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## ACTS AND RESOLUTIONS

### Regular Session, 1994
- First Extraordinary Session, 1994
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AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; to amend and reenact section three, article one, chapter twenty-five; and to amend and reenact section five, article twenty, chapter thirty-one of said code, all relating to creating a pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; creation of the commission for distribution of surplus foods; powers and duties; definitions; program maintenance; authorizing the executive director of the regional jail and prison authority and the commissioner of the division of corrections to serve on the commission and implement the pilot program.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.
25. Department of Corrections.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-17. Pilot program for delivery of leftover prepared foods from schools and penal institutions to the homeless and needy; commission for distribution of surplus foods; powers and duties; definitions; program continuance.
(a) The purpose of the Legislature in enacting this section is to establish a framework for the distribution of excess and leftover foods in West Virginia public school cafeterias and in correctional facilities to community agencies that serve homeless and needy people in this state and to address findings that:

(1) Many homeless, destitute and needy people are without sufficient food to meet minimum requirements for daily living;

(2) Many school cafeterias and prison cafeterias prepare a large number of meals each day;

(3) Despite state and federal policies and guidelines and proper efforts of personnel at such institutions which attempt to eliminate or minimize the waste of unserved prepared food at such public institutions, that some surplusage of leftover food does in fact occur; and

(4) Various community agencies are trying to feed the homeless and needy people and that leftover foods from the aforesaid public institutions is an obvious resource to help provide food for the homeless and needy people of the state.

(b) For purposes of this section the following terms shall have the following meanings:

(1) “Leftover food” means food prepared for immediate human consumption but not served, that cannot be refrigerated or preserved to be served at a later time, nor used in the preparation of other foods, or unopened packaged foods, unopened cartons of milk and parcels of whole fruit which are taken by consumers at the institution, but not eaten, or is not subject to being reserved according to policies or rules governing the service of food at the institution;

(2) “Agency” means any nonprofit, religious or charitable organization which is exempt from taxation pursuant to 26 U.S.C. §501(c) (3) or (4) whose purposes include the feeding of homeless and needy persons.

(3) “Commission” means the commission distribution of surplus food established in subsection (c) of this section.
(c) There is hereby established a commission for the distribution of surplus prepared foods. The superintendent of the state board of education, or his or her designee, shall serve as chair of the commission. The executive director of the regional jail and prison authority, or his or her designee, and the commissioner of the division of corrections, of the department of public safety, or his or her designee, shall serve as members of the commission.

(d) The commission shall develop and establish a pilot program in Ohio County for the distribution of leftover foods from secondary school cafeterias, the county jail in Ohio County and the regional jail located in Marshall County to community agencies in Ohio County to be distributed to homeless and needy persons in Ohio County, consistent with the goals and purposes established in this section. The pilot program shall provide that an agency pay any cost of transporting the leftover food. In no event may the pilot program provide that the state bear any of the cost of transporting the leftover food.

(e) The commission shall have the following powers and duties in carrying out the provisions of this section:

(1) Propose for promulgation legislative rules in accordance with article three, chapter twenty-nine-a of this code which are necessary to carry out the purposes of this section;

(2) Suggest modification of policies and propose amendments to current rules of the state board of education, the division of corrections and the regional jail authority which are in conflict with the purpose and goals of this section, only as such are applicable to the public institutions included in this pilot program;

(3) Coordinate and cooperate with all appropriate federal agencies, including, but not limited to, the United States department of agriculture to approve the distribution of leftover foods under controlled conditions;

(4) Draft cooperative and mutually beneficial agree-
ments between the respective agencies and the local school or district or correctional facilities;

(5) Develop a comprehensive plan of food distribution to agencies including consideration of any input or suggestions from agencies interested in participation in the plan; such plan shall address the care of environmental resources and human needs. Any plan or program for food distribution shall require that the cost of transporting the food is to be paid by a community agency. The commission has no authority to develop a comprehensive plan of food distribution which would provide that the state pay all or any part of the cost of transporting the food to be distributed.

(f) The pilot program shall commence no later than the first day of September, one thousand nine hundred ninety-four, and continue until the first day of July, one thousand nine hundred ninety-seven, unless sooner terminated by the Legislature. On the first Wednesday after the second Monday of each January, the commission shall report to the governor and the Legislature on the progress of the program whether it should be continued or discontinued, any recommended modifications in the program's scope and mission and whether any action is necessary by the Legislature to improve the success of the program. At the end of the pilot program, the commission shall make a final report to the governor and the Legislature as to whether the findings in this section are being addressed and recommend whether or not the program shall be expanded statewide, with specific recommendations for program support and administration, development and other relevant policy issues.

CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and human resources and state board of health; establishment of work and study release units; civil service coverage.
The commissioner of corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his jurisdiction or control:

- West Virginia Penitentiary at Moundsville;
- West Virginia State Prison for Women at Pence Springs;
- West Virginia Medium Security Prison at Huttonsville;
- West Virginia Industrial Home for Girls at Salem;
- West Virginia Industrial Home for Boys at Grafton;
- Davis Center (formerly the West Virginia Forestry Camp for Boys at Davis);
- Leckie Center (formerly the West Virginia Forestry Camp for Boys at Leckie); and
- Anthony Center (formerly the Anthony Correctional Center).

Jurisdiction of and title to the West Virginia Children's Home at Elkins are hereby transferred to the department of health and human resources, which shall be the custodian of all deeds and other muniments of title to such property and shall cause such as are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children's Home shall be managed and controlled by a superintendent appointed by the commissioner of health and human resources.

The commissioner is hereby authorized to establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. Such work and study release units may be coeducational and shall be managed, directed and controlled as provided for in this article.

The commissioner is hereby authorized to serve as a member of the commission for distribution of surplus foods and exercise all powers and authority otherwise granted to him or her in this article to implement the
pilot program for delivery of leftover prepared foods at
any institution under his or her control and supervision,
pursuant to section seventeen, article two, chapter
eighteen of this code.

Any person employed by the office of public institu-
tions who on the effective date of this article is a
classified civil service employee shall, within the limits
contained in section two, article six, chapter twenty-nine
of this code, remain in the civil service system as a
covered employee.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON
AUTHORITY.

§31-20-5. Powers and duties of the authority; bidding
procedures.

The regional jail and correctional facility authority
shall complete a comprehensive study of all correctional
facilities and jail facilities in the state of West Virginia
no later than the first day of July, one thousand nine
hundred eighty-six. This study shall include an assess-
ment of the physical conditions of confinement within
the institutions and the relative need for the institutions
when considering other available institutions of confine-
ment located within the state.

After completing this study, the authority shall
submit a plan to the governor on the establishment of
regional jails in this state and the acquisition, construc-
tion or renovation of facilities for correctional facilities.
The authority shall specify groups of counties within the
state to be formed into regions for the establishment of
such regional jails. Within each region a local jail
commission shall be established and have the powers
and duties as set forth in section six of this article.

The authority shall consider, but not be limited to, the
following when creating the plan establishing regions:

(1) The relative physical condition of the correctional
facilities and jail facilities located within the state;

(2) The transportation costs associated with the
establishment of centralized jail services, including, but not limited to, the costs of transporting persons incarcerated in regional jails to court appearances, to interviews with their attorneys, and to have visitation with their families and friends, all in any county seat of a county served by the regional facility: Provided, That consideration of such costs in the creation of the plan shall not be construed to require the transportation of inmates to interviews with their attorneys or to have visitation with their families and friends when visitation facilities and schedules are established in regional jails;

(3) The availability of medical services and educational and recreational opportunities;

(4) Information received from public hearings;

(5) The relative efficiency in the cost of jail services caused by establishment of regional jail facilities;

(6) Available facilities which may be used as regional jails or correctional facilities including, but not limited to, existing county and state owned properties: Provided, That if the authority determines that an existing facility meets the standards or could reasonably be made to meet the standards for a regional jail or other correctional facility, the authority may proceed to acquire such existing facility and compensate the owner thereof in an amount not less than any local share expended by the owner as matching moneys for the receipt of federal funds: Provided, however, That if the authority determines that an existing facility does not meet the standards or could not reasonably be made to meet the standards for a regional jail or other correctional facility, the authority shall provide the owner with a written statement setting forth the reasons supporting such determination;

(7) The cost of acquiring, constructing, renovating, operating and maintaining local jail facilities for use as local holding facilities in each county and regional jail facilities for each county and the financing provided by this article;

(8) The leasing of any available portion of any regional
jail space and the leasing of available facilities of any
regional jail to the West Virginia department of
corrections for the keeping and detaining of prisoners
sentenced to serve terms of incarceration under the
custody of the West Virginia department of corrections
for nonviolent crimes and to contract with the depart-
ment of corrections for the providing of food, clothing,
shelter and any and all incidental costs in the care,
control and maintenance of such prisoners: Provided,
That such leasing does not restrict space or facilities
needed for the detention of county prisoners;

(9) The advisability and cost effectiveness of acquir-
ing, constructing, renovating, operating and maintain-
ing work farms serving one or more counties or regions;
and

(10) The proximity of possible sites for the regional
jail facilities to residential areas, schools, churches and
other public buildings and facilities.

Public hearings pursuant to this section shall be held
by the authority in convenient locations throughout the
state. No less than ten public hearings shall be held for
public comment on the establishment of regional jails.
The authority shall cause to be published at least two
weeks in advance of a hearing a Class II-0 legal
advertisement, as provided in section two, article three,
chapter fifty-nine of this code, setting forth the reason
for the hearing and the time, place and date thereof. The
publication area shall be each county which may be
included in a region for the purposes of a regional jail
with the county in which the public hearing is held.

In addition to the hearing requirements above, before
beginning construction of a new facility for use as a
regional jail or correctional facility or before beginning
renovation or acquisition of an existing facility for use
as a regional jail facility, which existing facility is not
already a jail, correctional facility or secure facility for
the detention of juveniles or persons otherwise involun-
tarily committed or confined, the authority shall hold a
hearing for comment by all members of the public on
all aspects relating to the advisability of the use of the
The authority shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings, which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(a) To acquire, own, hold and dispose of property, real and personal, tangible and intangible.

(b) To lease property, whether as lessee or lessor.

(c) To mortgage or otherwise grant security interests in its property.

(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation at public or private hearings, on any matter relevant to this article and necessary for information on the construction or renovation of any correctional facility or the establishment of any correctional facility industries project.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(f) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear.

(g) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(h) To adopt, use and alter at will a corporate seal.

(i) To make bylaws for the management and regula-
(j) To appoint officers, agents and employees.

(k) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article.

(l) Without in any way limiting any other subdivision of this section, to accept grants from and enter into contracts and other transactions with any federal agency.

(m) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes: Provided, That no bond or other obligation may be issued or incurred unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used.

(n) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article.

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(1) The payment, funding or refunding of the principal of, interest on or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be
funded or refunded have or have not become due.

(2) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever.

(p) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds may be issued to mature more than twenty-five years from the date of issuance.

(q) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded.

(r) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(s) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note or contract or agreement of any kind to which the authority is a party.
(t) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note revenues.

(u) To promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law.

(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The authority shall provide for the transportation of inmates between the regional jails and local holding facilities for court appearances.

(w) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of regional jails and correctional facilities.

(x) To cooperate with the commission for distribution of surplus foods and to authorize the executive director to exercise all power and authority provided in this section necessary to implement the pilot program for delivery of leftover prepared foods at the regional jail located in Marshall County, pursuant to section seventeen, article two, chapter eighteen of this code.

Notwithstanding any other provision of this section, the regional jail and correctional facility authority shall no later than the first day of November, one thousand nine hundred eighty-nine, submit a plan to the joint committee on government and finance of the Legislature detailing the means by which the authority will comply with the mandates of the supreme court of appeals as to the structural and internal conditions and programs of the correctional facilities in this state. In preparing such plan, the authority is to allow for and consider any input from the public.
AN ACT to amend and reenact section three, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limiting those rights, remedies and requirements relating to discrimination by proprietors and others of penitentiaries, correctional facilities, regional jails and county jails to employees of such facilities, employees of law-enforcement agencies and visitors to such facilities or employees; and including domestic employees within the definition of employee generally.

Be it enacted by the Legislature of West Virginia:

That section three, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

§5-11-3. Definitions.

1 When used in this article:

2 (a) The term “person” means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

3 (b) The term “commission” means the West Virginia human rights commission;

4 (c) The term “director” means the executive director of the commission;

5 (d) The term “employer” means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: Provided, That such terms shall not be taken, understood or construed to include a private club;

6 (e) The term “employee” shall not include any
individual employed by his parents, spouse or child;

(f) The term “labor organization” includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment;

(g) The term “employment agency” includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term “discriminate” or “discrimination” means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap or familial status and includes to separate or segregate;

(i) The term “unlawful discriminatory practices” includes only those practices specified in section nine of this article;

(j) The term “place of public accommodations” means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a place of public accommodation, the rights, remedies and requirements provided by this article for any violation of subdivision (6), section nine of this article shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting any person detained in custody at such facility;
(k) The term "age" means the age of forty or above;

(l) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed twenty/two hundred in the better eye with correcting lenses, or if his visual acuity is greater than twenty/two hundred but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees; and

(m) The term "handicap" means a person who:

1. Has a mental or physical impairment which substantially limits one or more of such person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

2. Has a record of such impairment; or

3. Is regarded as having such an impairment.

For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

CHAPTER 72

(H. B. 4425—By Delegates Compton, Douglas, Brown, Gallagher, Leach, Huntwork and P. White)

[Passed March 12, 1994; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section ten, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enlarging the time period in which to file a human rights complaint from one hundred eighty days to three hundred days.
Be it enacted by the Legislature of West Virginia:

That section ten, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative, or the attorney general, shall, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the commission against such employer. Any complaint filed pursuant to this article must be filed within three hundred sixty-five days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney
may, within ten days after such service, file with the
commission a written request for a meeting with the
commission to show probable cause for substantiating
the allegations of the complaint. If it shall be deter-
dined after such investigation or meeting that probable
cause exists for substantiating the allegations of the
complaint, the commission shall immediately endeavor
to eliminate the unlawful discriminatory practices
complained of by conference, conciliation and persua-
sion. The members of the commission and its staff shall
not disclose what has transpired in the course of such
endeavors: Provided, That the commission may publish
the facts in the case of any complaint which has been
dismissed, and the terms of conciliation when the
complaint has been adjusted, without disclosing the
identity of the parties involved.

In case of failure so to eliminate such practice or in
advance thereof, if in the judgment of the commission
circumstances so warrant, the commission shall cause to
be issued and served a written notice, together with a
copy of such complaint as the same may have been
amended, in the manner provided by law for the service
of summons in civil actions, requiring the person,
employer, labor organization, employment agency,
owner, real estate broker, real estate salesman or
financial institution named in such complaint, hereinaf-
ter referred to as respondent, to answer the charges of
such complaint at a hearing before the commission in
the county where the respondent resides or transacts
business at a time and place to be specified in such
notice: Provided, That said written notice be served at
least thirty days prior to the time set for the hearing.

The case in support of the complaint shall be pres-
ten before the commission by one of its attorneys or
agents. The respondent may file a written, verified
answer to the complaint and appear at such hearing in
person or otherwise, with or without counsel, and submit
testimony and evidence. Except as provided in this
article, all of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures
in connection with and following such hearing, with like
If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this article, as in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of its order shall be delivered in all cases by the commission to the complainant, the respondent, the attorney general and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in section eleven of this article.
AN ACT to amend and reenact section fifteen-a, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to accredited reinsurers; licensing and filing requirements; credit requirements; designating the secretary of state for service of process; annual reports; expanding trusteeed accounts to include corporations as well as unincorporated underwriters; required forms and reports; security requirements and definitions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an "accredited reinsurer" is one which:

2 (1) Has filed an application for accreditation and received a letter of accreditation from the commissioner;

3 (2) Is licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one of the fifty states of the United States or the District of Columbia;

4 (3) Has filed with the application a certified statement that the company submits to this state's jurisdiction and that the company will comply with the laws, rules and regulations of the state of West Virginia;
(4) Has filed with the application a certified statement that the company submits to the examination authority granted the commissioner by section nine, article two of this chapter and will pay all examination costs and fees as required by that section;

(5) Has filed with the application a copy of its most recent annual statement in a form consistent with the requirements of subdivision (8) of this subsection and a copy of its last audited financial statement;

(6) Has filed any other information the commissioner requests to determine that the company qualifies for accreditation under this section;

(7) Has remitted the applicable processing fee with its application for accreditation;

(8) Files with the commissioner after initial accreditation on or before the first day of March of each year a true statement of its financial condition, transactions and affairs as of the preceding thirty-first day of December. The statement shall be on the appropriate national association of insurance commissioners annual statement blank; shall be prepared in accordance with the national association of insurance commissioners annual statement instructions; and shall follow the accounting practices and procedures prescribed by the national association of insurance commissioners accounting practices and procedures manual as amended. The statement shall be accompanied by the applicable annual statement filing fee. The commissioner may grant extensions of time for filing of this annual statement upon application by the accredited reinsurer; and

(9) Files with the commissioner after initial accreditation by the first day of June of each year a copy of its audited financial statement for the period ending the preceding thirty-first day of December.

(b) If the commissioner determines that the assuming insurer has failed to continue to meet any of these qualifications, he or she may upon written notice and hearing, as prescribed by section thirteen, article two of
this chapter, revoke an assuming insurer's accreditation.

Credit shall not be allowed to a ceding insurer if the assuming insurers' accreditation has been revoked by the commissioner after notice and hearing.

(c) Credit for reinsurance shall be allowed a domestic ceding insurer or any foreign or alien insurer transacting insurance in West Virginia that is domiciled in a jurisdiction that employs standards regarding credit for reinsurance that are not substantially similar to those applicable under this article as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets one of the following requirements:

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this state.

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state prior to the effective date of the reinsurance contract.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through one of the fifty states of the United States or the District of Columbia and which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute, and the ceding insurer provides evidence suitable to the commissioner that the assuming insurer:

(A) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars: Provided, That the requirements of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system;

(B) The ceding insurer provides the commissioner with a certified statement from the assuming insurer that the assuming insurer submits to the authority of
this state to examine its books and records granted the
commissioner by section nine, article two of this chapter
and will pay all examination costs and fees as required
by that section; and

(C) The reinsurer complies with the provisions of
subdivision (6), subsection (c) herein.

(4) Credit shall be allowed when the reinsurance is
ceded to an assuming insurer which maintains a trust
fund as required by subsection (d) herein in a qualified
United States financial institution, as defined by this
section, for the payment of the valid claims of its United
States policyholders and ceding insurers, their assigns
and successors in interest, and complies with the
provisions of subdivision (6) herein.

(5) Credit shall be allowed when the reinsurance is
ceded to an assuming insurer not meeting the require-
ments of subdivisions (1) through (4), subsection (c) of
this section, but only with respect to the insurance of
risks located in jurisdictions where such reinsurance is
required by applicable law or regulation of that
jurisdiction.

(6) If the assuming insurer is not licensed or accred-
dited to transact insurance or reinsurance in this state,
the credit permitted by subdivisions (3) and (4) of this
subsection shall not be allowed unless the assuming
insurer agrees in the reinsurance agreements:

(A) That in the event of the failure of the assuming
insurer to perform its obligations under the terms of the
reinsurance agreement, the assuming insurer, at the
request of the ceding insurer, shall submit to the
jurisdiction of any court of competent jurisdiction in any
state of the United States, shall comply with all
requirements necessary to give such court jurisdiction,
and shall abide by the final decision of such court or of
any appellate court in the event of an appeal; and

(B) To designate the secretary of state as its true and
lawful attorney upon whom may be served any lawful
process in any action, suit or proceeding instituted by
or on behalf of the ceding company. Process shall be
served upon the secretary of state, or accepted by him or her, in the same manner as provided for service of process upon unlicensed insurers under section thirteen of this article: Provided, That this provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(d) Whenever an assuming insurer establishes a trust fund for the payment of claims pursuant to the provisions of this section, the following requirements shall apply:

(1) The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars. In the case of a group, including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(2) In the case of a group of incorporated insurers
under common administration which complies with the filing requirements contained in the previous paragraph; which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation; which submits to this state's authority to examine its books and records and bears the expense of the examination; and which has aggregate policyholders' surplus of ten billion dollars, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group. The group shall also maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities. Each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountants.

(3) Any trust that is subject to the provisions of this section shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust described herein shall remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

(4) No later than the twenty-eighth day of February of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end. The trustees shall certify the date of
termination of the trust, if so planned, or certify that
the trust shall not expire prior to the next following
December thirty-first.

(e) A reduction from liability for the reinsurance
ceded by a ceding insurer subject to the requirements
of this article to an assuming insurer not meeting the
requirements of subsection (c) of this section shall be
allowed in an amount not exceeding the liabilities
carried by the ceding insurer. The reduction shall be in
the amount of funds held by or on behalf of the ceding
insurer, including funds held in trust for the ceding
insurer, under a reinsurance contract with the assuming
insurer as security for the payment of obligations
thereunder: Provided, That the security is held in the
United States subject to withdrawal solely by, and
under the exclusive control of, the ceding insurer; or, in
the case of a trust, held in a qualified United States
financial institution, as defined by this section. The
security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office
of the national association of insurance commissioners
and qualifying as admitted assets; or

(3) Clean, irrevocable, unconditional letters of credit,
issued or confirmed by a qualified United States
financial institution, as defined by this section, no later
than the thirty-first day of December of the year for
which filing is being made, and in the possession of the
ceding company on or before the filing date of its annual
statement: Provided, That letters of credit meeting
applicable standards of issuer acceptability as of the
dates of their issuance or confirmation shall, notwith-
standing the issuing or confirming institution's subse-
quently failure to meet applicable standards of issuer
acceptability, continue to be acceptable as security until
their expiration, extension, renewal, modification or
amendment, whichever first occurs.

(f) For purposes of this section, a "qualified United
States financial institution" means an institution that:
(1) Is organized or licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the commissioner, or the securities valuation office of the national association of insurance commissioners, to meet the standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(g) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(1) Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

(h) The provisions of this section shall apply to all cessions on or after the first day of January, one thousand nine hundred ninety-three.

CHAPTER 74

(S. B. 390—By Senator Minard)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the approval of insurance policy forms; creating exceptions for certain associations; and providing for
exemptions upon written application and for good cause shown.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Approval of forms.

