emergency, a cash bonus as herein provided shall be paid to veterans of the Persian Gulf,
Panama, Grenada and Lebanon conflicts. Such bonus shall be paid to (1) all persons who served on active duty in the armed forces of the United States or who were members of reserve components called to active duty in the armed forces of the United States by the President of the United States under Title 10, United States Code section 782(D), 783, or 783(B), during the Persian Gulf conflict, Operation Desert Shield/Desert Storm, between the first day of August, one thousand nine hundred ninety and the eleventh day of April, one thousand nine hundred ninety-one, both dates inclusive, and (2) all veterans, active service members, or members of reserve components, of the armed forces of the United States, who served on active duty in one of the military operations referred to herein for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this bill, periods of active duty in a campaign or expedition are designated as: The conflict in Panama, between the twentieth day of December, one thousand nine hundred eighty-nine, through the thirty-first day of January, one thousand nine hundred eighty-nine, both dates inclusive; the conflict in Grenada, between the twenty-third day of October, one thousand nine hundred eighty-three, and the twenty-first day of November, one thousand nine hundred eighty-three, both dates inclusive; and the conflict in Lebanon, between the twenty-fifth day of August, one thousand nine hundred eighty-two, and the twenty-sixth day of February, one thousand nine hundred eighty-four, both dates inclusive: Provided, That said bonus shall only be paid to the veterans as described herein who were bona fide residents of the state of West Virginia at the time of their entry into such service and for a period of at least six months immediately prior thereto, who have not been separated from such armed forces under conditions other than honorable and who within the periods specified above, actively served in such armed forces for a period of at least ninety days.

Such cash bonus shall also be paid to any disabled
veteran otherwise qualified, who was discharged within ninety days after entering the armed forces because of a service-connected disability.

As used in this bill, "armed forces" means the army, navy, air force, marine corps and coast guard of the United States.

As used in this bill, "active duty" means full-time active service in the armed forces with full duty pay status, but shall not include time absent from leave, absent over leave, while in confinement or any other time classified by the respective branches of the armed forces as "bad" or "lost" time.

For purposes of this bill, "active service" shall mean the person's active duty as a member of one of the armed forces during the periods of conflict referred to herein.

As used in this bill, "bona fide resident" shall mean any person who, at the time of his or her entry into active service as such is defined herein, was a legal resident of the state of West Virginia. Evidence of legal residence shall be shown by the presentation of evidence that the person filed a West Virginia personal income tax for the tax year immediately preceding his or her entry into active service or proof that he or she maintained a permanent place of abode in West Virginia at the time of his or her entry into active service and for a period of at least six months prior to entry into active service.

§3. Payment of bonus to relatives of deceased veterans.

The bonus to which any deceased veteran would have been entitled, had he or she lived, shall be paid only to the following surviving relatives of such veteran, provided that such relatives are residents of this state when application for payment is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate
categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his or her proportional share. Where a deceased veteran's death was connected with such service and resulted from such service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of one thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

As used in this bill, "unremarried widow" or "unremarried widower" means the spouse of a deceased veteran, legally married to the veteran at the time of his or her death, who has not remarried at the time of making application.

As used in this bill, "child" means the natural child, adopted child or stepchild of the deceased veteran upon whose service eligibility is derived and who has not attained the age of eighteen years at the time of making application.

As used in this bill, "parent" means either of the natural, step, or adoptive father or mother of, or person standing in loco parentis to, the deceased veteran upon whose service eligibility is derived.

§4. Amount of bonus.

The amount of bonus shall be five hundred dollars per eligible person who was in active service, inside the combat zone designated by the President or Congress of the United States at any time during the dates specified herein. In the case of the Persian Gulf conflict, the amount of bonus shall be three hundred dollars per eligible person who was in active service outside the combat zone designated by the President or Congress of the United States during the dates specified herein. For purposes of this bill not more than one bonus shall be paid to or on behalf of the service of any one veteran. In the event any veteran is eligible to receive more than one bonus, said veteran shall receive the greater bonus.

§5. Limitation on time of filing application.
No bonus shall be paid to any person, otherwise entitled thereto, unless application therefor shall be filed with the division of veterans affairs on or before the thirtieth day of June, one thousand nine hundred ninety-four. Warrants for the payment of any bonus shall be issued or reissued to any applicant on or before the thirtieth day of June, one thousand nine hundred ninety-five.

§6. Determination of director of the validity of claims.

Upon receipt of an application for benefits hereunder, the director shall, as soon as may be practicable, determine the validity of the claim. As soon as such determination has been made, the director shall mail to the applicant a warrant in the amount of the bonus payment he or she finds to be due. If the determination is made that no benefits hereunder are payable, then the director shall mail to the applicant a notification denying benefits and citing the reason or reasons for such denial.

Any applicant who is aggrieved by any such determination of the director may demand that his or her claim be reviewed as hereinafter provided. Such demand for review shall be filed with the director, in writing, within sixty days after the date on which the warrant of award or notice of denial was mailed to the applicant. Upon receipt of such demand for review, the director shall certify the demand, together with all files and records relating to the application, to a board of review. Unless such demand for review is duly filed with the director, all findings and orders of the director with reference to such claim shall be final and conclusive upon the applicant.