(a) Except as provided in section eight, article seventeen of this chapter (fire and marine forms), no insurance policy form, no group certificate form, no insurance application form where written application is required and is to be made a part of the policy, and no rider, endorsement or other form to be attached to any policy, shall be delivered or issued for delivery in this state by an insurer unless it has been filed with and approved by the commissioner, except that as to group insurance policies delivered outside this state, only the group certificates to be delivered or issued for delivery in this state shall be filed for approval with the commissioner. This section shall not apply to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or accident and sickness insurance policies, and are used at the request of the individual policyholder, contract holder or certificate holder, nor to the surety bond forms.

(b) Every such filing shall be made not less than sixty days in advance of any such delivery. At the expiration of such sixty days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may at any time, after notice and for cause shown, withdraw any such approval.

(c) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall
(d) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(e) Notwithstanding any other provisions of this section, any mass marketed life and/or health insurance policy offered to members of any association by the association shall be exempt from the provision requiring prior approval under this section: Provided, That for purposes of this section, the association shall have a minimum of sixty-one members at the outset of the issuance of the mass marketed life and/or health insurance policy and shall have been organized and maintained in good faith for purposes other than that of obtaining or providing insurance: Provided, however, That the association shall also have been in active existence for at least two years and shall have a constitution and bylaws which provide that: (1) The association holds annual meetings to further purposes of its members; (2) except in the case of credit unions, the association collects dues or solicits contributions from members; and (3) the members have voting privileges and representation on the governing board and committees that exist under the authority of the association: Provided further, That upon written application by an association and for good cause shown, the commissioner may grant an exemption to the association from the minimum member requirements of this section.

(f) This section shall apply also to any form used by domestic insurers for delivery in a jurisdiction outside West Virginia, if the insurance supervisory official of such jurisdiction informs the commissioner that such form is not subject to approval or disapproval by such official, and upon the commissioner's order requiring the form to be submitted to him for the purpose. The applicable same standards shall apply to such forms as apply to forms for domestic use.
AN ACT to amend and reenact sections ten, eleven and twelve, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article twenty-two of said chapter; to amend and reenact section two, article twenty-three of said chapter; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; to amend and reenact sections four and five, article twenty-seven of said chapter; to amend and reenact sections one and six, article thirty-one of said chapter; to amend and reenact section three, article thirty-two of said chapter; and to further amend said chapter by adding thereto two new articles, designated articles thirty-nine and forty, all relating to insurance; assets and liabilities; valuation of bonds; valuation of other securities; valuation of real property; farmers’ mutual fire insurance companies; applicability of other provisions; fraternal benefit societies; applicability of other provisions; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; health maintenance organization act; issuance of certificate of authority; insurance holding company systems; registration of insurers; standards; captive insurance; definitions; corporate organization; risk retention act; charter and license requirements for domestic groups; disclosure of material transactions; report; acquisitions and dispositions of assets; nonrenewals, cancellations or revisions of ceded reinsurance programs; effective date; risk based capital for life and/or health insurers; definitions; risk based capital reports; company action level event; regulatory action level event; authorized control level event;
mandatory control level event; hearings; confidentiality and prohibition on announcements; supplemental provisions; foreign insurers; severability clause; notices; and effective date.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

Article

23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
27. Insurance Holding Company Systems.
32. Risk Retention Act.
40. Risk Based Capital for Life and/or Health Insurers.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-10. Valuation of bonds.
§33-7-11. Valuation of other securities.
§33-7-12. Valuation of real property.

§33-7-10. Valuation of bonds.

1 (a) All bonds or other evidences of debt having a fixed term and rate of interest held by any insurer may, if
3 amply secured and not in default as to principal or
4 interest, be valued as follows:
5
(1) If purchased at par, at the par value.
6
(2) If purchased above or below par, on the basis of
7 the purchase price adjusted so as to bring the value to
8 par at maturity and so as to yield in the meantime the
9 effective rate of interest at which the purchase was
10 made, or in lieu of such method, according to such
11 accepted method of valuation as is approved by the
12 commissioner.
13
(3) Purchase price shall in no case be taken at a
14 higher figure than the actual market value at the time
15 of purchase, plus actual brokerage, transfer, postage or
16 express charges paid in the acquisition of such
17 securities.
18
(4) Unless otherwise provided by valuation established
19 or approved by the commissioner, no such security shall
20 be carried at above the call price for the entire issue
21 during any period within which the security may be so
22 called.
23
(b) The commissioner shall have full discretion in
24 determining the method of calculating values according
25 to the rules set forth in this section: Provided, That no
26 such method or valuation shall be inconsistent with any
27 applicable valuation or method used by insurers in
28 general or any such method then currently formulated
29 or approved by the committee on valuation of securities
30 of the national association of insurance commissioners or
31 its successor organization.

§33-7-11. Valuation of other securities.

1 (a) Securities, other than those referred to in section
2 ten of this article, held by an insurer shall be valued,
3 in the discretion of the commissioner, at their market
4 value, or at their appraised value, or at prices deter-
5 mined by him as representing their fair market value,
6 all consistent with any current method for the valuation
7 of any such security formulated or approved by the
8 commissioner.
(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

c) Stock of a subsidiary corporation of an insurer shall not be valued in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible pursuant to the provisions of this article, and article eight of this chapter, for investment of funds of the insurer directly.

d) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the committee on valuation of securities of the national association of insurance commissioners or its successor organization.

§33-7-12. Valuation of real property.

(a) In the event of a default real property acquired pursuant to a mortgage loan or contract for sale shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

(b) The value of other real property acquired or held by an insurer shall in no event be valued at more than the purchase price. Purchase price includes capitalized permanent improvements, less depreciation as allowed by the current accounting practices and procedures manuals of the national association of insurance commissioners. Real property that has been affected by permanent declines in value shall be valued at not more than market value.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions) except that section sixteen of article four shall not be applicable thereto; article seven (assets and liabilities); article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten assessments shall not be levied against any former member of a farmers’ mutual fire insurance company who is no longer a member of the company at the time the order to show cause was issued; article eleven (unfair trade practices); article twelve (agents, brokers and solicitors) except that the agent’s license fee shall be five dollars; article twenty-six (West Virginia Insurance Guaranty Association Act); article twenty-seven (insurance holding company systems); article thirty (mine subsidence insurance) except that under the provisions of section six, article thirty, a farmers’ mutual insurance company shall have the option of offering mine subsidence coverage to all of its policyholders but shall not be required to do so; article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (business transacted with producer-controlled property/casualty insurer); article thirty-seven (managing general agents); and article thirty-nine (disclosure of material transactions); but only to the extent these provisions are not inconsistent with the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


Every fraternal benefit society shall be governed and be subject to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provi-
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent's license fee shall be five dollars; section fourteen, article fifteen (individual accident

*Clerk's Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.
and sickness insurance); article fifteen-a (long-term care insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental illness); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act), after the first day of October, one thousand nine hundred ninety-one; article twenty-seven (insurance holding company systems); article twenty-eight (individual accident and sickness insurance minimum standards); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article thirty-nine (disclosure of material transactions); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, any such corporation is converted into a corporation organized for a pecuniary profit, or if it transacts business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

*§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to

*Clerk’s Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.
the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section fourteen, article fifteen (individual accident and sickness insurance); section three, article sixteen (required policy provisions); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); and article thirty-nine (disclosure of material transactions); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this article. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or

*Clerk's Note: This section was also amended by S. B. 522 (Chapter 78), which passed subsequent to this act.
medical service corporation laws of this state except
with respect to its health maintenance corporation
activities authorized and regulated pursuant to this
article.

(b) Factually accurate advertising or solicitation
regarding the range of services provided, the premiums
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance
organization granted a certificate of authority, or its
representative shall not be construed to violate any
provision of law relating to solicitation or advertising by
health professions: Provided, That nothing contained
herein shall be construed as authorizing any solicitation
or advertising which identifies or refers to any individ-
ual provider, or makes any qualitative judgment
concerning any provider.

(c) Any health maintenance organization authorized
under this article shall not be deemed to be practicing
medicine and shall be exempt from the provision of
chapter thirty of this code, relating to the practice of
medicine.

(d) The provisions of section fifteen, article four
(general provisions); article six-c (guaranteed loss ratio);
article seven (assets and liabilities); article eight
(investments); section fourteen, article fifteen (individ-
ual accident and sickness insurance); article fifteen-b
(uniform health care administration act); section three,
article sixteen (required policy provisions); section
three-f, article sixteen (treatment of temporomandibular
disorder and craniomandibular disorder); article six-
ten-a (group health insurance conversion); article
sixteen-c (small employer group policies); article
sixteen-d (marketing and rate practices for small
employers); article twenty-seven (insurance holding
company systems); article thirty-four-a (standards and
commissioner’s authority for companies deemed to be in
hazardous financial condition); article thirty-five
(criminal sanctions for failure to report impairment);
article thirty-seven (managing general agents); and
article thirty-nine (disclosure of material transactions)
shall be applicable to any health maintenance organization granted a certificate of authority under this article.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-4. Registration of insurers.

§33-27-5. Standards.

§33-27-4. Registration of insurers.

(a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this article or fifteen days after it becomes subject to registration, whichever is later, and annually thereafter by the first day of June of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement, the summary described in subsection (c) of this section, or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the national association of insurance commissioners, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer.
(2) The identity and relationship of every member of the insurance holding company system.

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer’s assets to liability, other than insurance contracts entered into in the ordinary course of the insurer’s business;

(E) All management and service contracts and all cost-sharing arrangements;

(F) All reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Any pledge of the insurer’s stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(4) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(c) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) Information need not be disclosed on the registration statement filed pursuant to subsection (b) of this
section if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one half of one percent or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within fifteen days after the end of the month in which it learns of each such change or addition.

(f) Subject to subsection (c), section five of this article, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

(g) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(h) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(i) The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(j) The commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file
all information and material required to be filed under this section.

(k) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(l) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(m) The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

§33-27-5. Standards.

(a) Transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) The terms shall be fair and reasonable;

(2) Charges or fees for services performed shall be reasonable;

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(4) The books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transac-
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(5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer's reserves; and

(10) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such invest-
(c) An insurer subject to registration under section four of this article shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until: (1) Thirty days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or (2) the commissioner shall have approved such payment within such thirty-day period.

(d) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of: (1) Ten percent of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or (2) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(e) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until: (1) The commissioner has approved the payment of such dividend or distribution; or (2) the commissioner has not disapproved such payment within the thirty-day period referred to above.
(f) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within such period:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;

(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided such transactions are equal to or exceed: The lesser of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders; each as of the thirty-first day of December next preceding;

(3) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the insurer;

(4) All management agreements, service contracts and all cost-sharing arrangements; and

(5) Any material transactions, specified by rule, which
the commissioner determines may adversely affect the interests of the insurer’s policyholders.

(g) Nothing contained in subsection (h) herein shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(h) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that such separate transactions were entered into over any twelve-month period for such purpose, he or she may exercise his or her authority under section nine.

(i) The commissioner, in reviewing transactions pursuant to subsection (f) of this section, shall consider whether the transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders.

(j) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in such corporation by the insurance holding company system exceeds ten percent of such corporation’s voting securities.

(k) With regard to domestic insurers, the following requirements apply:

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the provisions of this chapter.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperatively, or jointly using personnel, property or
services with one or more other persons under arrangements meeting the standards of subsection (a) of this section.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.
§33-31-6. Corporate organization.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires otherwise:

2 (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation or management.

3 (2) "Association" means any legal association of individuals, corporations, partnerships or associations that has been in continuous existence for at least one year, the member organizations of which collectively:

4 (A) Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

5 (B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer.

6 (3) "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

7 (4) "Captive insurance company" means any pure captive insurance company, association captive insurance company, or industrial insured captive insurance company formed or licensed under the provisions of this chapter.

8 (5) "Commissioner" means the insurance commissioner of West Virginia.

9 (6) "Industrial insured" means an insured:

10 (A) Who procures the insurance of any risk or risks
by use of the services of a full-time employee acting as
an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance
on all risks total at least twenty-five thousand dollars;
and

(C) Who has at least twenty-five full-time employees.

(7) "Industrial insured captive insurance company"
means any company that insures risks of the industrial
insureds that comprise the industrial insured group and
their affiliated companies.

(8) "Industrial insured group" means any group that
meets the following criteria:

Any group of industrial insureds that collectively:

(i) Own, control or hold with power to vote all of the
outstanding voting securities of an industrial insured
captive insurance company incorporated as a stock
insurer; or

(ii) Have complete voting control over an industrial
insured captive insurance company incorporated as a
mutual insurer.

(9) "Member organization" means any individual,
corporation, partnership or association that belongs to
an association.

(10) "Parent" means a corporation, partnership or
individual that directly or indirectly owns, controls or
holds with power to vote more than fifty percent of the
outstanding voting securities of a pure captive insurance
company.

(11) "Pure captive insurance company" means any
company that insures risks of its parent and affiliated
companies.

§33-31-6. Corporate organization.

(a) A pure captive insurance company shall be
incorporated as a stock insurer with its capital divided
into shares and held by the stockholders.

(b) An association captive insurance company or an
industrial insured captive insurance company may be
incorporated:

(1) As a stock insurer with its capital divided into
shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the
governing body of which is elected by the member
organizations of its association.

(c) A captive insurance company shall have at least
one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted
to the secretary of state, the incorporators shall petition
the commissioner to issue a certificate setting forth his
or her finding that the establishment and maintenance
of the proposed corporation will promote the general
good of the state. In arriving at such finding the
commissioner shall consider:

(1) The character, reputation, financial standing and
purpose of the incorporators;

(2) The character, reputation, financial responsibility,
insurance experience and business qualifications of the
officers and directors; and

(3) Such other aspects as the commissioner deems
advisable.

(e) The articles of association, such certificate and the
organization fee shall be transmitted to the secretary of
state, who shall thereupon record both the articles of
incorporation and the certificate.

(f) The capital stock of a captive insurance company
incorporated as a stock insurer shall be issued at not less
than par value.

(g) At least one of the members of the board of
directors of a captive insurance company incorporated
in this state shall be a resident of this state.

(h) Captive insurance companies formed under the
provisions of this chapter shall have the privileges and
be subject to the provisions of the general corporation
law as well as the applicable provisions contained in this
Captive insurance companies are subject to the provisions of article thirty-three, article thirty-four, article thirty-seven and article thirty-nine of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Charter and license requirements for domestic groups.

(a) A risk retention group shall, pursuant to the provisions of article five of this chapter, be chartered and licensed to write only liability insurance pursuant to this article and, except as provided elsewhere in this article, shall comply with all of the laws, rules and requirements applicable to insurers chartered and licensed in this state and with section four of this article, to the extent such requirements are not a limitation on laws, rules or requirements of this state.

(b) Notwithstanding any other provision of this chapter to the contrary, all risk retention groups chartered in this state shall file with the commissioner and the national association of insurance commissioners, an annual statement on a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner and completed in accordance with the national association of insurance commissioners' instructions and the national association of insurance commissioners accounting practices and procedures manual.

(c) Before it may offer insurance in any state, each risk retention group shall also submit for approval by the insurance commissioner of this state a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision of such plan or study, in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten days of any such change. The risk retention group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of the plan or study is approved by the
32 commissioner.
33 (d) At the time of filing its application for a charter, 34 the risk retention group shall provide to the commis- 35 sioner in summary form the following information: The 36 identity of the initial members of the group, the identity 37 of those individuals who organized the group or who will 38 provide administrative services or otherwise influence 39 or control the activities of the group, the amount and 40 nature of initial capitalization, the coverages to be 41 afforded, and the states in which the group intends to 42 operate. Upon receipt of this information, the commis- 43 sioner shall forward the information to the national 44 association of insurance commissioners. Providing 45 notification to the national association of insurance 46 commissioners is in addition to and shall not be 47 sufficient to satisfy the requirements of section four or 48 any other sections of this article.
49 (e) Risk retention groups are subject to the provisions 50 of article thirty-three, article thirty-four, article thirty- 51 seven and article thirty-nine of this chapter.

ARTICLE 39. DISCLOSURE OF MATERIAL TRANSACTIONS.

§33-39-3. Nonrenewals, cancellations or revisions of ceded reinsurance programs.


1 (a) Every insurer domiciled in this state shall file a 2 report with the commissioner disclosing material 3 acquisitions and dispositions of assets or material 4 nonrenewals, cancellations or revisions of ceded reinsur- 5 ance programs unless such acquisitions and disposi- 6 tions of assets or material nonrenewals, cancellations or 7 revisions of ceded reinsurance programs have been 8 submitted to the commissioner for review, approval or 9 information purposes pursuant to other provisions of 10 this chapter.

11 (b) The report required in subsection (a) of this section 12 is due within fifteen days after the end of the calendar 13 month in which any of the foregoing transactions occur.
(c) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall be filed with:

(1) The insurance commissioner; and

(2) The national association of insurance commissioners.

(d) All reports obtained by or disclosed to the commissioner pursuant to this article, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the national association of insurance commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part thereof in such manner as he or she may deem appropriate.


(a) No acquisitions or dispositions of assets need be reported pursuant to section one of this article if the acquisitions or dispositions are not material. For purposes of this article, a material acquisition, or the aggregate of any series of acquisitions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance commissioner. For purposes of this article, a material disposition, or the aggregate of any series of dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance commissioner.
(b) Asset acquisitions subject to this article include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.

(c) Asset dispositions subject to this article include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

(d) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

1. Date of the transaction;
2. Manner of acquisition or disposition;
3. Description of the assets involved;
4. Nature and amount of the consideration given or received;
5. Purpose of, or reason for, the transaction;
6. Manner by which the amount of consideration was determined;
7. Gain or loss recognized or realized as a result of the transaction; and
8. Name(s) of the person(s) from whom the assets were acquired or to whom they were disposed.

(e) Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or a one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer ceded substantially all of its direct and assumed business to a pool. An insurer is deemed to have ceded "substantially all" of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a
calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. If a group of insurers reports on a consolidated basis as here allowed, the report should identify the individual insurers that are members of the group.

§33-39-3. Nonrenewals, cancellations or revisions of ceded reinsurance programs.

(a) No nonrenewals, cancellations or revisions of ceded reinsurance programs need be reported pursuant to section one of this article if the nonrenewals, cancellations or revisions are not material. For purposes of this article, a material nonrenewal, cancellation or revision is one that affects for property and casualty business, including accident and health business when written as such, more than fifty percent of an insurer's ceded written premium, or for life, annuity and accident and health business, more than fifty percent of the total reserve credit taken for business ceded, on an annualized basis as indicated in the insurer's most recently filed statutory statement: Provided, That no filing is required if the insurer's ceded written premium or the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of direct plus assumed written premium or ten percent of the statutory reserve requirement prior to any cession, respectively.

(b) Subject to the criteria outlined above, a report is to be filed without regard to which party has initiated the nonrenewal, cancellation or revision of ceded reinsurance whenever one or more of the following conditions exist:

(1) The entire cession has been canceled, nonrenewed or revised and ceded indemnity and loss adjustment expense reserves after any nonrenewal, cancellation or revision represent less than fifty percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation or revision not occurred;

(2) An authorized or accredited reinsurer has been
replaced on an existing cession by an unauthorized reinsurer; or

(3) Collateral requirements previously established for unauthorized reinsurers have been reduced. For example, the requirement to collateralize incurred but not reported claim reserves has been waived with respect to one or more unauthorized reinsurers newly participating in an existing cession.

(4) Subject to the materiality criteria, for purposes of subdivisions (2) and (3) above, a report shall be filed if the result of the revision affects more than ten percent of the cession.

(c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of a ceded reinsurance program:

(1) Effective date of the nonrenewal, cancellation or revision;

(2) The description of the transaction with an identification of the initiator thereof;

(3) Purpose of, or reason for, the transaction; and

(4) If applicable, the identity of the replacement reinsurers.

(d) Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or a one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to a pool. An insurer is deemed to have ceded "substantially all" of its direct and assumed business to a pool if the insurer has less than one million dollars of total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus. If a group
of insurers reports on a consolidated basis as here
allowed, the report shall identify the individual insurers
that are members of the group.


This article shall take effect on the first day of
January, one thousand nine hundred ninety-six.

ARTICLE 40. RISK BASED CAPITAL FOR LIFE AND/OR
HEALTH INSURERS.

§33-40-1. Definitions.
§33-40-2. Risk based capital reports.
§33-40-3. Company action level event.
§33-40-4. Regulatory action level event.
§33-40-5. Authorized control level event.
§33-40-6. Mandatory control level event.
§33-40-10. Foreign insurers.

§33-40-1. Definitions.

(a) "Adjusted risk based capital report" means a risk
based capital report which has been adjusted by the
commissioner in accordance with subsection (c), section
two of this article.

(b) "Corrective order" means an order issued by the
commissioner specifying corrective actions which the
commissioner has determined are required.

(c) "Domestic insurer" means any life and/or health
insurance company organized in this state pursuant to
article five of this chapter.

(d) "Foreign insurer" means any life and/or health
insurance company which is licensed to do business in
this state pursuant to article three of this chapter but
is not domiciled in this state.

(e) "Negative trend" means a negative trend over a
period of time, as determined in accordance with the
trend test calculation included in the risk based capital
instructions defined in subsection (f) of this section.
(f) “Risk based capital instructions” means the risk based capital report including risk based capital instructions, as amended and adopted by the national association of insurance commissioners.

(g) “Risk based capital level” is an insurer’s company action level, regulatory action level, authorized control level or mandatory control level where:

(1) “Authorized control level” is the amount calculated by applying the risk based capital formula in accordance with the risk based capital instructions;

(2) “Company action level” is the risk based capital amount equal to the product of multiplying the authorized control level by two;

(3) “Mandatory control level” is the risk based capital amount equal to the product of multiplying the authorized control level by seven tenths;

(4) “Regulatory action level” is the risk based capital amount equal to the product of multiplying the authorized control level by one and one half.

(h) A “risk based capital plan” is a comprehensive financial plan containing the elements specified in subsection (b), section three of this article. If the commissioner rejects the risk based capital plan, and it is revised by the insurer, with or without the commissioner’s recommendation, the plan shall be called the “revised risk based capital plan”.

(i) A “risk based capital report” is the report required by section two of this article.

(j) “Total adjusted capital” is the sum of:

(1) An insurer’s statutory capital and surplus; and

(2) Such other items, if any, as the risk based capital instructions may provide.

§33-40-2. Risk based capital reports.

(a) Every domestic insurer shall annually on or before the first day of March, prepare and file with the commissioner a report of its risk based capital levels for
the year ending the thirty-first day of December next preceding. The risk based capital report shall be in a form containing such information as is required by the risk based capital instructions. In addition, every domestic insurer shall file its risk based capital report:

(1) With the national association of insurance commissioners in accordance with the risk based capital instructions; and

(2) With the insurance commissioner of any state in which the insurer is authorized to do business, and that insurance commissioner has notified the insurer of its request in writing. When so requested, the insurer shall file its risk based capital report:

(i) Fifteen days from the receipt of notice to file its risk based capital report with that state; or

(ii) If the request is received after the thirty-first day of December next preceding but prior to the first day of March, on or before the fifteenth day of March.

(b) An insurer's risk based capital shall be determined in accordance with the formula set forth in the risk based capital instructions. The formula shall take into account and may adjust for the covariance between:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and such other relevant risks as are set forth in the risk based capital instructions.

The above risks shall be determined in each case by applying the factors in the manner set forth in the risk based capital instructions.

(c) If a domestic insurer files a risk based capital report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk based capital report to correct the inaccuracy and shall
§33-40-3. Company action level event.

(a) A "company action level event" is any of the following events:

(1) The filing of a risk based capital report by an insurer which indicates that:
   (A) The insurer's total adjusted capital is greater than or equal to its regulatory action level but less than its company action level; or
   (B) The insurer has total adjusted capital which is greater than or equal to its company action level but less than the product of multiplying its authorized control level by two and one half and has a negative trend;

(2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in paragraph (A) or (B), subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article; or

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in paragraph (A) or (B), subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner of rejection of the insurer's challenge.

(b) In the event of a company action level event, the insurer shall prepare and file with the commissioner a comprehensive financial plan which shall:

(1) Identify the internal conditions of the insurer which contribute to the company action level event;

(2) Contain proposals of corrective actions which the insurer intends to take that are expected to result in the elimination of the company action level event;

(3) Provide separate projections of the insurer's financial results in the current year and at least the four
succeeding years, one projection prepared giving effect
to the proposed corrective actions and one projection not
giving effect to the proposed corrective actions. The
projections shall include estimates of statutory operating
income, net income, capital and/or surplus. The projec-
tions for both new and renewal business may include
separate projections for each major line of business and
separately identify each significant income, expense and
benefit component;

(4) Identify the key assumptions impacting the
insurer’s projections and the sensitivity of the projec-
tions to the assumptions; and

(5) Identify the quality of, and problems associated
with, the insurer’s business, including, but not limited
to, its assets, anticipated business growth and associated
surplus strain, extraordinary exposure to risk, mix of
business and use of reinsurance in each case, if any.

(c) The risk based capital plan shall be filed:

(1) Within forty-five days of the company action level
event; or

(2) If the insurer challenges an adjusted risk based
capital report pursuant to section seven of this article,
within forty-five days after notification to the insurer
that the commissioner has, after a hearing, rejected the
insurer’s challenge.

(d) Within sixty days after the filing of a risk based
capital plan, the commissioner shall notify the insurer
whether the risk based capital plan shall be imple-
mented or that it is unsatisfactory. If the commissioner
determines the risk based capital plan is unsatisfactory,
the notification to the insurer shall set forth the reasons
for the determination and may set forth proposed
revisions which will render the risk based capital plan
satisfactory. Upon notification from the commissioner,
the insurer shall prepare a revised risk based capital
plan, which may incorporate by reference any revisions
proposed by the commissioner. The revised risk based
capital plan shall be filed with the commissioner:

(1) Within forty-five days after the notification from
72   the commissioner; or
73   (2) If the insurer challenges the notification from the
74   commissioner pursuant to section seven of this article,
75   within forty-five days after a notification to the insurer
76   that the commissioner has, after a hearing, rejected the
77   insurer's challenge.
78   (e) In the event of a notification by the commissioner
79   to an insurer that the insurer's risk based capital plan
80   or revised risk based capital plan is unsatisfactory, the
81   commissioner may specify in the notification that the
82   notification constitutes a regulatory action level event.
83   Such notification is subject to the insurer's right to a
84   hearing pursuant to section seven of this article.
85   (f) Every domestic insurer that files a risk based
86   capital plan or revised risk based capital plan with the
87   commissioner shall file a copy of the risk based capital
88   plan or revised risk based capital plan with the
89   insurance commissioner of any state in which the
90   insurer is authorized to do business if:
91   (1) Such state has a risk based capital provision
92   substantially similar to the provision of subsection (a),
93   section eight of this article; and
94   (2) The insurance commissioner of that state has
95   notified the insurer of its request for the filing in
96   writing. The insurer shall file a copy of the risk based
97   capital plan or revised risk based capital plan in that
98   state on or before the later of:
99   (A) Fifteen days after the receipt of notice to file a
100  copy of its risk based capital plan or revised risk based
101  capital plan with that state; or
102  (B) The date of which the risk based capital plan or
103  revised risk based capital plan is filed under subsection
104  (c), section four of this article.
§33-40-4. Regulatory action level event.
1   (a) A "regulatory action level event", with respect to
2   any insurer, is any of the following events:
3   (1) The filing of a risk based capital report by the
insurer which indicates that the insurer's total adjusted
capital is greater than or equal to its authorized control
level but less than its regulatory action level;

(2) Notification from the commissioner of an adjusted
risk based capital report that indicates the event in
subdivision (1) of this subsection: Provided, That the
insurer does not challenge the adjusted risk based
capital report pursuant to section seven of this article;

(3) If the insurer challenges an adjusted risk based
capital report that indicates the event in subdivision (1)
of this subsection pursuant to section seven of this
article, notification from the commissioner that the
insurer does not challenge the adjusted risk based
capital report pursuant to section seven of this article;

(4) The failure of the insurer to file a risk based
capital report by the filing date, unless the insurer has
provided an explanation for such failure which is
satisfactory to the commissioner and has cured the
failure within ten days after the filing date;

(5) The failure of the insurer to file a risk based
capital plan with the commissioner within the time
period set forth in subsection (c), section three of this
article;

(6) Notification from the commissioner that:

(A) The risk based capital plan or revised risk based
capital plan filed by the insurer is unsatisfactory; and

(B) Such notification constitutes a regulatory action
level event with respect to the insurer: Provided, That
the insurer has not challenged the determination
pursuant to section seven of this article;

(7) If the insurer challenges a determination by the
commissioner under subdivision (6) of this subsection
pursuant to section seven of this article, notification
from the commissioner that the commissioner has, after
a hearing, rejected the insurer's challenge;

(8) Notification from the commissioner that the
insurer has failed to adhere to its risk based capital plan
or revised risk based capital plan. The commissioner
must determine that the failure to adhere has a substantial adverse effect or the ability of the insurer to eliminate the regulatory action level event in accordance with its risk based capital plan or revised risk based capital plan and state so in the notification. A determination challenged pursuant to section seven of this article is not a regulatory action level event; or

(9) If the insurer challenges a determination by the commissioner under subdivision (8) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a regulatory action level event the commissioner shall:

(1) Require the insurer to prepare and file a risk based capital plan or, if applicable, a revised risk based capital plan;

(2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the insurer including a review of its risk based capital plan or revised risk based capital plan; and

(3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required.

(c) In determining corrective actions, the commissioner may take into account such factors as are deemed relevant with respect to the insurer based upon the commissioner's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk based capital instructions. The risk based capital plan or revised risk based capital plan shall be filed:

(1) Within forty-five days after the occurrence of the regulatory action level event;

(2) If the insurer challenges an adjusted risk based capital report pursuant to section seven of this article
and the challenge is not in the judgment of the commissioner frivolous, within forty-five days after the notification from the commissioner that the challenge the commissioner has, after a hearing, rejected the insurer's challenge; or

(3) If the insurer challenges a revised risk based capital plan pursuant to section seven of this article, within forty-five days after notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge.

(d) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the insurer's risk based capital plan or revised risk based capital plan, examine or analyze the assets, liabilities and operations of the insurer and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants shall be borne by the insurer or such other party as directed by the commissioner.

§33-40-5. Authorized control level event.

(a) An "authorized control level event" is any of the following events:

(1) The filing of a risk based capital report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level but less than its authorized control level;

(2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article;

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge;
(4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order: Provided, That the insurer has not challenged the corrective order pursuant to section seven of this article; or

(5) If the insurer has challenged a corrective order pursuant to section seven of this article and the commissioner has, after a hearing, rejected the insurer's challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.

(b) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(1) Take such actions as are required by subsection (b), section four of this article when a regulatory action level event has occurred; or

(2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the insurer and of the public, take such actions as are necessary to cause the insurer to be placed under regulatory control pursuant to article ten of this chapter. In the event the commissioner takes such actions, the authorized control level event shall be deemed sufficient grounds for the commissioner to take action pursuant to said article, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said article. In the event the commissioner takes actions under this subdivision pursuant to an adjusted risk based capital report, the insurer shall be entitled to such protections as are afforded to insurers pursuant to the provisions of article ten of this chapter pertaining to summary proceedings.

§33-40-6. Mandatory control level event.

(a) A "mandatory control level event" is any of the following events:

(1) The filing of a risk based capital report which indicates that the insurer's total adjusted capital is less than its mandatory control level;
(2) Notification from the commissioner of an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection: Provided, That the insurer does not challenge the adjusted risk based capital report pursuant to section seven of this article; or

(3) If the insurer challenges an adjusted risk based capital report that indicates the event in subdivision (1) of this subsection pursuant to section seven of this article, notification from the commissioner that the commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a mandatory control level event, the commissioner shall take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to article ten of this chapter. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action pursuant to said article, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said article. In the event the commissioner takes actions pursuant to an adjusted risk based capital report, the insurer shall be entitled to such protections as are afforded to insurers pursuant to the provisions of said article pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.


An insurer shall have the right to a departmental hearing, on a record, at which the insurer may challenge any determination or action of the commissioner made pursuant to the provisions of this article. The insurer shall notify the commissioner of its request for a hearing within five days after receiving from the commissioner:

(a) Notification of an adjusted risk based capital report; or
(b) Notification that:

1. The insurer's risk based capital plan or revised risk based capital plan is unsatisfactory; and
2. Such notification constitutes a regulatory action level event with respect to such insurer; or
3. Notification that the insurer has failed to adhere to its risk based capital plan or revised risk based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk based capital plan or revised risk based capital plan; or
4. Notification of a corrective order with respect to the insurer.

Upon receipt of the insurer's request for a hearing, the commissioner shall set a date for the hearing, no less than fifteen nor more than forty-five days after the date of the insurer's request.


(a) All risk based capital reports, to the extent the information therein is not required to be set forth in a publicly available annual statement schedule, and risk based capital plans, including the results or report of any examination or analysis of an insurer performed pursuant hereto and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to any domestic insurer or foreign insurer which are filed with the commissioner constitute information that might be damaging to the insurer if made available to its competitors and therefore shall be kept confidential by the commissioner. This information shall not be made public and/or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this article or any other provision of the insurance laws of this state. The information required by this section is specifically exempt from the requirements of chapter twenty-nine-b of this code.
(b) It is the judgment of the Legislature that the comparison of an insurer's total adjusted capital to any of its risk based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under the provisions of this article, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the risk based capital levels of any insurer, or of any component derived in the calculation, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited: Provided, That if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurers' risk based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.


1 The provisions of this article are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, article ten of this chapter.

§33-40-10. Foreign insurers.

1 (a) Any licensed foreign insurer shall, upon the
written request of the commissioner, file with the commissioner a risk based capital report for the year ending the thirty-first day of December next preceding:

(1) Fifteen days from the receipt of notice to file its risk based capital report; or

(2) If the request is received after the thirty-first day of December next preceding but prior to the first day of March, on or before the fifteenth day of March.

Any licensed foreign insurer shall, at the written request of the commissioner, promptly file with the commissioner a copy of any risk based capital plan that is filed with the insurance commissioner of any other state.

(b) The commissioner may require any licensed foreign insurer to file a risk based capital plan in the event of a company action level event or a regulatory action level event or an authorized control level event when:

(1) The event is determined pursuant to the risk based capital statute applicable in the insurer's state of domicile or as determined pursuant to the provisions of this article if there is no risk based capital statute in force in that state; and

(2) The insurance commissioner of the state of domicile fails to require the insurer to file a risk based capital plan pursuant to the risk based capital statute in force in that state or under the provisions of section three of this article if there is no risk based capital statute in force in that state.

In such event, the failure of the licensed foreign insurer to file a risk based capital plan with the commissioner shall be grounds to order the insurer to cease and desist writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to any licensed foreign insurer, if no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and
liquidation statute applicable in the state of domicile of the foreign insurer, the commissioner may make application to the circuit court of Kanawha County permitted pursuant to the provisions of article ten of this chapter with respect to the liquidation of property of foreign insurers found in this state and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.


If any provision of this article, or the application thereof to any person or circumstances, is held invalid, such determination shall not affect the provisions or applications of this article which can be given effect without the invalid provision or application and to that end the provisions of this article are severable.


All notices from the commissioner to an insurer which may result in regulatory action hereunder shall be subject to and deemed effective pursuant to the provision of section twelve, article two of this chapter.


This article shall take effect on the first day of January, one thousand nine hundred ninety-six.

CHAPTER 76
(S. B. 524—By Senators Wagner and Bailey)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing continuing education requirements for certain persons selling preneed burial contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2a. Duty to receive continuing education; educational requirements; compliance; penalties.

1 The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner's office effective the first day of July, one thousand nine hundred ninety-two, with the guidelines to be set up under the board of insurance agent education. Nothing in this section shall prohibit an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent's license.

2 (a) This section applies to persons licensed to engage in the sale of the following types of insurance:

3 (1) Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

4 (2) Sickness, accident and health insurance;

5 (3) All lines of property and casualty insurance; and

6 (4) All other lines of insurance for which an examination is required for licensing.

7 (b) This section does not apply to:

8 (1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any such limited or restricted license as the commissioner may exempt;

9 (2) Individuals selling credit life or credit accident and health insurance;

10 (3) Individuals selling only preneed burial insurance contracts, under a certificate of authority issued pursuant to article fourteen, chapter forty-seven of this code: Provided, That any individual selling preneed burial insurance contracts, under a certificate of
authority issued pursuant to said article code shall 
complete a program of continuing insurance education 
developed by the board of insurance agent education and 
approved by the commissioner which requires that the 
individual complete six hours of continuing insurance 
education biennially.

(c) (1) The board of insurance agent education as 
established by section two of this article shall develop 
a program of continuing insurance education and 
submit the proposal for the approval of the commis-
sioner on or before the thirty-first day of December of 
each year. No program shall be approved by the 
commissioner that includes a requirement that any 
agent complete more than thirty hours of continuing 
insurance education biennially.

(2) The commissioner and the board, under standards 
established by the board, may approve any course or 
program of instruction developed or sponsored by an 
authorized insurer, accredited college or university, 
agents' association, insurance trade association or 
independent program of instruction that presents the 
criteria and the number of hours that the board and 
commissioner determine appropriate for the purpose of 
this section.

(d) Persons licensed to sell insurance and who are not 
otherwise exempt shall satisfactorily complete the 
courses or programs of instructions the commissioner 
may prescribe.

(e) Every person, subject to the continuing education 
requirements, shall furnish, at intervals and on forms 
as may be prescribed by the commissioner, written 
certification listing the courses, programs or seminars 
of instruction successfully completed by the person. The 
certification shall be executed by, or on behalf of, the 
organization sponsoring the courses, programs or 
seminars of instruction.

(f) Any person, failing to meet the requirements 
mandated in this section, and who has not been granted 
an extension of time, with respect to such requirements, 
or who has submitted to the commissioner a false or
fraudulent certificate of compliance shall, after a
hearing thereon, which hearing may be waived by the
person, be subjected to suspension of all licenses issued
for any kind or kinds of insurance. No further license
may be issued to the person for any kind or kinds of
insurance until he or she has demonstrated to the
satisfaction of the commissioner that he or she has
complied with all of the requirements mandated by this
section and all other applicable laws or rules.

(g) Hearings for the violation of any provision of this
section, and the administrative procedure prior to,
during and following these hearings, shall be conducted
in accordance with the provisions of article two of this
chapter.

(h) The commissioner is authorized to hire personnel
and make reasonable expenditures as deemed necessary
for purposes of establishing and maintaining a system
of continuing education for insurers.

CHAPTER 77
(Com. Sub. for H. B. 4384—By Delegates S. Williams,
Staton, Beane, Farris and Flanigan)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty-three of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section thirty-two, relating to requiring
insurance companies withdrawing from writing private
passenger automobile insurance within the state to
continue to appoint and pay agents who service surviv­
ing policies for a period of two years from the date of
termination of the contractual relationship for those
renewal policies which the agent continues to service;
and limitations.

Be it enacted by the Legislature of West Virginia:
That article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-two, to read as follows:

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-32. Termination of contractual relationship; continuation of certain commissions; exceptions.

1 (a) In the event of a termination of a contractual relationship between a duly licensed insurance agent and an automobile insurer of private passenger automobiles who is withdrawing from writing private passenger automobile insurance within the state, the insurer shall pay the agent a commission, equal to the commission the agent would have otherwise been entitled to under his or her contract with the insurer, for a period of two years from the date of termination of the contractual relationship for those renewal policies that cannot otherwise be canceled or nonrenewed pursuant to law, which policies the agent continues to service. The insurer must continue the appointment of the agent for the duration of time the agent continues to service the business: Provided, That this requirement shall not obligate the withdrawing insurer to accept any new private passenger automobile insurance within the state.

19 (b) Subsection (a) of this section does not apply to an agent who is an employee of the insurer, or an agent as defined by article twelve-a of this chapter, or an agent, who by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.
AN ACT to amend and reenact section sixteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eighteen and nineteen; to amend and reenact section eleven, article sixteen of said chapter; to further amend said article by adding two new sections, designated sections thirteen and fourteen; to amend and reenact section two, article sixteen-c of said chapter; to further amend said article by adding a new section, designated section five-a; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend and reenact section fifteen-a, article two, chapter forty-eight of said code, all relating to health coverage; coverage of children; coverage for adopted children and children of divorced parents; prohibiting denial of insurance coverage under certain conditions; insurer's obligations to children, parents, providers and state agencies; employer's obligations; equal treatment of state agency; coordination of benefits with medicaid; medical support enforcement; applying provisions to certain policies and insurers; modifying domestic relations sections regarding insurance for children of divorced parents; providing remedies for noncompliance with court orders requiring health care coverage; providing for wage attachment by state agencies; and making related technical changes.

Be it enacted by the Legislature of West Virginia:

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

Chapter
33. Insurance.
48. Domestic Relations.

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
16C. Employer Group Accident and Sickness Insurance Policies.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-16. Policies not to exclude insured's children from coverage; required services; coordination with other insurance.


§33-15-16. Policies not to exclude insured's children from coverage; required services; coordination with other insurance.

1 (a) An insurer issuing accident and sickness policies in this state shall provide coverage for the child or children of the insured without regard to the amount of child support ordered to be paid or actually paid by the insured, if any, and without regard to the fact that the insured may not have legal custody of the child or children or that the child or children may not be
(b) An insurer issuing accident and sickness policies in this state shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply to natural, dependent children of participants and beneficiaries, irrespective of whether the adoption has become final.

(c) An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the parent's federal tax return; or

(3) The child does not reside with the parent or in the insurer's service area.

(d) Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) Permit the custodial parent, or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with subdivision (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency: Provided, That upon payment to the custodial parent, the provider or the state medicaid agency, the insurer's obligation to the noncustodial parent under the policy with respect to the covered child's claims shall be fully satisfied.

(e) Where a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:
(1) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child’s other parent, the state agency administering the medicaid program or the state agency administering 42 U.S.C. §651 through §669, the child support enforcement program; and

(3) Not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

   (A) The court or administrative order is no longer in effect; or

   (B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.


An insurer may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.


Any health insurer, health maintenance organization as defined in article twenty-five-a of this chapter or hospital and medical service corporations as defined in article twenty-four of this chapter is prohibited from considering the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. §1396a, Section 1902 of the Social Security Act, herein referred to as medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders or certificate-holders.
ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-11. Group policies not to exclude insured's children from coverage; required services; coordination with other insurance.
§33-16-14. Coordination of benefits with medicaid.

§33-16-11. Group policies not to exclude insured's children from coverage; required services; coordination with other insurance.

(a) An insurer issuing group accident and sickness policies in this state shall provide coverage for the child or children of each employee or member of the insured group without regard to the amount of child support ordered to be paid or actually paid by such employee or member, if any, and without regard to the fact that the employee or member may not have legal custody of the child or children or that the child or children may not be residing in the home of the employee or member.

(b) An insurer issuing group accident and sickness policies in this state shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply to natural, dependent children of participants and beneficiaries, irrespective of whether the adoption has become final.

(c) An insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the parent's federal tax return; or

(3) The child does not reside with the parent or in the insurer's service area.

(d) Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;
(2) Permit the custodial parent, or the provider, with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with subdivision (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency: Provided, That upon payment to the custodial parent, the provider or the state medicaid agency, the insurer's obligation to the noncustodial parent under the policy with respect to the covered child's claims shall be fully satisfied.

(e) Where a parent is required by court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(1) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application of the child's other parent, the state agency administering the medicaid program or the state agency administering U.S.C. §651 through §669, the child support enforcement program; and

(3) Not disenroll or eliminate coverage of the child unless the insurer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment.


An insurer may not impose requirements on a state agency, which has been assigned the rights of an
individual eligible for medical assistance under medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

§33-16-14. Coordination of benefits with medicaid.

Any health insurer, including a group health plan, as defined in 29 U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974, health maintenance organization as defined in article twenty-five-a of this chapter or hospital and medical service corporations as defined in article twenty-four of this chapter is prohibited from considering the availability or eligibility for medical assistance in this or any other state under 42 U.S.C. §1396a, Section 1902 of the Social Security Act, herein referred to as medicaid, when considering eligibility for coverage or making payments under its plan for eligible enrollees, subscribers, policyholders or certificateholders.

ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16C-2. Definitions.

§33-16C-5a. Policies not to exclude insured's children from coverage; required services.

§33-16C-2. Definitions.

As used in this article:

(a) "Basic policy" means a group accident and sickness insurance contract for medical, surgical or hospital care that is required to contain only those minimum benefits and coverages mandated by this article, but which may contain other benefits and coverages which have been approved by the insurance commissioner.

(b) "Commissioner" means the insurance commissioner of West Virginia.

(c) "Department" means the department of insurance.

(d) "Eligible employee" means an employee who is employed by the employer for an average of at least twenty hours per week; includes individuals who are sole proprietors, general partners and limited partners;
and includes individuals who either work or reside in this state.

(e) "Eligible employer" means a corporation, partnership or proprietorship which has done business in this state for at least one year and has not offered health insurance to all of its employees within the twelve months preceding its application for a basic policy as defined by this section.

(f) "Family member" means an eligible employee's spouse and any dependent child or stepchild under the age of eighteen or under age twenty-three if a full-time student at an accredited school: Provided, That the spouse, child or stepchild is not eligible for Medicare.