For the purposes of this bill, the veterans council of the division of veterans affairs is hereby designated as the "Veterans Bonus Board of Review." Under rules and regulations adopted by the veterans council, any one or more members of the board of review may conduct hearings on a demand by an applicant for review of the determination of the director, and may report his or her
or their findings thereon, together with the entire record
of the case, to the board of review for its final deter-
mination and decision.

If the number of demands for review hereunder shall
become too numerous to be handled expeditiously by the
veterans council, the governor, upon the recommenda-
tion of the council, may appoint one or more additional
boards of review. Additional boards shall consist of not
more than three members, one of whom shall be a
lawyer, who shall have the same qualifications as the
members of the veterans council, and who shall serve
at the will and pleasure of the governor for such time
as may be necessary for the purposes of this bill. Each
such additional board of review shall have the same
authority and its final decision shall have the same force
and effect as that of the veterans council under the
provisions of this bill.

Upon receipt from the director of the files and records
relating to any claim, the board, or a member or
members thereof, as the case may be, shall fix a time
and place for a hearing thereon. The applicant shall be
notified of the time and place fixed and shall be
informed of his or her right to demand a public hearing
if he or she so desires. At the hearing the claim shall
be reexamined de novo and the submission of additional
evidence may be required or permitted. Upon the
conclusion of such hearing, the board of review, on the
basis of the record and the recommendations, if any,
made by the member or members who conducted the
hearing, shall enter its order reversing, affirming or
modifying the determination made by the director.

Any order so entered by the board shall be final and
conclusive upon the applicant and the director unless an
application is made for review to the West Virginia
supreme court of appeals as hereinafter provided. The
board shall mail to the applicant and to the director a
copy of the order entered by it in each case.

All notices and correspondence shall be directed to the
applicant at the address listed on his or her application
and all notices and correspondence to the director shall
be addressed to him or her at his or her office in the
city of Charleston.

The director shall provide for each board of review
such clerical and stenographic assistants and such
supplies as may be necessary for the performance of its
duties.

Each member of a board of review shall receive as
compensation fifty dollars per day for each day actually
spent in the performance of his or her duties under the
provisions of this bill, and shall be reimbursed for all
reasonable and necessary expenses actually incurred by
him or her in the performance of such duties.

§8. Court review of final orders of review board.

Within thirty days after notification of the entry of
any final order of a board of review, the director or the
applicant affected may petition for review of such order
by the West Virginia supreme court of appeals in the
same manner and within the same period of time as is
provided by section four, article five, chapter twenty-
three of the code, for judicial review of final decisions
by the workers' compensation appeal board.

§9. Legislative appropriations paid into veterans bonus
fund; expenditures; investment thereof; unex-
pended balance.

All money as appropriated by the Legislature for the
payment of a cash bonus to veterans as provided in the
veterans bonus amendment of 1992 shall be paid into the
veterans bonus fund which is hereby created in the
office of the state treasurer and such fund shall be
expended solely for the payment of such veterans bonus
and the cost of administration necessarily incident
thereto. Except for such sums necessary for current
operating balances, such fund shall be invested and
reinvested by the West Virginia state board of invest-
ments in accordance with the provisions of article six,
chapter twelve of the code of West Virginia, one
thousand nine hundred thirty-one, as amended: Pro-
vided, That no such investment or reinvestment shall
adversely affect the current operating balances of such
§10. Penalty for making false statements.

Any person who shall knowingly make any false or misleading statement or representation, oral or written, in support of any claim for a bonus under the provisions of this bill, shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

§11. Penalty for filing more than one application.

Only one application shall be filed by any veteran or by any person who claims to be entitled to a share of the bonus payable in the case of any deceased veteran. Any person who, with intent to defraud, violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the penitentiary for not less than one nor more than two years, or by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

The bonus provided by this bill is hereby declared to be a gift or gratuity made as a token of appreciation for the service rendered by the veteran to the people of West Virginia in time of grave national emergency and is in no sense compensation for such services. The money received as such bonus shall be exempt from taxation and such money, or any claim therefor, shall not be subject to garnishment, attachment or levy of execution. A claim for payment of a bonus under the provisions of this bill shall not be assignable for any purpose whatsoever.

§13. Collection of fees or charges; penalty.
No fee or charge shall be made by any person, attorney, agent or representative for any service in connection with the filing of an application for payment of a bonus hereunder, except such fees as are provided by law for the performance of official duties by a duly elected or appointed officer of this state or a political subdivision thereof. No person shall, for a consideration, discount or attempt to discount or advance money upon any warrant issued for payment of any bonus provided for in this bill.

If an applicant shall employ an attorney to represent him or her in connection with the prosecution of his or her claim before a board of review, or before the supreme court of appeals, the attorney shall file with the director an executed copy of his or her contract of employment, and the total amount of the fee therein provided shall not exceed twenty-five percent of the amount under dispute.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than twelve months, or by both such fine and imprisonment.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1993

HOUSE BILLS

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[1967]
**DISPOSITION OF BILLS ENACTED**

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**Regular Session, 1993**

### SENATE BILLS

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