(g) "Insurer" means any of the following entities that holds a valid certificate of authority from the commissioner: An insurance company authorized to transact accident and sickness insurance; a hospital service corporation, medical service corporation or health service corporation organized pursuant to article twenty-four of this chapter; a health care corporation organized pursuant to article twenty-five of this chapter; or a health maintenance organization organized pursuant to article twenty-five-a of this chapter.

(h) "Premium" means the consideration for insurance, by whatever name called.

§33-16C-5a. Policies not to exclude insured's children from coverage; required services.

(a) Each basic policy issued pursuant to this article shall provide coverage for the child or children of each employee or member of the insured group without regard to the amount of child support ordered to be paid or actually paid by such employee or member, if any, and without regard to the fact that the employee or member may not have legal custody of the child or children or that the child or children may not be residing in the home of the employee or member.

(b) Each basic policy issued pursuant to this article shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the
same terms and conditions as apply to natural, dependent children of participants and beneficiaries, irrespective of whether the adoption has become final.

(c) An insurer shall not deny enrollment of a child under the health plan of the child’s parent on the grounds that:

(1) The child was born out of wedlock;

(2) The child is not claimed as a dependent on the parent’s federal tax return; or

(3) The child does not reside with the parent or in the insurer’s service area.

(d) Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

(1) Provide such information to the custodial parent as may be necessary for the child to obtain benefits through that coverage;

(2) Permit the custodial parent, or the provider, with the custodial parent’s approval, to submit claims for covered services without the approval of the noncustodial parent; and

(3) Make payments on claims submitted in accordance with subdivision (2) of this subsection directly to the custodial parent, the provider or the state medicaid agency: Provided, That upon payment to the custodial parent, the provider or the state medicaid agency, the insurer’s obligation to the noncustodial parent under the policy with respect to the covered child’s claims shall be fully satisfied.

(e) Where a parent is required by court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

(1) Permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make
application to obtain coverage for the child, enroll the
child under family coverage upon application of the
child's other parent, the state agency administering the
medicaid program or the state agency administering 42
U.S.C §651 through §669, the child support enforcement
program; and

(3) Not disenroll or eliminate coverage of the child
unless the insurer is provided satisfactory written
evidence that:

(A) The court or administrative order is no longer in
effect; or

(B) The child is or will be enrolled in comparable
health coverage through another insurer which will take
effect not later than the effective date of disenrollment.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE
CORPORATIONS AND HEALTH SERVICE
CORPORATIONS.

*§33-24-4. Exemptions; applicability of insurance laws.

Every corporation defined in section two of this
article is hereby declared to be a scientific, nonprofit
institution and exempt from the payment of all property
and other taxes. Every corporation, to the same extent
the provisions are applicable to insurers transacting
similar kinds of insurance and not inconsistent with the
provisions of this article, shall be governed by and be
subject to the provisions as hereinbelow indicated, of the
following articles of this chapter: Article two (insurance
commissioner), except that, under section nine of said
article, examinations shall be conducted at least once
every four years; article four (general provisions), except
that section sixteen of said article shall not be applicable
thereto; section thirty-four, article six (fee for form and
rate filing); article six-c (guaranteed loss ratio); article
seven (assets and liabilities); article eleven (unfair trade
practices); article twelve (agents, brokers and solicitors),
except that the agent's license fee shall be five dollars;
section fourteen, article fifteen (individual accident and

* Clerk's Note: This section was also amended by S. B. 434 (Chapter 75),
which passed prior to this act.
sickness insurance); section sixteen, article fifteen
(coverage of children); section eighteen, article fifteen
(equal treatment of state agency); section nineteen,
article fifteen (coordination of benefits with medicaid);
article fifteen-a (long-term care insurance); section
three, article sixteen (required policy provisions); section
three-a, article sixteen (mental illness); section three-c,
article sixteen (group accident and sickness insurance);
section three-d, article sixteen (medicare supplement
insurance); section three-f, article sixteen (treatment of
temporomandibular joint disorder and craniomandibu-
lar disorder); section eleven, article sixteen (coverage of
children); section thirteen, article sixteen (equal treat-
ment of state agency); section fourteen, article sixteen
(coordination of benefits with medicaid); article sixteen-
a (group health insurance conversion); article sixteen-c
(small employer group policies); article sixteen-d
(marketing and rate practices for small employers);
article twenty-six-a (West Virginia life and health
insurance guaranty association act), after the first day
of October, one thousand nine hundred ninety-one;
article twenty-seven (insurance holding company sys-
tems); article twenty-eight (individual accident and
sickness insurance minimum standards); article thirty-
three (annual audited financial report); article thirty-
four (administrative supervision); article thirty-four-a
(standards and commissioner's authority for companies
deemed to be in hazardous financial condition); article
thirty-five (criminal sanctions for failure to report
impairment); and article thirty-seven (managing
general agents); and no other provision of this chapter
may apply to these corporations unless specifically made
applicable by the provisions of this article. If, however,
the corporation is converted into a corporation organized
for a pecuniary profit or if it transacts business without
having obtained a license as required by section five of
this article, it shall thereupon forfeit its right to these
exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.
*§33-25-6. Supervision and regulation by insurance commissioner; exemption from insurance laws.

Corporations organized under this article are subject to supervision and regulation of the insurance commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated of the following articles of this chapter: Article four (general provisions), except that section sixteen of said article shall not be applicable thereto; article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article ten (rehabilitation and liquidation); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); section three, article sixteen (required policy provisions); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-six-a (West Virginia life and health insurance guaranty association act); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article thirty-seven (managing general agents); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the

*Clerk's Note: This section was also amended by S. B. 434 (Chapter 75), which passed prior to this act.*
provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Except as otherwise provided in this article, provisions of the insurance laws and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this article. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article.

(b) Factly accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained herein shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any health maintenance organization authorized under this article shall not be deemed to be practicing medicine and shall be exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of section fifteen, article four (general provisions); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight

*Clerk's Note: This section was also amended by S. B. 434 (Chapter 75), which passed prior to this act.
(investments); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular disorder and cranio-mandibular disorder); section eleven, article sixteen (coverage of children); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with medicaid); article sixteen-a (group health insurance conversion); article sixteen-c (small employer group policies); article sixteen-d (marketing and rate practices for small employers); article twenty-seven (insurance holding company systems); article thirty-four-a (standards and commissioner's authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); and article thirty-seven (managing general agents) shall be applicable to any health maintenance organization granted a certificate of authority under this article.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

(a) For the purposes of this section:

(1) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of child or children for whom child support is ordered.

(2) "Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay
for insurance coverage and medical care, or some
portion thereof, for his or her child.

(3) "Insurance coverage" means coverage for medical,
dental, including orthodontic, optical, psychological,
psychiatric or other health care service.

(4) "Child" means a child to whom a duty of child
support is owed.

(5) "Medical care" means medical, dental, optical,
psychological, psychiatric or other health care service
for children in need of child support.

(6) "Insurer" means any company, health maintenance
organization, self-funded group, multiple employer
welfare arrangement, hospital or medical services
corporation, trust, group health plan, as defined in 29
U.S.C. §1167, Section 607(1) of the Employee Retire-
ment Income Security Act of 1974 or other entity which
provides insurance coverage or offers a service benefit
plan.

(b) In every action to establish or modify an order
which requires the payment of child support, the court
shall ascertain the ability of each parent to provide
medical care for the children of the parties. In any
temporary or final order establishing an award of child
support or any temporary or final order modifying a
prior order establishing an award of child support, the
court shall order one or more of the following:

(1) The court shall order either parent or both parents
to provide insurance coverage for a child, if such
insurance coverage is available to that parent on a group
basis through an employer or through an employee’s
union. If similar insurance coverage is available to both
parents, the court shall order the child to be insured
under the insurance coverage which provides more
comprehensive benefits. If such insurance coverage is
not available at the time of the entry of the order, the
order shall require that if such coverage thereafter
becomes available to either party, that party shall
promptly notify the other party of the availability of
insurance coverage for the child.
(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multi-employer trust or employees' union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to be liable for reasonable and necessary medical care for a child. The court shall specify the proportion of the medical care for which each party shall be responsible.

(4) If insurance coverage is available, the court shall also determine the amount of the annual deductible on insurance coverage which is attributable to the children and designate the proportion of the deductible which each party shall pay.

(5) The order shall require the obligor to continue to provide the child advocate office with information as to his or her employer's name and address and information as to the availability of employer-related insurance programs providing medical care coverage so long as the child continues to be eligible to receive support.

(c) The cost of insurance coverage shall be considered by the court in applying the child support guidelines provided for in section eight, article two, chapter forty-eight-a of this code.

(d) Within thirty days after the entry of an order requiring the obligated parent to provide insurance coverage for the children, that parent shall submit to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made. Such proof of insurance coverage shall consist of, at a minimum:

(1) The name of the insurer;
(2) The policy number;
(3) An insurance card;
(4) The address to which all claims should be mailed;
(5) A description of any restrictions on usage, such as prior approval for hospital admission, and the manner in which to obtain such approval;

(6) A description of all deductibles; and

(7) Five copies of claim forms.

(e) The custodian for the child shall send the insurer or the obligated parent's employer the children's address and notice that the custodian will be submitting claims on behalf of the children. Upon receipt of such notice, or an order for insurance coverage under this section, the obligated parent's employer, multi-employer trust or union shall, upon the request of the custodian for the child, release information on the coverage for the children, including the name of the insurer.

(f) A copy of the court order for insurance coverage shall not be provided to the obligated parent's employer or union or the insurer unless ordered by the court, or unless:

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;

(2) The custodian for the child serves written notice by mail at the obligated parent's last known address of intention to enforce the order requiring insurance coverage for the child; and

(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.

(g) (1) Upon service of the order requiring insurance coverage for the children, the employer, multi-employer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages.

(2) If more than one plan is offered by the employer, multi-employer trust or union, the child shall be
enrolled in the same plan as the obligated parent at a reasonable cost.

(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in subsection (j) of this section.

(h) Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer is required:

(1) To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child's other parent, by the state agency administering the medicaid program or by the child advocate office;

(3) Not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect;

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or

(C) The employer has eliminated family health coverage for all of its employees;

(4) To withhold from the employee's compensation the employee's share, if any, of premiums for health coverage and to pay this amount to the insurer: Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. §1673, Section 303(b) of the Consumer Credit Protection Act.
(i) (1) The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

(2) No insurer, employer or multi-employer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

(3) The insurer shall reimburse the custodian for the child or the obligated parent who submits copies of medical bills for the child with proof of payment.

(4) All insurers in this state shall comply with the provisions of section sixteen, article fifteen, chapter thirty-three of this code and section eleven, article sixteen of said chapter and shall provide insurance coverage for the child of a covered employee notwithstanding the amount of support otherwise ordered by the court and regardless of the fact that the child may not be living in the home of the covered employee.

(j) When an order for insurance coverage for a child pursuant to this section is in effect and the obligated parent’s employment is terminated, or the insurance coverage for the child is denied, modified or terminated, the insurer shall in addition to complying with the requirements of article sixteen-a, chapter thirty-three of this code, within ten days after the notice of change in coverage is sent to the covered employee, notify the custodian for the child and provide an explanation of any conversion privileges available from the insurer.

(k) A child of an obligated parent shall remain eligible for insurance coverage until the child is emancipated or until the insurer under the terms of the applicable insurance policy terminates said child from coverage, whichever is later in time, or until further order of the court.

(l) If the obligated parent fails to comply with the order to provide insurance coverage for the child, the
court shall:

(1) Hold the obligated parent in contempt for failing or refusing to provide the insurance coverage, or for failing or refusing to provide the information required in subsection (d) of this section;

(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child, and any insurance premiums paid or provided for the child during any period in which the obligated parent failed to provide the required coverage; and

(3) In the alternative, other enforcement remedies available under sections two and three, article five, chapter forty-eight-a of this code, or otherwise available under law, may be used to recover from the obligated parent the cost of medical care or insurance coverage for the child.

(4) In addition to other remedies available under law, the child advocate office may garnish the wages, salary or other employment income of, and withhold amounts from state tax refunds to any person who:

(A) Is required by court or administrative order to provide coverage of the cost of health services to a child eligible for medical assistance under medicaid; and

(B) Has received payment from a third party for the costs of such services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services, to the extent necessary to reimburse the state medicaid agency for its costs: Provided, That claims for current and past due child support shall take priority over these claims.

(m) Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need pursuant to section fifteen of this article, and provides a basis for modification of the child support order.
AN ACT to amend and reenact section six, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance rating organizations; requiring certain applications and filings; establishing fees; required notices; rules of the insurance commissioner; subscribers to the rating organization service; prohibited acts; cooperation among rating organizations and insurers; review and examinations; permitting subscription to actuarial, technical or other services; establishing time frames for commencement and completion of classification inspections; requiring notification of adjustments, written evaluations and publications of classifications; and requiring classification lists, changes in established classifications and guidelines to be submitted to the insurance commissioner within a certain time period.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-6. Rating organizations.

1 (a) A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the commissioner for license as a rating organization for such kinds of casualty insurance or subdivisions thereof, or for such kinds of fire and marine insurance or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file therewith (1) a copy of its constitution, its articles of agreement or association or its certificates of incorporation, and of its bylaws, rules governing the conduct of its business, (2)
a list of its members and subscribers, (3) the name and address of a resident of this state as attorney-in-fact upon whom notices or orders of the commissioner or process affecting such rating organization may be served and (4) a statement of its qualifications as a rating organization. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance or subdivisions thereof for which the applicant is authorized to act as a rating organization. Every application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for the license shall be one hundred dollars, and the fee shall be in lieu of all other fees, licenses or taxes to which a rating organization might otherwise be subject, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after notice and hearing, in the event the rating organization ceases to meet the requirements of this article. Every rating organization shall notify the commissioner promptly of every change in (1) its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules governing the conduct of its business, (2) its list of members and subscribers and (3) the name and address of the resident of this state designated as attorney-in-fact by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(b) Subject to rules which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of casualty
insurance or subdivision thereof, or for any kind of fire
and marine insurance or subdivision or class of risk or
a part or combination thereof, or any kind of surety
insurance or subdivision thereof, for which it is
authorized to act as a rating organization. Notice of
proposed changes in such rules shall be given to
subscribers. Each rating organization shall furnish its
ingrating services without discrimination to its members
and subscribers. The reasonableness of any rule or
regulation in its application to subscribers, or the
refusal of any rating organization to admit an insurer
as a subscriber, shall, at the request of any subscriber
or any such insurer, be reviewed by the commissioner.
If, after notice and hearing, the commissioner finds that
the rule or regulation is unreasonable in its application
to subscribers, he shall order that such rule or regula-
tion shall not be applicable to subscribers. If the rating
organization fails to grant or reject an insurer's
application for subscribership within thirty days after
it was made, the insurer may request a review by the
commissioner as if the application had been rejected. If,
after notice and hearing, the commissioner finds that
the insurer has been refused admittance to the rating
organization as a subscriber without justification, he
shall order the rating organization to admit the insurer
as a subscriber. If he finds that the action of the rating
organization was justified, he shall make an order
affirming its action.

(c) No rating organization shall adopt any rule the
effect of which would be to prohibit or regulate the
payment of dividends, savings or unabsorbed premium
deposits allowed or returned by insurers to their
policyholders, members or subscribers.

(d) Cooperation among rating organizations or among
rating organizations and insurers in rate making or in
other matters within the scope of this article is hereby
authorized, provided the filings resulting from such
cooperation are subject to all the provisions of this
article which are applicable to filings generally. The
commissioner may review such cooperative activities
and practices, and if after a hearing he finds that any
such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this article, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this article, and requiring the discontinuance of such activity or practice.

(e) Any rating organization for casualty, marine or surety insurance may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. The rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

(f) Any rating organization may subscribe for or purchase actuarial, technical or other services, and these services shall be available to all members and subscribers without discrimination.

(g) Any rating organization responsible for establishing fire rate classifications for West Virginia cities, towns, and fire districts shall:

(1) Review a request for classification revision within ninety days after receiving said request in writing from an entity for which the rating organization provides a public fire protection classification. Such written requests for classification revision must be made by the chief official of the city, town or fire district and must outline the specific changes in conditions in the entity that would warrant a classification revision.

(A) If the changed conditions in the entity do not warrant a revision to the applicable classification, the rating organization must provide the entity with a written response outlining the reasons why such changes in condition will not impact the classification.
(B) If the changed conditions in the entity indicate a potential revision to the applicable classification, the rating organization may request reasonable additional information from the entity. Upon receipt of such information, and upon determination that a classification revision may be indicated, the rating organization must schedule a survey of the entity.

(2) Complete any required survey, analysis, and written evaluation of the entity and develop any applicable classification revision within sixty days after all necessary information about changed conditions has been received in writing by the rating organization from the entity.

(3) Advise its participating insurers within sixty days after the revised public fire protection classification has been developed reflecting the changed conditions in the entity.

(4) Have the option to request a reasonable extension of the above described time frames from the insurance commissioner if unusual conditions exist, including, but not limited to, unusual weather conditions or difficulty in scheduling a mutually convenient survey time.

(5) File the following with the insurance commissioner:

(A) Within thirty days of its publication:

(i) A copy of a current list of all classifications established in West Virginia. Such list shall be published on at least a quarterly basis and;

(ii) All changes in established classifications during the previous month. Such list shall be published on a monthly basis.

(B) Within thirty days after being requested by the insurance commissioner pursuant to this paragraph, a copy of guidelines used to establish classifications, stating the minimum qualifications, standards and requirements for each classification (classes one through ten).
AN ACT to amend and reenact section twenty-two-a, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-two-c; to amend and reenact section eleven, article twenty-two of said chapter; and to further amend said article by adding thereto a new section, designated section eleven-a, all relating to the approved means of investing municipal funds; permitting investments in federally-issued, backed or guaranteed instruments, including mortgages on real property situate in the state or in highly rated pooled trusts; opening investment options in certain mutual funds and in the securities and commercial paper of private organizations, banks, trusts and savings organizations; imposing portfolio limitations on specified investments; establishing approved investment instruments for the retirement system assets of Class I, II and III municipalities; permitting investments in federally guaranteed, backed or issued instruments, including mortgages on real property situate in the state or in highly rated pooled trusts; opening investment options in certain mutual funds and in the securities and commercial paper of private corporations, banks, trusts and savings organizations; and imposing portfolio limitations on specified investments.

Be it enacted by the Legislature of West Virginia:

That section twenty-two-a, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-two-c; that section eleven, article twenty-two of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-a, all to read as follows:
ARTICLE 13. TAXATION AND FINANCE.

PART VI. ACCOUNTING PRINCIPLES; FUNDS; DISBURSEMENTS.

§8-13-22a. Investment of municipal funds.

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government national mortgage association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee valley authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(3) Any evidence of indebtedness issued by the federal national mortgage association to the extent such indebtedness is guaranteed by the government national mortgage association;

(4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;
(5) Direct and general obligations of this state;

(6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over three hundred million dollars in other funds under its management;

(8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in less than one year and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code; and

(10) Mutual funds registered with the securities and exchange commission which have assets in excess of three hundred million dollars.


Moneys invested as permitted by section eleven of this article are subject to the restrictions and conditions
§8-22-11. **Investment of funds.**

The board shall keep as an available sum for the purpose of making retirement, disability and death payments and administration expense an amount estimated to meet such payments for a period not to exceed ninety days. The board in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the fund shall exercise judgment and care which persons of experience, prudence, discretion and intelligence exercise in the management of financial affairs, considering the probable income as well as the probable security of the investment and with regard to the permanent disposition of the fund. Within the limitations of the foregoing

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE­MEN’S PENSION AND RELIEF FUND; FIRE­MEN’S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART II. GENERAL RETIREMENT SYSTEMS FOR CLASS I, II AND III CITIES.

standard, the board is authorized in its sole discretion
to invest and reinvest any funds received by it in the
following:

(1) Any direct obligation of, or obligation guaranteed
as to the payment of both principal and interest by, the
United States of America;

(2) Any evidence of indebtedness issued by any United
States government agency guaranteed as to the payment
of both principal and interest, directly or indirectly, by
the United States of America including, but not limited
to, the following: Government national mortgage
association, federal land banks, federal home loan
banks, federal intermediate credit banks, banks for
cooperatives, Tennessee valley authority, United States
postal service, farmers home administration, export-
import bank, federal financing bank, federal home loan
mortgage corporation, student loan marketing associa-
tion and federal farm credit banks;

(3) Any evidence of indebtedness issued by the federal
national mortgage association to the extent such
indebtedness is guaranteed by the government national
mortgage association;

(4) Any evidence of indebtedness that is secured by
a first lien deed of trust or mortgage upon real property
situate within this state, if the payment thereof is
substantially insured or guaranteed by the United
States of America or any agency thereof;

(5) Direct and general obligations of this state;

(6) Any undivided interest in a trust, the corpus of
which is restricted to mortgages on real property and,
unless all of such property is situate within the state and
insured, such trust at the time of the acquisition of such
undivided interest, is rated in one of the three highest
rating grades by an agency which is nationally known
in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or
other evidence of indebtedness of any private corpora-
tion or association: Provided, That any such security is,
at the time of its acquisition, rated in one of the three
highest rating grades by an agency which is nationally
known in the field of rating corporate securities:

Provided, however, That if any commercial paper or any
such security will mature within one year from the date
of its issuance, it shall, at the time of its acquisition, be
rated in one of the two highest rating grades by any
such nationally known agency and commercial paper or
other evidence of indebtedness of any private corpora-
tion or association shall be purchased only upon the
written recommendation from an investment advisor
that has over three hundred million dollars in other
funds under its management;

(8) Negotiable certificates of deposit issued by any
bank, trust company, national banking association or
savings institution which mature in less than one year
and are fully collateralized;

(9) Interest earning deposits including certificates of
deposit, with any duly designated state depository,
which deposits are fully secured by a collaterally
secured bond as provided in section four, article one,
chapter twelve of this code; and

(10) Mutual funds registered with the securities and
exchange commission which have assets in excess of
three hundred million dollars.


Moneys invested as permitted by section eleven of this
article are subject to the restrictions and conditions
contained in this section:

(1) At no time may more than seventy-five percent of
the portfolio of either fund be invested in securities
described in subdivision (7), section eleven of this article;

(2) At no time may more than twenty percent of the
portfolio of either fund be invested in securities
described in subdivision (7), section eleven of this article
which mature within one year from the date of issuance
thereof;

(3) At no time may more than nine percent of the
portfolio be invested in securities issued by a single
14 private corporation or association;
15 (4) At no time may more than sixty percent of the
16 portfolio be invested in equity mutual funds under
17 subdivision (10), section eleven of this article;
18 (5) Notwithstanding any other provision of this article,
19 any investments in equity mutual funds under subdivi-
20 sion (10), section eleven of this article by a policemen’s
21 pension and relief fund or a firemen’s pension and relief
22 fund shall be in a securities and exchange commission
23 registered no sales-load equity mutual funds whose
24 stated investment policy requires investment in a
25 portfolio of securities which are at least eighty-five
26 percent in New York Stock Exchange instruments and
27 requires multi-industry diversification: Provided, That
28 the value of such investments shall not exceed the lesser
29 of: (a) One percent times completed months since
30 enactment of this section; or (b) fifty percent of the total
31 assets of said pension and relief fund.

CHAPTER 81

(H. B. 4377—By Delegates Phillips, Rutledge and Burk)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-c, article six,
chapter twelve of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to investment of funds by the state board of investments,
administrators and political subdivisions of the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9c. Authorization of additional investments.

1 Notwithstanding the restrictions which may otherwise
2 be provided by law with respect to the investment of
funds, the state board of investments, all administrators, custodians or trustees of pension funds, each political subdivision of this state and each county board of education is authorized to invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited (i) to obligations issued by or guaranteed as to the payment of both principal and interest by the United States of America or its agencies or instrumentalities, and (ii) to repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian: Provided, however, That the investment company or investment trust is rated within one of the top two rating categories of any nationally recognized rating service such as Moody’s or Standard and Poor’s.

CHAPTER 82
(S. B. 527—Originating in the Committee on Finance)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to placing limitations on investments by the jobs investment trust board; providing for an additional short-term debt investment; providing for an extension of the twelve-month repayment term; specifying criteria for granting an extension; and requiring the board to report any extension to the governor and the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-7. Limitation on investments.

1 Subject to the provisions of section nine of this article, the board may invest in any eligible business: Provided, That at the time of the placement of the investment not more than twenty percent of the board’s total investment portfolio is invested in one eligible business within any two-year period: Provided, however, That the board may invest in an eligible business up to an additional twenty percent of the board’s total investment portfolio, or up to a total of two million dollars, whichever is less. The additional investment must be in the form of a short-term debt investment to be repaid within twelve months of the investment: Provided further, That the board may extend said twelve-month repayment term until the thirtieth day of September, one thousand nine hundred ninety-four, and upon terms consistent with the actions of other investors involved in similar investments with the eligible business if the eligible business demonstrates to the board: (i) That said business is progressing with a plan for capital formation and business development; and (ii) that said extension of the twelve-month period, and any other modification thereto, will not substantially prejudice the position of the board in relation to the other investors in, and creditors of, the eligible business. The board shall report any extension of any repayment term made prior to the thirty-first day of March, one thousand nine hundred ninety-four, and approved by the board pursuant to the provisions of this section, to the governor and to the Legislature’s joint committee on government and finance within twenty days of such approval: And provided further, That the board shall report to the governor and the joint committee on government and finance of its intention to extend any repayment term at least twenty days prior to the board approving any extension made on or after the first day of April, one thousand nine hundred ninety-four.
CHAPTER 83

(H. B. 4009—By Mr. Speaker, Mr. Chambers, and Delegates Martin, Evans and Nicol)

[Passed March 4, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-j, relating to the Jennings Randolph Lake Project Compact; authorizing the governor to execute a certain Jennings Randolph Lake Project Compact between the state of West Virginia and the state of Maryland with concurrence by the United States army corps of engineers; stating certain purposes and goals related to establishing the compact; establishing through the compact certain responsibilities of the state of West Virginia, the state of Maryland and the corps of engineers, respectively, with respect to the Jennings Randolph Lake Project; providing through the compact for certain coordination between the states and the corps of engineers in planning, operation and maintenance of the Jennings Randolph Lake Project so as to provide for public recreation and for protection and management of fish and wildlife resources; establishing through the compact that the states and the corps of engineers will have certain concurrent jurisdiction over the lands and waters of the Jennings Randolph Lake Project for enforcing certain natural resources and boating laws; establishing the effective date of the compact following certain other ratifications and approvals; providing certain procedures for amending the compact; providing for termination of the compact under certain circumstances; and generally relating to and authorizing the governor to execute the Jennings Randolph Lake Project Compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1J. JENNINGS RANDOLPH LAKE PROJECT COMPACT.

§29-1J-1. Jennings Randolph Lake Project Compact authorized.
§29-1J-2. Date on which article becomes effective.

§29-1J-1. Jennings Randolph Lake Project Compact authorized.

1. The governor is hereby authorized and directed to execute a compact on behalf of the state of West Virginia with the state of Maryland, with participation through concurrence by the United States army corps of engineers legally joining in the form substantially as follows:

JENNINGS RANDOLPH LAKE PROJECT COMPACT

PREAMBLE

WHEREAS, The signatory parties hereto desire to provide for joint natural resource management and enforcement of laws and regulations pertaining to natural resources and boating at the Jennings Randolph Lake Project lying in Garrett County, Maryland, and Mineral County, West Virginia, for which they have a joint responsibility; and they declare as follows:

a. The Congress, under Public Law 87-874, authorized the development of the Jennings Randolph Lake Project for the North Branch of the Potomac River substantially in accordance with House Document Number 469, 87th Congress, 2nd Session for flood control, water supply, water quality and recreation; and

b. Section 4 of the Flood Control Act of 1944 (CH 665, 58 STAT.534) provides that the chief of engineers, under the supervision of the secretary of war (now secretary of the army), is authorized to construct, maintain and operate public park and recreational facilities in reservoir areas under control of such secretary for the purpose of boating, swimming, bathing, fishing and
other recreational purposes, so long as the same is not inconsistent with the laws for the protection of fish and wildlife of the state(s) in which such area is situated; and

c. Pursuant to the authorities cited above, the U.S. army engineer district (Baltimore), hereinafter “District,” did construct and now maintains and operates the Jennings Randolph Lake Project; and

d. The National Environmental Policy Act of 1969 (P.L. 91-190) encourages productive and enjoyable harmony between man and his environment, promotes efforts which will stimulate the health and welfare of man, and encourages cooperation with state and local governments to achieve these ends; and

e. The Fish and Wildlife Coordination Act (16 U.S.C. 661-666C) provides for the consideration and coordination with other features of water-resource development programs through the effectual and harmonious planning, development, maintenance and coordination of wildlife conservation and rehabilitation; and

f. The District has fisheries and wildlife plans as part of the District’s project operational plan management; and

g. In the respective states, the Maryland department of natural resources (hereinafter referred to as Maryland DNR) and the West Virginia division of natural resources (hereinafter referred to as West Virginia DNR) are primarily responsible for providing a system of control, propagation, management, protection and regulation of natural resources and boating in Maryland and West Virginia and the enforcement of laws and regulations pertaining to those resources as provided in annotated code of Maryland natural resources article and West Virginia chapter 20, respectively, and the successors thereof; and

h. The District, the Maryland department of natural resources and the West Virginia division of natural resources are desirous of conserving, perpetuating and improving fish and wildlife resources and recreational benefits of the Jennings Randolph Lake Project; and
The District and the states of Maryland and West Virginia wish to implement the aforesaid acts and responsibilities through this compact and they each recognize that consistent enforcement of the natural resources and boating laws and regulations can best be achieved by entering this compact:

Now, therefore

The states of West Virginia and Maryland, with the concurrence of the United States department of the army, corps of engineers, hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, to the Jennings Randolph Lake Project Compact, which consists of this preamble and the articles that follow:

ARTICLE I. NAME, FINDINGS AND PURPOSE.

a. This compact shall be known and may be cited as the Jennings Randolph Lake Project Compact.

b. The legislative bodies of the respective signatory parties, with the concurrence of the U.S. army corps of engineers, hereby find and declare:

1. The water resources and project lands of the Jennings Randolph Lake Project are affected with local, state, regional and national interest, and the planning, conservation, utilization, protection and management of these resources, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties; and

2. The lands and waters of the Jennings Randolph Lake Project are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact that, notwithstanding any boundary between Maryland and West Virginia that preexisted the creation of Jennings Randolph Lake, the parties will have and exercise concurrent jurisdiction over any lands and waters of the Jennings Randolph Lake Project concerning natural resources and boating laws and regulations in the common interest of the people of the region.
ARTICLE II. DISTRICT RESPONSIBILITIES.

The District, within the Jennings Randolph Lake Project,

a. Acknowledges that the West Virginia division of natural resources and the Maryland department of natural resources have authorities and responsibilities in the establishment, administration and enforcement of the natural resources and boating laws and regulations applicable to this project: Provided, That the laws and regulations promulgated by the states support and implement, where applicable, the intent of the rules and regulations governing public use of water resources development projects administered by the chief of engineers in Title 36, Chapter III, Part 327, Code of Federal Regulations,

b. Agrees to practice those forms of resource management as determined jointly by the District, the West Virginia division of natural resources and the Maryland department of natural resources to be beneficial to natural resources and which will enhance public recreational opportunities compatible with other authorized purposes of the project,

c. Agrees to consult with the West Virginia division of natural resources and the Maryland department of natural resources prior to the issuance of any permits for activities or special events which would include, but not necessarily be limited to, fishing tournaments, training exercises, regattas, marine parades, placement of ski ramps, slalom water ski courses and the establishment of private markers or lighting. All such permits issued by the District will require the permittee to comply with all state laws and regulations,

d. Agrees to consult with the West Virginia division of natural resources and the Maryland department of natural resources regarding any recommendations for regulations affecting natural resources including, but not limited to, hunting, trapping, fishing or boating at the Jennings Randolph Lake Project which the District believes might be desirable for reasons of public safety, administration, or public use and enjoyment,
e. Agrees to consult with the West Virginia division of natural resources and the Maryland department of natural resources relative to the marking of the lake with buoys, aids to navigation, regulatory markers and establishing and posting of speed limits, no wake zones, restricted or other control areas and to provide, install and maintain such buoys, aids to navigation and regulatory markers as are necessary for the implementation of the District's operational management plan. All buoys, aids to navigation and regulatory markers to be used shall be marked in conformance with the uniform state waterway marking system,

f. Agrees to allow hunting, trapping, boating and fishing by the public in accordance with the laws and regulations relating to the Jennings Randolph Lake Project.

g. Agrees to provide, install and maintain public ramps, parking areas, courtesy docks, etc., as provided for by the approved Corps of Engineers master plan, and

h. Agrees to notify the West Virginia division of natural resources and the Maryland department of natural resources of each reservoir drawdown prior thereto excepting drawdown for the reestablishment of normal lake levels following flood control operations and drawdown resulting from routine water control management operations described in the reservoir regulation manual including releases requested by water supply owners and normal water quality releases. In case of emergency releases or emergency flow curtailments, telephone or oral notification will be provided. The District reserves the right, following issuance of the above notice, to make operational and other tests which may be necessary to ensure the safe and efficient operation of the dam, for inspection and maintenance purposes, and for the gathering of water quality data both within the impoundment and in the Potomac River downstream from the dam.

ARTICLE III. STATE RESPONSIBILITIES.

The state of West Virginia and the state of Maryland agree:
a. That each state will have and exercise concurrent jurisdiction with the District and the other state for the purpose of enforcing the civil and criminal laws of the respective states pertaining to natural resources and boating laws and regulations over any lands and waters of the Jennings Randolph Lake Project;

b. That existing natural resources and boating laws and regulations already in effect in each state shall remain in force on the Jennings Randolph Lake Project until either state amends, modifies or rescinds its laws and regulations;

c. That the agreement for fishing privileges dated the twenty-fourth day of June, one thousand nine hundred eighty-five, between the state of West Virginia and the state of Maryland, as amended, remains in full force and effect;

d. To enforce the natural resources and boating laws and regulations applicable to the Jennings Randolph Lake Project;

e. To supply to the District with the name, address and telephone number of the persons to be contacted when any drawdown except those resulting from normal regulation procedures occurs;

f. To inform the reservoir manager of all emergencies or unusual activities occurring on the Jennings Randolph Lake Project;

g. To provide training to District employees in order to familiarize them with natural resources and boating laws and regulations as they apply to the Jennings Randolph Lake Project; and

h. To recognize that the District and other federal agencies have the right and responsibility to enforce, within the boundaries of the Jennings Randolph Lake Project, all applicable federal laws, rules and regulations so as to provide the public with safe and healthful recreational opportunities and to provide protection to all federal property within the project.

ARTICLE IV. MUTUAL COOPERATION.
Pursuant to the aims and purposes of this compact, the state of West Virginia, the state of Maryland and the District mutually agree that representatives of their natural resource management and enforcement agencies will cooperate to further the purposes of this compact. This cooperation includes, but is not limited to, the following:

a. Meeting jointly at least once annually, and providing for other meetings as deemed necessary for discussion of matters relating to the management of natural resources and visitor use on lands and waters within the Jennings Randolph Lake Project;

b. Evaluating natural resources and boating, to develop natural resource and boating management plans and to initiate and carry out management programs;

c. Encouraging the dissemination of joint publications, press releases or other public information and the interchange between parties of all pertinent agency policies and objectives for the use and perpetuation of natural resources of Jennings Randolph Lake Project; and

d. Entering into working arrangements as occasion demands for the use of lands, waters, construction and use of buildings and other facilities at the project.

ARTICLE V. GENERAL PROVISIONS.

a. Each and every provision of this compact is subject to the laws of the states of West Virginia and Maryland and the laws of the United States, and the delegated authority in each instance.

b. The enforcement and applicability of natural resources and boating laws and regulations referenced in this compact shall be limited to the lands and waters of the Jennings Randolph Lake Project, including, but not limited to, the prevailing reciprocal fishing laws and regulations between the states of West Virginia and Maryland.

c. Nothing in this compact shall be construed as
obligating any party hereto to the expenditure of funds
or the future payment of money in excess of appropri-
ations authorized by law.

d. The provisions of this compact shall be severable,
and if any phrase, clause, sentence or provision of the
Jennings Randolph Lake Project Compact is declared to
be unconstitutional or inapplicable to any signatory
party or agency of any party, the constitutionality and
applicability of the compact shall not be otherwise
affected as to any other provision, party or agency. It
is the legislative intent that the provisions of this
compact be reasonably and liberally construed to
effectuate the stated purposes of the compact.

e. No member of or delegate to Congress, or signatory
shall be admitted to any share or part of this compact,
or to any benefit that may arise therefrom; but this
provision shall not be construed to extend to this
agreement if made with a corporation for its general
benefit.

f. When this compact has been ratified by the
Legislature of each respective state, when the governor
of West Virginia and the governor of Maryland have
executed this compact on behalf of their respective
states and have caused a verified copy thereof to be filed
with the secretary of state of each respective state, when
the Baltimore district engineer of the U.S. army corps
of engineers has executed its concurrence with this
compact, and when this compact has been consented to
by the Congress of the United States, then this compact
shall become operative and effective.

g. Either state may, by legislative act, after one year's
written notice to the other, withdraw from this compact,
the U.S. army corps of engineers may withdraw its
concurrence with this compact upon one year's written
notice from the Baltimore district engineer to the
governor of each state.

h. This compact may be amended from time to time.

Each proposed amendment shall be presented in
resolution form to the governor of each state and the
304 Baltimore district engineer of the U.S. army corps of
305 engineers. An amendment to this compact shall become
306 effective only after it has been ratified by the legisla-
307 tures of both signatory states and concurred in by the
308 U.S. army corps of engineers, Baltimore district.
309 Amendments shall become effective thirty days after the
310 date of the last concurrence or ratification.

§29-1J-2. Date on which article becomes effective.

1 This article shall take effect and become operative
2 and the compact be executed for and on behalf of this
3 state only from and after the approval, ratification, and
4 adoption, and entering into thereof by the state of
5 Maryland and with the concurrence of the United States
6 army corps of engineers, Baltimore, Maryland district.

CHAPTER 84
(Com. Sub. for H. B. 4129—By Delegates S. Williams, Phillips,
H. White, Rutledge and Harrison)

[Passed March 1, 1994; in effect ninety days from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts.
(a) If any deposit in any banking institution be made by any person describing him or herself in making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall be given in writing to the banking institution, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon, may be paid to the person for whom the deposit was thus stated to have been made.

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

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

(d) When any joint deposit account is opened on or after the first day of July, one thousand nine hundred ninety-four, the owners thereof shall be given written notice either on a signature card or in connection with the execution of a signature card, on a form to be approved by the banking commissioner, that the entire balance of any such account may be paid to a creditor or other claimant of any one of the joint tenants pursuant to legal process, including, but not limited to, garnishment, suggestion, or execution, regardless of the
receipt of any notice from any of the joint tenants. Such notice shall also advise the owners of a joint deposit account that the entire balance of any such account may be paid to any of the named joint tenants at any time; pledged as security to a banking institution by any of the named joint tenants; or otherwise encumbered at the request of any of the named joint tenants unless written notice is given to the banking institution, signed by any one of the joint tenants, not to permit such payment, pledge or encumbrance. The giving of the notice required by this section to any of the joint deposit account owners shall be deemed effective notice to all owners of the joint deposit account.

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

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

(g) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the approval of forms and procedures required by this section.
CHAPTER 85
(H. B. 4140—By Delegate S. Cook)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to safety and welfare of employees; and establishing a guaranteed meal break for all employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-10a. Meal breaks.

During the course of a workday of six or more hours, all employers shall make available for each of their employees, at least twenty minutes for meal breaks, at times reasonably designated by the employer. This provision shall be required in all situations where employees are not afforded necessary breaks and/or permitted to eat lunch while working.

CHAPTER 86
(H. B. 4133—By Delegates S. Williams, H. White, Phillips, Rutledge and Harrison)

[Passed March 10, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirteen and eighteen, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distress that may be levied on the goods of a lessee.
**Be it enacted by the Legislature of West Virginia:**

That sections thirteen and eighteen, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follow:

**ARTICLE 6. LANDLORD AND TENANT.**

§37-6-13. Property subject to distress.

§37-6-18. Removal of goods by third party having lien.

**§37-6-13. Property subject to distress.**

The distress may be levied on any goods of the lessee, or his assignee or undertenant, found on the premises, or which may have been removed therefrom not more than thirty days. If the goods of such lessee, assignee or undertenant, when carried on the premises, are subject to a lien which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon while they are upon the leased premises, they shall be liable to distress, but for not more than one year's rent, whether it shall have accrued before or after the creation of the lien: Provided, That if the goods are subject to a perfected purchase money security interest, as defined in section one hundred seven, article nine, chapter forty-six of this code, and that such purchase money security interest is in effect under the terms set forth in section four hundred three, article nine of chapter forty-six of this code, then the goods are liable to distress only to the extent of the unencumbered interest of the lessee, assignee or undertenant. No goods shall be liable to distress other than such as are declared to be so liable in this section.

**§37-6-18. Removal of goods by third party having lien.**

If, after the commencement of any tenancy, a lien be obtained or created by trust deed, mortgage, or otherwise, upon the interest or property in goods on premises leased or rented, of any person liable for the rent, the party having such lien may remove such goods from the premises on the following terms, and not otherwise, that is to say: On the terms of paying to the person entitled to the rent, so much as is in arrear, and securing to him...
so much as is to become due; what is so paid or secured
not being more altogether than a year’s rent in any case:
Provided, That if the party removing such goods has
perfected a purchase money security interest in the
goods, as defined in section one hundred seven, article
nine, chapter forty-six of this code and that such
purchase money security interest is in effect under the
terms set forth in section four hundred three, article
nine, chapter forty-six of this code, then the goods are
liable to distress only to the extent of the unencumbered
interest of the lessee, assignee or undertenant. If the
goods be taken under legal process, the officer executing
it shall, out of the proceeds of the goods, make such
payment of what is in arrear; and, as to what is to
become due, he shall sell a sufficient portion of the goods
on a credit till then, taking from the purchaser bond,
with good security, payable to the person so entitled, and
delivering such bond to him. If the goods be not taken
under legal process, such payment and security shall be
made and given before their removal. Neither this nor
any other section of this article shall affect any lien for
taxes or levies.

CHAPTER 87
(Com. Sub. for H. B. 4043—By Delegates Rowe, Reed, Huffman,
Manuel, Tribett and Faircloth)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections ten and thirteen,
article two, chapter eleven-a 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 to the disposition of
delinquent, nonentered, escheated and waste and
unappropriated lands.

Be it enacted by the Legislature of West Virginia:

That sections ten and thirteen, article two, chapter eleven-
a 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 2. Delinquency and Methods of Enforcing Payment.


4. Remedies Relating to Tax Sales.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.


1. In addition to the methods for the collection of taxes provided for in this article, tax liens on real estate may be sold for the taxes assessed thereon in the manner prescribed in article three of this chapter.


1. A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county commission at which they are to be presented for examination. At the same time a copy of each list shall be published as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Only the aggregate amount of the taxes owed by each person need be published. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of ten dollars shall be added to the taxes and interest already due on each item listed.

Any person whose taxes were delinquent on May first may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only three dollars if redemption is made before the list
is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-1. Declaration of legislative purpose and policy.
§11A-3-2. Second publication of list of delinquent real estate; notice.
§11A-3-3. Waiver of notice by person claiming lien.
§11A-3-4. Redemption after second publication and before sale.
§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.
§11A-3-6. Purchase by sheriff and clerk of county commission prohibited; co-owner free to purchase at tax sale.
§11A-3-7. Suspension from sale; amended delinquent lists; subsequent sale.
§11A-3-8. Certification of unsold property to the auditor.
§11A-3-9. Sheriff's list of sales, suspensions, redemptions and certifications; oath.
§11A-3-10. Sheriff to account for proceeds; disposition of surplus.
§11A-3-11. Return of list of sales, suspensions and redemptions.
§11A-3-12. Amendment of such list.
§11A-3-13. Publication by sheriff of sales list.
§11A-3-14. Purchase by individual at tax sale; certificate of sale.
§11A-3-16. Subsequent tax payments by purchaser.
§11A-3-17. Sale of subsequent tax liens.
§11A-3-18. Limitations on tax certificates.
§11A-3-19. What purchaser must do before he can secure deed.
§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

§11A-3-22. Service of notice.
§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

§11A-3-24. Notice of redemption to purchaser; moneys received by sheriff.
§11A-3-25. Distribution of surplus to purchaser.
§11A-3-26. Certificate of redemption issued by clerk; recordation; disposition of redemption money.

§11A-3-27. Deed to purchaser; record.
§11A-3-28. Compelling service of notice or execution of deed.
§11A-3-29. One deed for separate purchases.
§11A-3-30. Title acquired by individual purchaser; action to quiet title.
§11A-3-31. Effect of irregularity on title acquired by purchaser.
§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.
§11A-3-33. State commissioner of delinquent and nonentered lands.
§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.
§11A-3-35. Land record in auditor's office.
§11A-3-36. Operating fund for land department in auditor's office.
§11A-3-37. Disposition of nonentered lands.
§11A-3-38. Redemption of nonentered or certified lands.
§11A-3-40. Compulsory redemption at election of auditor.
§11A-3-41. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.
§11A-3-42. Lands subject to sale by deputy commissioner.
§11A-3-43. Officers to report lands subject to sale.
§11A-3-44. Auditor to certify list of lands to be sold; lands so certified are subject to sale.
§11A-3-45. Deputy commissioner to hold annual auction.
§11A-3-46. Publication of notice of auction.
§11A-3-47. Redemption prior to sale.
§11A-3-48. Unsold lands subject to sale without auction or additional advertising.
§11A-3-49. Purchase by owner or deputy commissioner or other officers prohibited; co-owner free to purchase at sale.
§11A-3-50. Receipt to purchaser for purchase price.
§11A-3-51. Deputy commissioner to report sales to auditor; auditor to approve sales.
§11A-3-52. What purchaser must do before he can secure a deed.
§11A-3-53. Refund to purchaser of payment made at deputy commissioner’s sale where property is subject of an erroneous assessment or is otherwise nonexistent.
§11A-3-54. Notice to redeem.
§11A-3-55. Service of notice.
§11A-3-56. Redemption from purchase; receipt; list of redemptions; certificate of redemption; lien; lien of person redeeming interest of another; record.
§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.
§11A-3-58. Distribution of surplus to purchaser.
§11A-3-59. Deed to purchaser; record.
§11A-3-60. Compelling service of notice or execution of deed.
§11A-3-61. One deed for separate purchases.
§11A-3-62. Title acquired by individual purchaser.
§11A-3-63. Effect of irregularity on title acquired by purchaser.
§11A-3-64. Sheriff to receive proceeds of deputy commissioners; sales and redemptions from the deputy commissioner; disposition.
§11A-3-65. Right of former owner to surplus proceeds.
§11A-3-67. Liability of officer failing to perform duty; penalty.
§11A-3-68. Disposition of lands heretofore purchased by or forfeited to state.

PART I

§11A-3-1. Declaration of legislative purpose and policy.

1 In view of the paramount necessity of providing regular tax income for the state, county and municipal governments, particularly for school purposes; and in view of the further fact that delinquent land not only constitutes a public liability, but also represents a
failure on the part of delinquent private owners to bear
a fair share of the costs of government; and in view of
the rights of owners of real property to adequate notice
and an opportunity for redemption before they are
divested of their interests in real property for failure to
pay taxes or have their property entered on the land-
books; and in view of the fact that the circuit court suits
heretofore provided prior to deputy commissioners' sales
are unnecessary and a burden on the judiciary of the
state; and in view of the necessity to continue the
mechanism for the disposition of escheated and waste
and unappropriated lands; now therefore, the Legislature declares that its purposes in the enactment of this
article are as follows: (1) To provide for the speedy and
expeditious enforcement of the tax claims of the state
and its subdivisions; (2) to provide for the transfer of
delinquent and nonentered lands to those more respon-
sible to, or better able to bear, the duties of citizenship
than were the former owners; (3) to secure adequate
notice to owners of delinquent and nonentered property
of the pending issuance of a tax deed; (4) to permit
deputy commissioners of delinquent and nonentered
lands to sell such lands without the necessity of
proceedings in the circuit courts; (5) to reduce the
expense and burden on the state and its subdivisions of
tax sales so that such sales may be conducted in an
efficient manner while respecting the due process rights
of owners of real property; and (6) to provide for the
disposition of escheated and waste and unappropriated
lands.

§11A-3-2. Second publication of list of delinquent real
estate; notice.

(a) On or before September tenth of each year, the
sheriff shall prepare a second list of delinquent lands,
which shall include all real estate in his county
remaining delinquent as of September first, together
with a notice of sale, in form or effect as follows:

Notice is hereby given that tax liens for the following
described tracts or lots of land or undivided interests
therein in the County of ______________ which are
delinquent for the nonpayment of taxes for the year (or
10 years) 19__, will be offered for sale by the undersigned
11 sheriff (or collector) at public auction at the front door
12 of the courthouse of the county, between the hours of ten
13 in the morning and four in the afternoon, on the ______
14 day of __________________, 19__
15
16 Tax liens on each unredeemed tract or lot, or each
17 unredeemed part thereof or undivided interest therein,
18 will be sold at public auction to the highest bidder for
19 cash in an amount which shall not be less than the taxes,
20 interest and charges which shall be due thereon to the
21 date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person</th>
<th>Quantity charged with taxes</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
</table>
22
23 Any of the aforesaid tracts or lots, or part thereof or
24 an undivided interest therein, may be redeemed by the
25 payment to the undersigned sheriff (or collector) before
26 sale, of the total amount of taxes, interest and charges
27 due thereon up to the date of redemption.

28 Given under my hand this __________________ day of
29 _________________, 19__
30
31
32
33 Sheriff (or collector).

34 The sheriff shall publish the list and notice prior to
35 the sale date fixed in the notice as a Class III-O legal
36 advertisement in compliance with the provisions of
37 article three, chapter fifty-nine of this code, and the
38 publication area for such publication shall be the county.

39 (b) In addition to such publication, no less than thirty
40 days prior to the sale the sheriff shall send a notice of
41 such delinquency and the date of sale by certified mail
42 (1) to the last known address of each person listed in the
43 landbooks whose taxes are delinquent, (2) to each person
44 having a lien on real property upon which the taxes are
45 due as disclosed by a statement filed with the sheriff
46 pursuant to the provisions of section three of this article,
47 (3) to each other person with an interest in the property
48 or with a fiduciary relationship to a person with an
interest in the property who has in writing delivered to
the sheriff on a form prescribed by the tax commis-
sioner a request for such notice of delinquency, and (4)
in the case of property which includes a mineral interest
but does not include an interest in the surface other than
an interest for the purpose of developing the minerals,
to each person who has in writing delivered to the
sheriff, on a form prescribed by the tax commissioner,
a request for such notice which identifies the person as
an owner of an interest in the surface of real property
that is included in the boundaries of such property:
Provided, That in a case where one owner owns more
than one parcel of real property upon which taxes are
delinquent, the sheriff may, at his option, mail separate
notices to the owner and each lienholder for each parcel,
or may prepare and mail to the owner and each
lienholder a single notice which pertains to all such
delinquent parcels. If he elects to mail only one notice,
that notice shall set forth a legally sufficient description
of all parcels of property on which taxes are delinquent.
In no event shall failure to receive the mailed notice by
the landowner or lienholder affect the validity of the
title of the property conveyed if it is conveyed pursuant
to sections twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing
the second delinquent list, a charge of ten dollars shall
be added to the taxes, interest and charges already due
on each item and all such charges shall be stated in the
list as a part of the total amount due.

(2) To cover the cost of preparing and mailing notice
to the landowner, lienholder or any other person entitled
thereo pursuant to this section, a charge of five dollars
per addressee shall be added to the taxes, interest and
charges already due on each item and all such charges
shall be stated in the list as a part of the total amount
due.

(d) Any person whose taxes were delinquent on
September first may have his name removed from the
delinquent list prior to the time the same is delivered
to the newspapers for publication by paying to the
sheriff the full amount of taxes and costs owed by such
person at the date of such redemption. In such case, the sheriff shall include but three dollars of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the general county fund.

§11A-3-3. Waiver of notice by person claiming lien.

(a) Any person claiming a lien against real property shall be deemed to have waived any right to notice provided by sections two, twenty-two and fifty-five of this article unless he shall have filed a statement declaring such interest with the sheriff. Such statement shall be filed upon creation of the lien and upon release of said lien and upon any change of the lienholder's postal address since the original filing of such statement.

Such statement shall be sufficient if it is filed at the time the document creating the lien is filed and when said lien is released on a form and in a manner to be prescribed from time to time by the tax commissioner, which form shall include the name of the person charged with taxes for the real property; the tax map and parcel number of the property; the assessor's account number of the property; a description of the interest claimed; and the address to which notice is to be sent. The statement may be amended at any time by the person claiming the lien, upon such amended form and in such manner as may be prescribed by the tax commissioner: Provided, That in counties with a population greater than two hundred thousand any person claiming liens against more than fifty parcels of real estate may file such statement electronically in a similar format as before described designed by the tax commissioner.

(b) At least once a year prior to July first, the sheriff shall publish a notice that any person claiming a lien against taxable real property must file the statement required by this section or such person will be deemed to have waived any right to notice provided by the preceding section. The notice shall be published as a
Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such land is located.

§11A-3-4. Redemption after second publication and before sale.

Any of the real estate included in the list published pursuant to the provisions of section two of this article may be redeemed at any time before sale as provided in section eighteen, article two of this chapter.

§11A-3-5. Sale by sheriff; immunity; penalty; mandamus.

(a) The tax lien on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein shall be sold by the sheriff at public auction to the highest bidder for cash, between the hours of ten in the morning and four in the afternoon on any business working day after the fourteenth day of October and before the twenty-third day of November: Provided, That no tax lien for such unredeemed tract or lot or undivided interest therein shall be sold upon any bid or for any sum less than the total amount of taxes, interest and charges then due: Provided, however, That at any such sale, the tax lien for each unredeemed tract or lot, or undivided interest therein, shall be offered for sale and sold for the entirety of such tract or lot or undivided interest therein as the same is described and constituted as a unit or entity in the list and notice prescribed in section two of this article. If the sale shall not be completed on the day designated in the notice for the holding of such sale, it shall be continued from day to day between the same hours until disposition shall have been made of all the land.

(b) Each sheriff is immune from liability if a loss or claim results from the sale of a tax lien conducted pursuant to the provisions of this article or from any subsequent conveyance of the property to which the lien attaches: Provided, That where a sheriff fails or refuses to sell said tax lien pursuant to the provisions of this article for reasons other than those provided by section seven of this article, the sheriff may be compelled by
mandamus to sell the same upon the petition of the auditor or any taxpayer of the county in a court of competent jurisdiction.

§11A-3-6. Purchase by sheriff and clerk of county commission prohibited; co-owner free to purchase at tax sale.

(a) No sheriff, clerk of the county commission or circuit court, assessor, nor deputy of any of them, shall directly or indirectly become the purchaser, or be interested in the purchase, of any tax lien on any real estate at the tax sale or receive any tax deed conveying such real estate. Any such officer so purchasing shall forfeit one thousand dollars for each offense. The sale of any tax lien on any real estate, or the conveyance of such real estate by tax deed, to one of the officers named in this section shall be voidable, at the instance of any person having the right to redeem, until such real estate reaches the hands of a bona fide purchaser.

(b) Any co-owner, except a coparcener, in the absence of satisfactory proof of a fiduciary relationship, shall be entitled to acquire by tax purchase for his own account the tax lien on the interest of any, or all, of his co-owners in any real estate, and to receive a tax deed conveying such interest without being required to hold such tax lien or interest or interests under any constructive trust. There shall be a prima facie presumption against the existence of any such constructive trust.

§11A-3-7. Suspension from sale; amended delinquent lists; subsequent sale.

(a) Whenever it shall appear to the sheriff that any real estate included in the list has been previously conveyed by deed and no tax thereon is currently delinquent, or that the tax lien thereon has been sold previously and not redeemed, or that the tax lien thereon ought not to be sold for the amount stated therein, he shall suspend the sale thereof and report his reasons therefor to the county commission and to the auditor. If the commission finds that the tax lien on the real estate ought not to be sold, it shall so order; but if the commission finds that the tax lien on the real estate
ought to be sold for the amount stated, or for a greater
or less amount, it shall order the sheriff to include such
real estate in his next September list, unless sooner
redeemed.

(b) In the event the list and notice of sale prescribed
in section two of this article is not published, posted and
completed in the manner provided by said section two,
so that it is impossible for that reason, or by reason of
omission of any necessary procedural act, for the sheriff
to make sale of the tax lien for the real estate embraced
in said list pursuant to the provisions of this chapter,
then and in that event the sheriff shall certify to the
auditor, on or before the second day of December
following the month in which such sale should have been
held, an amended list or lists of such taxes which then
remain delinquent. The sheriff shall include the real
estate in the last-mentioned amended list or lists in his
next September list, unless sooner redeemed.

§11A-3-8. Certification of unsold property to the auditor.

If no person present bids the amount of taxes, interest
and charges due on any real estate offered for sale, the
sheriff shall certify the real estate to the auditor for
disposition pursuant to section forty-four of this article,
subject, however, to the right of redemption provided by
section thirty-eight of this article. The auditor shall
prescribe the form by which the sheriff certifies the
property.

§11A-3-9. Sheriff's list of sales, suspensions, redemptions
and certifications; oath.

As soon as the sale provided for in section five of this
article has been completed, the sheriff shall prepare a
list of all tax liens on delinquent real estate purchased
at the sale, or suspended from sale, or redeemed before
sale, or certified to the auditor. The heading of the list
shall be in form or effect as follows:

List of sales of tax liens on real estate in the county
of ____________, returned delinquent for nonpay-
ment of taxes thereon for the year (or years) 19____, and
sold in the month (or months) of ____________,
or suspended from sale, or redeemed before sale, or certified to the auditor.

The sheriff shall, at the foot of such list, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, ________________, sheriff (or deputy sheriff or collector) of the county of ________________, do swear that the above list contains a true account of all the tax liens on real estate within my county returned delinquent for nonpayment of taxes thereon for the year (or years) 19__, which were sold by me or which were suspended from sale or redeemed before sale or certified to the auditor, and that I am not now, nor have I at any time been, directly or indirectly interested in the purchase of any such tax liens.

Except for the heading and the oath, the tax commissioner shall prescribe the form of the list.

§11A-3-10. Sheriff to account for proceeds; disposition of surplus.

(a) The sheriff shall account for the proceeds of all sales and redemptions included in such list in the same way he accounts for other taxes collected by him, except that if the purchase money paid for any property sold is in excess of the amount of taxes, interest and charges due thereon, the surplus shall be deposited in a special county fund to be known and designated as the “sale of tax lien surplus fund”. Where there is a redemption after the sale, the sheriff shall also deposit into said fund the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption, described in subdivision (2), subsection (b), section twenty-four of this article. Such surpluses shall be disposed of as follows:

(1) In any case where the property was redeemed, such surplus shall be distributed to the person or persons who purchased the tax lien thereon, or the heirs, devisees, legatees, executors, administrators, successors


or assigns thereof, if a proper claim therefor is filed
with the sheriff within two years from and after the date
of the sale; or

(2) If a claim as specified in subdivision (1) hereof is
not timely filed, or if there was no redemption, such
surplus shall be distributed to the person or persons who
owned the property at the time of the sale, or the heirs,
devises, legatees, executors, administrators, successors
or assigns thereof, if a proper claim therefor is filed
with the sheriff within three years from and after the
date of the sale; or

(3) If there be no proper claim filed under either
subdivision (1) or (2) hereof within the time limits
aforesaid, all claims to such surplus shall be barred and
such surplus shall be distributed by the sheriff in the
manner provided by law for the distribution of property
taxes collected by him.

(b) All real estate included in the first delinquent list
sent to the auditor, and not accounted for in the list of
sales, suspensions, redemptions and certifications, shall
be deemed to have been redeemed before sale, and the
taxes, interest and charges due thereon shall be
accounted for by the sheriff as if they had been received
by him before the sale.

§11A-3-11. Return of list of sales, suspensions and
redemptions.

(a) Within one month after completion of the sale, the
sheriff shall deliver the original list of sales, suspensions
and redemptions described in section nine of this article,
with a copy thereof, to the clerk of the county commis-
sion. The clerk shall bind the original of such list in a
permanent book to be kept for the purpose in his office,
and shall note each sale and suspension, each redemption
not previously noted, and each certification on his
record of delinquent lands. The clerk, within ten days
after delivery of the list to him, shall transmit the copy
to the auditor, who shall note each sale, suspension,
redemption and certification on the record of delinquent
lands kept in his office.
§11A-3-12. Amendment of such list.

If the sheriff shall make any error or omission in the list of sales, suspensions, redemptions and certifications returned to the clerk of the county commission, he or any person interested may, within six months after the sale, apply by petition to the county commission for an order permitting or requiring amendment of the list. Any person who might be prejudiced by the proposed amendment must, if found within the county, be given at least ten days' notice of such application. Upon proof of the error or mistake the commission shall make an order permitting or requiring the sheriff to file an amended list with the clerk of the commission. The sheriff shall thereupon prepare and deliver to the clerk of the commission the amended list and a copy thereof, with a copy of the order of the commission permitting or requiring it to be filed attached to the list and to the copy. The clerk shall substitute the original of the amended list for the list already in his office, and make the necessary corrections on his record of delinquent lands. The clerk shall transmit the copy of the amended list to the auditor who shall note the corrections on his record of delinquent lands.

§11A-3-13. Publication by sheriff of sales list.

Within one month after completion of the sale, the sheriff shall prepare and publish a list of all the sales and certifications made by him, in form or effect as follows, which list shall be published as a Class II-O legal advertisement in compliance with the provisions of...
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county.

List of tax liens on real estate sold in the county of
______________ in the month (or months) of
______________, 19__, for nonpayment of taxes
thereon for the year (or years) 19__, and purchased
by individuals or certified to the auditor of the state of
West Virginia:

<table>
<thead>
<tr>
<th>Name of Local person charged with taxes description of lands</th>
<th>Quantity of land charged for which tax lien is sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Local person charged with taxes description of lands</td>
<td>Whole Name amount of paid by purchaser</td>
</tr>
<tr>
<td>charged with taxes charged for which tax lien is sold</td>
<td>paid by purchaser</td>
</tr>
</tbody>
</table>

The owner of any real estate listed above, or any other
person entitled to pay the taxes thereon, may, however,
redeem such real estate as provided by law.

Given under my hand this __________ day of
__________, 19__.

To cover the costs of preparing and publishing such
list, a charge of ten dollars shall be added to the taxes,
interest and charges already due on each item listed.

§11A-3-14. Purchase by individual at tax sale; certificate
of sale.

(a) If any person, being the highest bidder present at
the sale provided for in section five of this article, bids
and pays at least the amount of taxes, interest and
charges for which the tax lien on any real estate is
offered for sale, the sheriff shall issue to him a
certificate of sale for the purchase money. The heading
of the certificate shall be:

Memorandum of tax lien on real estate sold in the
county of ______________ on this __________ day
of ______________, 19__ for the nonpayment of
taxes charged thereon for the year (or years) 19__.

Except for the heading, the tax commissioner shall
prescribe the form of the receipt.

(b) The certificate of sale shall describe the real estate
subject to the tax lien that was sold, the total amount
of all taxes, interest, penalties and costs paid for each
lot or tract, and the rate of interest to which the
purchaser shall be entitled upon redemption. The
certificate shall also set forth columns for the entry of
subsequent taxes and costs paid. For each certificate so
delivered, the purchaser shall pay a fee of ten dollars,
and such amount shall be included in the costs described
therein.


The certificate of sale shall be assignable by endor-
sement, and an assignment thereof, when entered upon
the delinquent lands book of the clerk of the county
commission, shall vest in the assignee or his legal
representative all the right and title of the original
purchaser. The clerk shall be entitled to a fee of two
dollars for the entry thereof.

§11A-3-16. Subsequent tax payments by purchaser.

Any person desiring to pay any subsequent taxes on
lands for which he holds the certificate of sale described
in section fourteen or fifteen of this article shall produce
such certificate to the sheriff, who shall endorse the
amount of such subsequent taxes and the date of
payment thereof in his records upon the payment to the
sheriff of a fee therefor in the amount of two dollars.
He shall also present such certificate to the clerk of the
county commission, who shall enter the amount of such
tax in his record of delinquent lands upon the payment
to the clerk of a fee therefor in the amount of two
dollars.

§11A-3-17. Sale of subsequent tax liens.

Whenever any tax lien on any real estate has been sold
at a tax sale to an individual purchaser, and the tax on
such real estate for the year of the sale or for any
subsequent year have become delinquent, the sheriff
shall include the real estate in the delinquent lists of the
proper year and shall sell any subsequent tax liens
therefor on the whole or a part thereof for taxes as if
the former sale had not occurred. The purchaser at the
first sale may, however, prevent the second sale by paying the amount due, or he may redeem from the second sale. If the purchaser bought the lien upon only a part of the land at the first sale, he may prevent a second sale thereof by paying the proportionate part of the taxes assessed against the whole which are chargeable to the part purchased.

§11A-3-18. Limitations on tax certificates.

(a) No lien upon real property conveyed by a tax certificate of sale issued by a sheriff on account of any delinquent property taxes shall remain a lien thereon for a period longer than eighteen months after the original issuance thereof.

(b) No tax deed shall issue on any tax sale evidenced by a tax certificate of sale where such certificate has ceased to be a lien pursuant to the provisions of this section and application for such tax deed is not pending at the time of the expiration of the limitation period provided for in this section.

(c) Whenever a lien conveyed by a tax certificate of sale has expired by reason of the provisions of this section, the sheriff shall immediately issue a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation; and he shall also make proper entries in his records. He shall also present every such certificate of cancellation to the county clerk who shall enter the same in his records and file the same, and such certificate and the record thereof shall be prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of such certificate on the lands therein described. Failure to record such certificate of cancellation shall not extend the lien conveyed by the certificate of sale. The sheriff and county clerk shall not be entitled to any fees for the issuing of such certificate of cancellation nor for the entries in their books made under the provisions of this subsection.

§11A-3-19. What purchaser must do before he can secure deed.
(a) At any time after October thirty-first of the year following the sheriff's sale, and on or before December thirty-first of the same year, the purchaser, his heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall: (1) Prepare a list of those to be served with notice to redeem and request the clerk to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article; (2) deposit, or offer to deposit, with the clerk a sum sufficient to cover the costs of preparing and serving the notice; and (3) present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the clerk of the county commission. For failure to meet these requirements, the purchaser shall lose all the benefits of his purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the clerk a written assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest therein sold for delinquent taxes, or any assignment thereof, is lost or wrongfully withheld from the rightful owner thereof and such land or interest has not been redeemed, the county commission may receive evidence of such loss or wrongful detention and, upon satisfactory proof of such fact, may cause a certificate of such proof and finding, properly attested by the county clerk under the seal of the county, to be delivered to such rightful claimant, and a record thereof shall be duly made by the county clerk in the recorded proceedings of the commission.

§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

If, after payment of the amount bid at a sheriff's sale, the purchaser discovers that the lien purchased at such
sale is the subject of an erroneous assessment or is otherwise nonexistent, such purchaser shall submit the certificate of an attorney-at-law that the property is the subject of an erroneous assessment or is otherwise nonexistent. Upon receipt thereof, the sheriff shall cause the moneys so paid to be refunded. Upon refund, the sheriff shall inform the assessor of the erroneous assessment for the purpose of having the assessor correct said error.


Whenever the provisions of section nineteen of this article have been complied with, the clerk of the county commission shall thereupon prepare a notice in form or effect as follows:

To ____________________________

You will take notice that ______________, the purchaser (or ______________, the assignee, heir or devisee of ______________, the purchaser) of the tax lien(s) on the following real estate, ____________________, located in ____________________, (here describe the real estate for which the tax lien(s) thereon were sold) located in ______________, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of ______________, and for which the tax lien(s) thereon was sold by the sheriff of ___________ County at the sale for delinquent taxes made on the ______________ day of ______________, 19____, has requested that you be notified that a deed for such real estate will be made to him on or after the first day of April, 19____, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the last day, March thirty-first, will be as follows:

Amount paid sheriff at sale, with interest to March 31st ................................ $ ______________
Amount of taxes paid on the property, since the sale, with interest to March 31st .... $ ______________
Amount paid for title examination and preparation
of list of those to be served, and for preparation
and service of the notice with interest to

_________ $_________

Amount paid for other statutory costs (describe)

$_________

Total $_________

You may redeem at any time before March thirty-
first by paying the above total less any unearned
interest.

Given under my hand this day of ___________,

19__.

__________________________
Clerk of the County Commission
of _________________ County,
State of West Virginia

The clerk for his service in preparing the notice shall
receive a fee of five dollars for the original and one
dollar for each copy required. Any costs which must be
expended in addition thereto for publication, or service
of such notice in the manner provided for serving
process commencing a civil action, or for service of
process by certified mail, shall be charged by the clerk.
All costs provided by this section shall be included as
redemption costs and included in the notice described
herein.

§11A-3-22. Service of notice.

As soon as the clerk has prepared the notice provided
for in section twenty-one of this article, he shall cause
it to be served upon all persons named on the list
generated by the purchaser pursuant to the provisions
of section nineteen of this article.

The notice shall be served upon all such persons
residing or found in the state in the manner provided
for serving process commencing a civil action, or by
certified mail, return receipt requested. The notice shall
be served on or before the tenth day following the
request for such notice.
If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the clerk in his office, together with any return receipts for notices sent by certified mail.

§11A-3-23. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section five of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the clerk of the county commission the following amounts: (1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any
title examination incident thereto, with interest at the
rate of one percent per month from the date of payment,
but the amount he shall be required to pay, excluding
said interest, for such expenses incurred for the
preparation of the list of those to be served with notice
to redeem required by section nineteen of this article,
and any title examination incident thereto, shall not
exceed one hundred dollars; and (4) all additional
statutory costs paid by the purchaser. Where the clerk
has not received from the purchaser satisfactory proof
of the expenses incurred in preparing the notice to
redeem, and any examination of title incident thereto,
in the form of receipts or other evidence thereof, the
person redeeming shall pay the clerk the sum of one
hundred dollars plus interest thereon at the rate of one
percent per month from the date of the sale for
disposition by the sheriff pursuant to the provisions of
sections ten, twenty-four, twenty-five and thirty-two of
this article.

The person redeeming shall be given a receipt for the
payment.

(b) Any person who, by reason of the fact that no
provision is made for partial redemption of the tax lien
on real estate purchased by an individual, is compelled
in order to protect himself to redeem the tax lien on all
of such real estate when it belongs, in whole or in part,
to some other person, shall have a lien on the interest
of such other person for the amount paid to redeem such
interest. He shall lose his right to the lien, however,
unless within thirty days after payment he shall file
with the clerk of the county commission his claim in
writing against the owner of such interest, together with
the receipt provided for in this section. The clerk shall
docket the claim on the judgment lien docket in his
office and properly index the same. Such lien may be
enforced as other judgment liens are enforced.

§11A-3-24. Notice of redemption to purchaser; moneys
received by sheriff.

(a) Upon payment of the sum necessary to redeem, the
clerk shall promptly notify the purchaser, his heirs or
assigns, by mail of the redemption, deliver to the sheriff the redemption money paid, and note the fact of redemption on his record of delinquent lands. The notice by mail shall advise that upon the request of the purchaser, his heirs or assigns, the sheriff shall pay to the purchaser the sums described in section twenty-five of this article.

(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall deposit into the sale of tax lien surplus fund provided by section ten of this article the amount thereof equal to (1) the surplus of money paid in excess of the amount of the taxes, interest and charges due and paid to the sheriff at the sale; and (2) the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-25. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in section twenty-three of this article, and the clerk has delivered the redemption money to the sheriff pursuant to section twenty-four of this article, the sheriff shall, upon request made of him by the purchaser, his heirs or assigns, and upon delivery to the sheriff of the certificate of sale or assignment thereof, pay to the purchaser, his heirs or assigns the following amounts: (1) From the sale of tax lien surplus fund provided by section ten of this article, (A) the surplus of money paid in excess of the amount of the taxes, interest and charges due and paid to the sheriff at the sale, and (B) the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment,
but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section nineteen of this article, and any title examination incident thereto, shall not exceed one hundred dollars; and (4) all additional statutory costs paid by the purchaser.

(b) Where, pursuant to section twenty-three of this article, the clerk has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any title examination incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of one hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of redemption, and the sheriff is barred from any claim thereto. Where pursuant to section twenty-three of this article, the clerk has received from the purchaser and therefore delivered to the sheriff said sum of one hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of redemption such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-26. Certificate of redemption issued by clerk; recordation; disposition of redemption money.

(a) Upon payment of the sum necessary to redeem, the clerk shall execute a certificate of redemption in duplicate, which certificate shall specify the real estate redeemed, or the part thereof or the interest therein, as the case may be, together with any changes in respect thereto which were made in the landbook and in the
record of delinquent lands; shall specify the year or
years for which payment was made; and shall state that
it is a receipt for the money paid and a release of the
tax lien on the real estate redeemed. The original
certificate shall be retained in the files in the clerk's
office and one copy shall be delivered to the person
redeeming. The clerk shall make any necessary changes
in his record of delinquent lands and shall note the fact
of redemption on such record, and shall record the
certificate in a separate volume provided for the
purpose.

The fee for issuing the certificate of redemption shall
be twenty-five dollars.

(b) All certificates of redemption issued by the clerk
in each year shall be numbered consecutively and shall
be filed by the clerk in numerical order. Reference to
the year and number of the certificate shall be included
in the notation of redemption required herein. No fee
shall be charged by the clerk for any recordation, filing
or notation required by this section.

(c) In April of each year, the clerk shall prepare and
certify to the auditor a list of all redemptions which
have not been included in any other lists.

§11A-3-27. Deed to purchaser; record.

If the real estate described in the notice is not
redeemed within the time specified therein, but in no
event prior to the first day of April of the second year
following the sheriff's sale, the person entitled thereto
shall make and deliver to the clerk of the county
commission at any time thereafter, subject to the
provisions of section eighteen of this article, a quitclaim
deed for such real estate in form or effect as follows:

This deed made this ____________ day of
_____________________, 19___, by and between
_______________, clerk of the county commission of
______________ County, West Virginia, (or by and
between ____________, a commissioner appointed
by the Circuit Court of ___________ County, West
Virginia) grantor, and ______________, purchaser,
16 (or ____________, heir, devisee or assignee of
17 ____________, purchaser,) grantee, witnesseth,
18 that:
19 Whereas, In pursuance of the statutes in such case
20 made and provided, ________________, Sheriff of
21 ___________ County, (or ____________, deputy for
22 ______________, Sheriff of _____________ County,) (or
23 ______________, collector of ________________
24 County,) did, in the month of ________________, in the
25 year 19____, sell the tax lien(s) on real estate, here-
26 after mentioned and described, for the taxes delin-
27 quent thereon for the year (or years) 19____, and
28 ________________ (here insert name of purchaser) for
29 the sum of $______________, that being the amount
30 of purchase money paid to the sheriff, did become the
31 purchaser of the tax lien(s) on such real estate (or on
32 ____________ acres, part of the tract or land, or on an
33 undivided ____________ interest in such real
34 estate) which was returned delinquent in the name of
35 ________________, and
36 Whereas, The clerk of the county commission has
37 caused the notice to redeem to be served on all persons
38 required by law to be served therewith; and
39 Whereas, The tax lien(s) on the real estate so pur-
40 chased has not been redeemed in the manner provided
41 by law and the time for redemption set in such notice
42 has expired;
43 Now, therefore, the grantor, for and in consideration
44 of the premises and in pursuance of the statutes, doth
45 grant unto ____________, grantee, his heirs and assigns
46 forever, the real estate on which the tax lien(s) so pur-
47 chased existed, situate in the county of ________________
48 bounded and described as follows: ________________
49 Witness the following signature:
50 ________________
51 Clerk of the County Commission of ___________ County.
52 Except when ordered to do so, as provided in section
53 twenty-eight of this article, no clerk of the county
commission shall execute and deliver such a deed more
than thirty days after the person entitled to the deed
delivers the same and requests the execution thereof.
Upon the clerk's determination that the deed presented
substantially complies with the requirements of this
section, the clerk shall execute the deed and acknowl-
edge the same, record the deed in the clerk's office, and
deliver the original thereof to the purchaser.

For the execution of the deed and for all the recording
required by this section, a fee of ten dollars shall be
charged, to be paid by the grantee upon delivery of the
deed. The deed, when duly acknowledged or proven,
shall be recorded by the clerk of the county commission
in the deed book in his office, together with assignment
from the purchaser, if one was made, the notice to
redeem, the return of service of such notice, the affidavit
of publication, if the notice was served by publication,
and any return receipts for notices sent by certified
mail.

§11A-3-28. Compelling service of notice or execution of
deed.

If the clerk of the county commission fails or refuses
to prepare and serve the notice to redeem as required
in sections twenty-one and twenty-two of this article, the
person requesting the notice may, at any time within
two weeks after discovery of such failure or refusal, but
in no event later than sixty days following the date the
person requested that notice be prepared and served,
apply by petition to the circuit court of the county for
an order compelling the clerk to prepare and serve the
notice or appointing a commissioner to do so. If the
person requesting the notice fails to make such appli-
cation within the time allowed, he shall lose his right
to the notice, but his rights against the clerk under the
provisions of section sixty-seven of this article shall not
be affected. Notice given pursuant to an order of the
court or judge shall be as valid for all purposes as if
given within the time required by section twenty-two of
this article.

If the clerk fails or refuses to execute the deed as
required in section twenty-seven of this article, the person requesting the deed may, at any time after such failure or refusal, but not more than six months after his right to the deed accrued, apply by petition to the circuit court of the county for an order compelling the clerk to execute the deed or appointing a commissioner to do so. If the person requesting the deed fails to make such application within the time allowed, he shall lose his right to the deed, but his rights against the clerk under the provisions of section sixty-seven of this article shall not be affected. Any deed executed pursuant to an order of the court or judge shall have the same force and effect as if executed and delivered by the clerk within the time specified in the preceding section.

Ten days' written notice of every such application must be given to the clerk. If, upon the hearing of such application, the court or judge is of the opinion that the applicant is not entitled to the notice or deed requested, the petition shall be dismissed at his costs; but if the court or judge is of the opinion that he is entitled to such notice or deed, then, upon his deposit with the clerk of the circuit court of a sum sufficient to cover the costs of preparing and serving the notice, unless such a deposit has already been made with the clerk of the county commission, an order shall be made by the court or judge directing the clerk to prepare and serve the notice or execute the deed, or appointing a commissioner for the purpose, as the court or judge shall determine. If it appears to the court or judge that the failure or refusal of the clerk was without reasonable cause, judgment shall be given against him for the costs of the proceedings; otherwise the costs shall be paid by the applicant.

Any commissioner appointed under the provisions of this section shall be subject to the same liabilities as are provided for the clerk. For the preparation of the notice to redeem, he shall be entitled to the same fee as is provided for the clerk. For the execution of the deed, he shall also be entitled to a fee of ten dollars, to be paid by the grantee upon delivery of the deed.

§11A-3-29. One deed for separate purchases.
Whenever one purchaser at the tax sale has purchased tax liens on two or more pieces of real estate, or undivided interests therein, charged with taxes for the same year, or years, he, his heirs or assigns may request the clerk of the county commission to execute a separate deed for each piece of real estate, or undivided interest therein, or separate deeds for some and one deed for the remainder, or one deed for all, as he or they may prefer. Every deed for two or more pieces of real estate, or undivided interests therein, shall describe each piece of real estate and each undivided interest separately.

§11A-3-30. Title acquired by individual purchaser; action to quiet title.

(a) Whenever the purchaser of any tax lien on any real estate sold at a tax sale, his heirs or assigns shall have obtained a deed for such real estate from the clerk of the county commission or from a commissioner appointed to make the deed, he or they shall thereby acquire all such right, title and interest, in and to the real estate, as was, at the time of the execution and delivery of the deed, vested in or held by any person who was entitled to redeem, unless such person is one who, being required by law to have his interest separately assessed and taxed, has done so and has paid all the taxes due thereon, or unless the rights of such person are expressly saved by the provisions of section six of this article or section two, three, four or six, article four of this chapter.

The tax deed shall be conclusive evidence of the acquisition of such title. The title so acquired shall relate back to July first of the year in which the taxes, for nonpayment of which the tax lien on the real estate was sold, were assessed.

(b) Any individual purchaser to whom a tax deed has been issued may institute and prosecute actions to quiet title in any such real estate conveyed thereby. Such action may be maintained for all or any one or more of the lots or tracts conveyed.

§11A-3-31. Effect of irregularity on title acquired by purchaser.
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1 No irregularity, error or mistake in respect to any step in the procedure leading up to and including delivery of the tax deed by the clerk shall invalidate the title acquired by the purchaser unless such irregularity, error or mistake is, by the provisions of section six of this article or section two, three, four or six, article four of this chapter, expressly made ground for instituting a suit to set aside the sale or the deed.

§11A-3-32. Sheriff to keep proceeds in separate accounts; disposition.

1 (a) The sheriff shall keep in a separate fund the proceeds of all redemptions and sales paid to him under the provisions of this chapter, except for those proceeds for which a separate fund is directed by the provisions of section sixty-four of this article. Out of the total proceeds of each sale or redemption he shall in the order of priority stated below credit the following amounts, for payment as hereinafter provided: (1) To the general county fund, such part as represents costs paid out of such fund for publishing the sheriff's delinquent and sales list and all other costs incurred by the sheriff pursuant to the provisions of this article; (2) surplus proceeds from the sale of tax liens on delinquent lands shall be held by the sheriff for the periods provided for in section ten of this article, and if no application is made within the time therein specified, such surplus shall be distributed by the sheriff in the manner provided by law for the distribution of property taxes collected by him; and (3) the balance, if any, of the proceeds of the lands included in each suit shall be prorated among the various taxing units on the basis of the total amount of taxes due them in respect to the lands that were sold or redeemed. The amounts so determined shall be credited as follows, for payment as hereinafter provided: (1) To the auditor, such part as represents state taxes and interest; and (2) to the fund kept by the sheriff for each local taxing unit, such part as represents taxes and interest payable to such unit.

(b) All amounts which under the provisions of this section were so credited by the sheriff to the auditor shall be paid to him semiannually; and those credited
to the various local taxing units shall be transferred semiannually by the sheriff to the fund kept by him for each such taxing unit.

(c) The tax commissioner, in cooperation with the land department in the auditor's office, shall prescribe the form of the records to be kept by the sheriff for the purposes of this section, and the method to be used by him in making the necessary pro rata distributions.

PART II

§11A-3-33. State commissioner of delinquent and nonentered lands.

1 The state auditor shall ex officio be state commissioner of delinquent and nonentered lands. The term "auditor" whenever used in this chapter in connection with delinquent, nonentered, escheated or waste and unappropriated lands, shall be construed to refer to the auditor in his capacity as state commissioner of delinquent and nonentered lands.

2 The auditor is empowered, and it shall be his duty, through the land department in his office, to administer and carry into execution the laws with reference to such lands. The auditor on behalf of the state shall have power to hold and manage such lands, and to exercise all other powers incident to the powers and duties conferred upon him by this article.

§11A-3-34. Deputy commissioners of delinquent and nonentered lands; bond.

1 The auditor shall appoint for each county in the state a deputy commissioner of delinquent and nonentered lands. Persons serving in that capacity when this article takes effect shall continue to serve, subject to the provisions of this article. The auditor shall make new appointments from time to time thereafter whenever vacancies occur, or when in the auditor's judgment it is deemed advisable. The auditor may promulgate rules respecting the tenure of deputy commissioners. In the absence of such rules, the deputy commissioner for each county shall, so long as he satisfies the requirements of this section in respect to professional qualifications and bonding, continue to act without reappointment until the
14 auditor designates his successor.
15 The auditor shall appoint deputy commissioners in
16 such numbers and to serve such counties as the auditor
17 deems advisable to effect the purposes of this article.
18 Appointments shall be limited to persons duly licensed
19 to practice law in this state. Any person appointed as
20 deputy commissioner for a single county shall reside in
21 said county. Any person appointed as deputy commis-
22 sioner for more than one county shall reside in one of
23 the counties for which he has been appointed.
24 Whenever in respect to any land the deputy commis-
25 sioner, in his own judgment or in the opinion of the
26 auditor, is disqualified or otherwise unable to serve,
27 because of his personal interest, or because of his
28 representation of clients in matters affecting such land,
29 or because of vacancies or failure to act, the auditor may
30 appoint a special deputy, including an employee of his
31 office licensed to practice law in this state, to assume
32 all of the disqualified deputy commissioner's rights,
33 duties, responsibilities and liabilities relating to such
34 land.
35 The deputy commissioner shall be subject to the
36 orders and control of the auditor, shall be accountable
37 to him, and shall serve as his local agent within the
38 county. It shall be his duty to do whatever is required
39 of him by the auditor or by the provisions of this article.
40 The deputy commissioner before entering upon his
41 duties shall give a bond, with satisfactory corporate
42 surety, conditioned upon the faithful performance of his
43 duties and the payment of any forfeitures incurred. The
44 penalty of such bond shall be not less than twenty-five
45 thousand dollars nor more than one hundred thousand
46 dollars, as the auditor may direct. The premium
47 therefor shall be paid by the auditor out of the operating
48 fund for the land department in his office.

§11A-3-35. Land record in auditor's office.
1 The auditor shall prepare and keep in his office a
2 permanent record of all delinquent, nonentered,
3 escheated and waste and unappropriated lands. The
4 record shall as to every tract or lot listed set forth the
information available as to quantity, local description, and, except in the case of waste and unappropriated lands, the name of the former owner and the respective dates of nonentry, or delinquency and certification to the auditor, or escheat, as the case may be. The record shall be prima facie evidence of all matters required by this section to be set forth therein, including the correctness of the description of lands as nonentered, delinquent, escheated or waste and unappropriated.

§11A-3-36. Operating fund for land department in auditor's office.

(a) The auditor shall establish a special operating fund for the land department in his office. He shall pay into such fund all redemption fees, all publication or other charges collected by him, if such charges were paid by or were payable to him, the unclaimed surplus proceeds received by him from the sale of delinquent and other lands pursuant to this article, and all payments made to him under the provisions of sections sixty-four and sixty-five of this article, except such part thereof as represents state taxes and interest. All payments so excepted shall be credited by the auditor to the general school fund or other proper state fund.

(b) The operating fund shall be used by the auditor in cases of deficits in land sales to pay any balances due to deputy commissioners for services rendered, and any unpaid costs including those for publication which have accrued or will accrue under the provisions of this article, to pay fees due surveyors under the provisions of section forty-three of this article, and to pay for the operation and maintenance of the land department in his office. The surplus over and above the amount of one hundred thousand dollars, remaining in the fund at the end of any fiscal year, shall be paid by the auditor into the general school fund.

§11A-3-37. Disposition of nonentered lands.

It is the duty of the owner of land to have his land entered for taxation on the landbooks of the appropriate county, have himself charged with the taxes due thereon, and pay the same. Land which, for any five
successive years, shall not have been so entered and
charged shall, without any proceedings therefor, be
subject to the authority and control of the auditor and
such nonentered lands shall thereafter be subject to
transfer or sale under the provisions of this article
relating to the auditor's disposition of lands certified to
the auditor pursuant to section eight thereof.

§11A-3-38. Redemption of nonentered or certified lands.

(a) The owner of any real estate certified to the
 auditor pursuant to section eight of this article, or of any
nonentered real estate subject to the authority of the
auditor pursuant to section thirty-seven of this article,
or any other person who was entitled to pay the taxes
thereon, may redeem such real estate from the auditor
at any time prior to the certification of such real estate
to the deputy commissioner as provided in section forty-
four of this article. Thereafter such real estate shall be
subject to disposition pursuant to section forty-four of
this article, and subsequent sections.

(b) In order to redeem the person seeking redemption
must pay to the auditor such of the following amounts
as may be due: (1) The taxes, interest and charges due
on the real estate on the date of certification to the
auditor or the discovery of the nonentry, with interest
at the rate of twelve percent per annum from the date
of such certification or discovery; (2) all taxes assessed
thereon for the year in which the certification occurred
or nonentry was discovered, with interest at the rate of
twelve percent per annum from the date on which they
became delinquent, except when such taxes are cur-
rently due and payable to the sheriff; (3) all taxes except
those for the current year which would have been
assessed thereon since the certification had the certifi-
cation not occurred, or which, in case of nonentered
lands, would have been assessed thereon had the land
been properly entered, with interest at the rate of twelve
percent per annum from the date on which such taxes
would have become delinquent: Provided, That in the
case of nonentered lands, the owner shall not be liable
for more than the taxes and interest which would have
become due and payable during the ten years imme-
(c) In computing the amount due under subdivision (3), subsection (b) of this section on real estate certified to the auditor by the sheriff, the auditor shall use as the basis for computation the classification and valuation placed thereon by the assessor for each year since the sale. If such valuation and classification have not been made, he shall use the last valuation and classification appearing on the property books. In computing the amount due under subdivision (3), subsection (b) of this section on nonentered real estate, the auditor shall use as the basis for computation such classification and valuation as may, at the request of the auditor or the person redeeming, be certified to the auditor by the assessor as the classification and valuation which in his opinion would be proper for each year of nonentry.

(d) Redemption of an undivided interest included in a group assessment shall not be permitted until the applicable provisions of section nine or ten of article one of this chapter have been complied with, except that instead of presenting the assessor's certificate to the sheriff as therein provided, the person redeeming shall present it to the auditor, who, after making the necessary changes in the land book, and in the record of delinquent lands kept in his office, shall compute the taxes due on the part or interest redeemed.


(a) Upon payment of the sum necessary to redeem, the auditor shall execute a certificate of redemption in triplicate, which certificate shall specify the real estate redeemed, or the interest therein, as the case may be, together with any changes in respect thereto which were made in the land book and in the record of delinquent lands, shall specify the year or years for which payment was made, and shall state that it is a receipt for the money paid and a release of the state's lien against the real estate redeemed. The original certificate shall be retained in the files in the auditor's office, one copy shall
be delivered to the person redeeming and the second copy shall be mailed by the auditor to the clerk of the
county commission of the county in which the real estate is situated, who, after making any necessary changes in his record of delinquent lands, shall note the fact of redemption on such record, and shall record the certificate in a separate volume provided for the purpose.

The fee for issuing the certificate of redemption shall be ten dollars or seven and one-half percent of the total taxes, interest and charges due, whichever is greater.

(b) All certificates of redemption issued by the auditor in each year shall be numbered consecutively and shall be filed by the clerk of the county commission in numerical order. Reference to the year and number of the certificate shall be included in the notation of redemption required of the clerk of the county commission. No fee shall be charged by the clerk for any recordation, filing or notation required by this section.

§11A-3-40. Compulsory redemption at election of auditor.

The auditor, if he so elects, may at any time compel redemption of any nonentered lands or real estate certified to the auditor by the sheriff. In order to collect from the owner of such real estate an amount sufficient for redemption, he may use any of the methods provided in article two of this chapter for collection of taxes by the sheriff.

§11A-3-41. Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.

(a) The auditor shall report monthly to the sheriff, the assessor and the clerk of the county commission of each county all land in such county which was redeemed in his office during the preceding month. The assessor shall enter the fact of such redemption in the land book in his office. The clerk shall file and index the report in a separate volume provided for the purpose.

(b) Between August fifteenth and August thirty-first of each year, the auditor shall report to the sheriff of
each county for inclusion in his next September
delinquent list all tracts of land redeemed from the
auditor, which after certification to the auditor have
been reported to him by the sheriff as suspended from
sale, if the taxes for the year or years of suspension were
not collected by the auditor. The sheriff shall be charged
with such taxes and shall account for them as is
required in the case of current taxes. Instead of making
this report, the auditor may collect the taxes due for the
year or years of suspension. Upon collection thereof he
shall issue a second certificate of redemption, and such
certificate shall be a release of the state's lien for such
taxes.

(c) The auditor shall each month draw his warrant
upon the treasury, payable to the sheriff of each county,
for that part of the taxes, interest and charges received
by him upon the redemption of the property included
in his report, which was owing to any of the taxing units
in such county. The sheriff shall account for and pay
over such money as if it had been paid to him for
redemption before sale.

Upon collection of delinquent taxes due the state, the
auditor shall credit them to the proper fund.

§11A-3-42. Lands subject to sale by deputy commissioner.

All lands for which no person present at the sheriff's
sale, held pursuant to section five of this article, has bid
the total amount of taxes, interest and charges due, and
which were subsequently certified to the auditor
pursuant to section eight of this article, and which have
not been redeemed from the auditor within eighteen
months after such certification, together with all
nonentered lands, all escheated lands and all waste and
unappropriated lands, shall be subject to sale by the
deputy commissioner of delinquent and nonentered
lands as further provided in this article. References in
this chapter to the sale or purchase of certified or
nonentered lands by or from the deputy commissioner
shall be construed as the sale or purchase of the tax lien
or liens thereon.

§11A-3-43. Officers to report lands subject to sale.
(a) Whenever an assessor, sheriff, clerk of the county commission or county surveyor learns of the existence within the county of any nonentered land, he shall promptly report that fact to the auditor, together with his information relating thereto. The assessor, as escheator, shall likewise report all lands which escheat to the state.

(b) Whenever the deputy commissioner learns of the existence of any waste and unappropriated lands within his county, except lands lying under the bed of a navigable stream, he shall direct the county surveyor, or some other competent surveyor, to make a survey, plat and report thereof, listing all discovered claims of title thereto. For his services in making the survey, plat and report, the surveyor shall be entitled to a fee of fifty dollars, and such additional compensation as the deputy commissioner may recommend and the auditor approve, to be paid out of the operating fund for the land department in the auditor's office.

§11A-3-44. Auditor to certify list of lands to be sold; lands so certified are subject to sale.

On or after the first day of May and on or before the first day of October of each year, the auditor shall certify to the deputy commissioner of each county a list of all lands in the county subject to sale under this article. He shall note the fact of certification on the land record in his office. Upon completion of the list for certification, a charge of twenty-five dollars shall be added to the taxes, interest and charges already due on each tract listed, to cover the costs incurred by the auditor in the preparation of the list, and in the event of sale or redemption, the same shall be collected and paid into the operating fund provided for in this article.

Escheated lands and waste and unappropriated lands shall be listed separately. The list shall be arranged by districts and, except in the case of waste and unappropriated lands, alphabetically by the name of the owner. The list shall state as to each item listed the information required by section thirty-five of this article to be set forth in the land record in the auditor's office, and shall
specify as to each tract listed as delinquent or nonen- 
tered the amount of taxes and interest due or chargeable 
thereon on the date of certification, the publication and 
other charges due, with interest, and the total currently 
due. The specification of taxes due or chargeable shall 
as to delinquent land commence with those for nonpay- 
ment of which it was sold, and as to nonentered land 
with those properly chargeable to it for the first year 
of nonentry, subject to the provisions of the proviso set 
forth in subsection (b), section thirty-eight of this article.

All items certified to each deputy commissioner shall 
be numbered consecutively. All subsequent entries, 
applications or proceedings under this article in respect 
to any item shall refer to its number and the year of 
certification. All tracts, lots, or parcels certified to the 
auditor as a unit may be treated by the auditor as a 
single item for purposes of certification. Subject to the 
provisions of this section, the auditor shall prescribe a 
form for the list and shall provide in such form adequate 
space to show the subsequent history and final disposi- 
tion of each item certified.

The list shall be made in triplicate. The auditor shall 
keep the original and send one copy to the clerk of the 
county commission and one to the deputy commissioner. 
The clerk of the county commission shall bind his copy 
in a permanent book to be labeled "Report of State 
Commissioner of Delinquent and Nonentered Lands" 
and shall note the fact of the certification of each item 
on his record of delinquent lands. Such copies shall 
become permanent records, and shall be preserved as 
such in the offices of the auditor and the clerk of the 
county commission.

§11A-3-45. Deputy commissioner to hold annual auction.

(a) Each tract or lot certified to the deputy commis- 
sioner pursuant to the preceding section shall be sold by 
the deputy commissioner at public auction at the front 
door of the courthouse of the county to the highest 
bidder, for cash, between the hours of ten in the 
morning and four in the afternoon on any business 
working day within sixty days after the auditor has
certified the lands to the deputy commissioner as required by the preceding section. No part or interest in any tract or lot subject to such sale, or any part thereof of interest therein, that is less than the entirety of such unredeemed tract, lot or interest, as the same is described and constituted as a unit or entity in said list, shall be offered for sale or sold at such sale. If the sale shall not be completed on the first day of the sale, it shall be continued from day to day between the same hours until all the land shall have been offered for sale.

(b) A private, nonprofit, charitable corporation, incorporated in this state, which has been certified as a nonprofit corporation pursuant to the provisions of §501(c)(3) of the federal Internal Revenue Code, as amended, which has as its principal purpose the construction of housing or other public facilities, and which notifies the deputy commissioner of an intention to bid and subsequently submits a bid that is not more than five percent lower than the highest bid submitted by any person or organization which is not a private, nonprofit, charitable corporation as defined in this subsection, shall be sold the property offered for sale by the deputy commissioner pursuant to the provisions of this section at the public auction as opposed to the highest bidder.

The nonprofit corporation referred to in this subsection does not include a business organized for profit, a labor union, a partisan political organization or an organization engaged in religious activities and it does not include any other group which does not have as its principal purpose the construction of housing or public facilities.

§11A-3-46. Publication of notice of auction.

Once a week for three consecutive weeks prior to the auction required in the preceding section, the deputy commissioner shall publish notice of the auction as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.
The notice shall be in form or effect as follows:

Notice is hereby given that the following described tracts or lots of land in the County of ___________, have been certified by the Auditor of the State of West Virginia to ___________, Deputy Commissioner of Delinquent and Nonentered Lands of said County, for sale at public auction. The lands will be offered for sale by the undersigned deputy commissioner at public auction at the front door of the courthouse of _______________ County between the hours of ten in the morning and four in the afternoon, on the __________ day of ___________, 19__.  

Each tract or lot as described below, will be sold to the highest bidder for cash. If any of said tracts or lots remain unsold following the auction, they will be subject to sale by the deputy commissioner without additional advertising or public auction. All sales are subject to the approval of the auditor of the State of West Virginia.

(here insert description of lands to be sold)  

Any of the aforesaid tracts or lots may be redeemed by any person entitled to pay the taxes thereon at any time prior to the sale by payment to the deputy commissioner of the total amount of taxes, interest and charges thereon up to the date of redemption. Lands listed above as escheated or waste and unappropriated lands may not be redeemed.

Given under my hand this __________ day of ___________, 19__.  

___________ Deputy Commissioner of Delinquent and Nonentered Lands of _______________ County  

The description of lands required in the notice shall be in the same form as the list certifying said lands to the deputy commissioner for sale. If the deputy commissioner is required to auction lands certified to him in any previous years, pursuant to section forty-eight of this article, he shall include such lands in the notice, with reference to the year of certification and the item number of the tract or interest.
To cover the cost of preparing and publishing the notice, a charge of twenty-five dollars shall be added to the taxes, interest and charges due on the delinquent and nonentered property.

§11A-3-47. Redemption prior to sale.

1. Any of the delinquent and nonentered lands certified to the deputy commissioner may be redeemed, prior to the auction, by the owner of such land or any other person entitled to pay the taxes thereon, by payment of the taxes, interest and charges due. The deputy commissioner shall give to the person redeeming a duplicate receipt, one of which shall be filed with the clerk of the county commission, who shall note the fact of such redemption on his record of delinquent lands. Any person redeeming the interest of another shall be subrogated to the lien of the state on such interest as provided in section nine, article one of this chapter.

§11A-3-48. Unsold lands subject to sale without auction or additional advertising.

1. If any of the lands which have been offered for sale at the public auction provided in section forty-five of this article shall remain unsold following such auction, or if the auditor refuses to approve the sale pursuant to section fifty-one of this article, the deputy commissioner may sell such lands at any time subsequent to such auction, without any further public auction or additional advertising of such land, to any party willing to purchase such property. The price of such property shall be as agreed upon by the deputy commissioner and purchaser, subject to approval by the auditor as provided in section fifty-one of this article: Provided, that any of such unsold lands, which remain unsold at the time the deputy commissioner publishes notice of subsequent annual auctions, shall be included in such notice and offered for sale at such auction: Provided, however, that in no event shall the deputy commissioner be required to offer a tract, lot or interest for sale at more than three consecutive annual auctions.

§11A-3-49. Purchase by owner or deputy commissioner or other officers prohibited; co-owner free to purchase at sale.
(a) It shall be illegal for an owner, in whose name any real estate was certified to the auditor or was subjected to the authority of the auditor because of the nonentry thereof, or his heirs or assigns, or his or their agent, to purchase such real estate at sale provided in section forty-five or forty-eight of this article. No deputy commissioner, sheriff, clerk of the county commission or circuit court, assessor, nor deputy of any of them, shall directly or indirectly become the purchaser, or be interested in the purchase of any real estate at the sale. Any such person or officer so purchasing shall for each offense forfeit one thousand dollars, to be collected as other forfeitures are collected. The sale of any real estate, or the conveyance of such real estate by tax deed, to one of the persons or officers named in this section shall be voidable at the instance of any person having the right to redeem until such real estate reaches the hands of a bona fide purchaser.

(b) Any co-owner, except a coparcener, in the absence of satisfactory proof of a fiduciary relationship, shall be entitled to purchase at the sale for his own account the interest of any, or all, of his co-owners in any real estate, without being required to hold such interest or interests under a constructive trust. There shall be a prima facie presumption against such constructive trust.

§11A-3-50. Receipt to purchaser for purchase price.

The deputy commissioner shall issue to the purchaser a duplicate receipt for the purchase money, one of which shall be filed with the clerk of the county commission, who shall note the fact of such sale on his record of delinquent lands. The heading of the receipt shall be:

Memorandum of real estate sold in the county of ____________ on this ____________ day of ____________, 19____, by the ____________, deputy commissioner of delinquent and nonentered lands of said county.

Except for the heading, the auditor shall prescribe the form of the receipt.

§11A-3-51. Deputy commissioner to report sales to auditor; auditor to approve sales.
Within fourteen days following the auction required by section forty-five of this article, and within fourteen days of any sale pursuant to section forty-eight of this article, the deputy commissioner must report such sales to the auditor. The report must include the year that the land was certified by the auditor for sale, the item number of the land on the list certifying the land for sale, the amount of taxes, interest and charges on such land at the time of the sale, the quantity of the land, the name and address of the purchaser and the purchase price. The report shall be filed in duplicate with the auditor. The auditor may prescribe the form of the report.

As soon as possible after receiving the report, the auditor shall determine whether the sale is in the best interest of the state, and shall either approve or disapprove the sale. The auditor shall then note such approval or disapproval and, if disapproved, the reasons therefor, on the copy of the report, and return the copy to the deputy commissioner. The original shall be retained by the auditor.

If the auditor shall disapprove any such sale, the deputy commissioner shall forthwith refund the purchase price to the purchaser. The land shall then be again subject to sale pursuant to sections forty-five and forty-eight of this article. If the auditor approves the sale, the purchaser shall immediately commence the steps to obtain a deed, as provided in section fifty-two of this article.

§11A-3-52. What purchaser must do before he can secure a deed.

(a) Within thirty days following the approval of the sale by the auditor pursuant to section fifty-one of this article, the purchaser, his heirs or assigns, in order to secure a deed for the real estate purchased, shall: (1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article; and (2) deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice.
For failure to meet these requirements, the purchaser shall lose all the benefits of his purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he shall, at the time of the request, file with the deputy commissioner a written assignment to him of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

§11A-3-53. Refund to purchaser of payment made at deputy commissioner's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

If, after payment of the amount bid at a deputy commissioner's sale, the purchaser discovers that the property purchased at such sale is the subject of an erroneous assessment or is otherwise nonexistent, such purchaser shall submit the certificate of an attorney-at-law that the property is the subject of an erroneous assessment or is otherwise nonexistent. Upon receipt thereof, the deputy commissioner shall cause the moneys so paid to be refunded. Upon refund, the deputy commissioner shall inform the assessor of the erroneous assessment for the purpose of having the assessor correct said error.

§11A-3-54. Notice to redeem.

Whenever the provisions of section fifty-two of this article have been complied with, the deputy commissioner shall thereupon prepare a notice in form or effect as follows:

To ___________________________

You will take notice that ______________ , the purchaser (or ______________ , the assignee, heir or devisee of ______________ , the purchaser) of the following real estate, ______________ , (here describe the real estate sold) located in ______________ , (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was ______________ (here put whether the property was returned delinquent or nonentered) in the name of
and was sold by the deputy commissioner of delinquent and nonentered lands of County at the sale for delinquent taxes (or nonentry) on the day of , 19__, has requested that you be notified that a deed for such real estate will be made to him on or after the day of , 19__, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the day of , will be as follows:

Amount paid deputy commissioner at sale, with interest to $ Amount of taxes paid on the property, since the sale, with interest to $ Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest to $ Amount paid for other statutory costs (describe) $ Total $ You may redeem at any time before by paying the above total less any unearned interest. Given under my hand this day of , 19__.

Deputy Commissioner of Delinquent and Nonentered Lands County, State of West Virginia

The deputy commissioner for his service in preparing the notice shall receive a fee of ten dollars for the original and two dollars for each copy required. Any costs which must be expended in addition thereto for publication, or service of such notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the deputy commissioner. All costs provided
by this section shall be included as redemption costs and included in the notice described herein.

§11A-3-55. Service of notice.

As soon as the deputy commissioner has prepared the notice provided for in section fifty-four of this article, he shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of section fifty-two of this article. Such notice shall be mailed and, if necessary, published, at least thirty days prior to the first day of the third month following the deputy commissioner’s sale.

The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action, or by certified mail, return receipt requested. The notice shall be served on or before the tenth day following the request for such notice.

If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.

If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the deputy commissioner in his office, together with any return receipts for notices sent by certified mail.
§11A-3-56. Redemption from purchase; receipt; list of redemptions; certificate of redemption; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section forty-five or forty-eight of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the deputy commissioner the following amounts: (1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section fifty-two of this article, and any title examination incident thereto, shall not exceed one hundred dollars; (4) all additional statutory costs paid by the purchaser; and (5) the deputy commissioner's fee and commission as provided by section sixty-six of this article. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of one hundred dollars plus interest thereon at the rate of one per cent per month from the date of the sale for disposition pursuant to the provisions of sections fifty-seven, fifty-eight and sixty-four of this article. Upon payment to the deputy commissioner of any those and any other unpaid statutory charges required by this
article, including the fee of the clerk of the county commission for the issuance of a certificate of redemption, and of any unpaid expenses incurred by the sheriff, the auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall issue duplicate receipts for the payment and shall note on said receipts that the property has been redeemed. One of such receipts shall be given to the person redeeming and the other receipt shall be filed with the clerk of the county commission with the fee for the certificate of redemption. The clerk shall endorse on the receipt the fact and time of such filing, note the fact of redemption on his record of delinquent lands, and issue a certificate of redemption pursuant to the provisions of section twenty-six of this article.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He shall lose his right to the lien, however, unless within thirty days after payment he shall file with the clerk of the county commission his claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-57. Notice of redemption to purchaser; moneys received by sheriff.

(a) Upon payment of the sum necessary to redeem, the deputy commissioner shall promptly notify the purchaser, his heirs or assigns, by mail of the redemption and deliver to the sheriff the redemption money paid. The notice by mail shall advise that upon the request of the purchaser, his heirs or assigns, the sheriff shall pay to the purchaser the sums described in section fifty-eight of this article.
(b) Of the redemption money received by the sheriff pursuant to this section, the sheriff shall hold as surplus to be disposed of pursuant to section sixty-four of this article an amount thereof equal to (1) the surplus of money paid in excess of the amount of the taxes, interest and charges due and paid to the sheriff at the sale; and (2) the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month thereon from the date of sale to the date of redemption.

§11A-3-58. Distribution of surplus to purchaser.

(a) Where the land has been redeemed in the manner set forth in section fifty-six of this article, and the deputy commissioner has delivered the redemption money to the sheriff pursuant to section fifty-seven of this article, the sheriff shall, upon request made of him by the purchaser, his heirs or assigns, and upon delivery to the sheriff of the purchaser's receipt for the sale, pay to the purchaser, his heirs or assigns the following amounts: (1) (A) The surplus of money paid in excess of the amount of the taxes, interest and charges due and paid to the deputy commissioner at the sale, and (B) the amount of taxes, interest and charges due on the date of the sale, plus the interest at the rate of one percent per month from the date of sale to the date of redemption; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount which shall be paid, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section fifty-two of this article, and any title examination incident thereto, shall not exceed one hundred dollars; and (4) all additional statutory costs paid by the purchaser.

(b) Where, pursuant to section fifty-six of this article, the deputy commissioner has not received from the
purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any title examination incident thereto, in the form of receipts or other evidence thereof, and therefore received from the purchaser as required by said section and delivered to the sheriff the sum of one hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the sheriff has not received from the purchaser such satisfactory proof of such expenses within thirty days from the date of redemption, the sheriff shall refund such amount to the person redeeming and the purchaser is barred from any claim thereto. Where pursuant to section fifty-six of this article, the deputy commissioner has received from the purchaser and therefore delivered to the sheriff said sum of one hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale to the date of redemption, and the purchaser provides the sheriff within thirty days from the date of redemption such satisfactory proof of such expenses, and the amount of such expenses is less than the amount paid by the person redeeming, the sheriff shall refund the difference to the person redeeming.

§11A-3-59. Deed to purchaser; record.

If the real estate described in the notice is not redeemed within the time specified therein, but in no event prior to the first day of the third month following the deputy commissioner's sale, the deputy commissioner shall, upon the request of the purchaser, make and deliver to the person entitled thereto a quitclaim deed for such real estate in form or effect as follows:

This deed, made this __________ day of __________, 19__, by and between ______________, deputy commissioner of delinquent and nonentered lands of ______________ County, West Virginia, grantor, and ______________, purchaser (or ______________ heir, devisee, assignee of ______________, purchaser) grantee, witnesseth, that

Whereas, in pursuance of the statutes in such case made and provided, ______________, deputy commis-
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17 sioner of delinquent and nonentered lands of _______
18 County, did, on the ______________ day of
19 ___________________, 19__, sell the real estate
hereinafter mentioned and described for the taxes
17 delinquent thereon for the year(s) 19__, (or as
18 nonentered land for failure of the owner thereof to have
the land entered on the land books for the years
19 ______, or as property escheated to the State of West
19 Virginia, or as waste or unappropriated property) for
19 the sum of $ ______________, that being the amount
of purchase money paid to the deputy commissioner, and
20 ______________ (here insert name of purchaser) did
21 become the purchaser of such real estate, which was
22 returned delinquent in the name of ___________
23 (or nonentered in the name of, or escheated from the
24 estate of, or which was discovered as waste or unappropri-
25 rated property); and

34 Whereas, the deputy commissioner has caused the
35 notice to redeem to be served on all persons required by
36 law to be served therewith; and

37 Whereas, the real estate so purchased has not been
38 redeemed in the manner provided by law and the time
39 for redemption set forth in such notice has expired.

40 Now, therefore, the grantor for and in consideration
41 of the premises recited herein, and pursuant to the
42 provisions of Article 3, Chapter 11A of the West
43 Virginia Code, doth grant unto ____________
44 grantee, his heirs and assigns forever, the real estate so
45 purchased, situate in the County of ____________,
46 bounded and described as follows: ____________
47 (here insert description of property)

48 Witness the following signature:

49 __________________________ Deputy Commis-
50 sioner of Delinquent and Nonentered Lands of
51 _______ County

52 Except when ordered to do so as provided in section
53 sixty of this article, the deputy commissioner shall not
54 execute and deliver a deed more than thirty days after
55 the purchaser's right to the deed accrued.
For the preparation and execution of the deed and for all the recording required by this section, a fee of fifty dollars shall be charged, to be paid by the grantee upon delivery of the deed. The deed, when duly acknowledged or proven, shall be recorded by the clerk of the county commission in the deed book in his office, together with the assignment from the purchaser, if one was made, the notice to redeem, the return of service of such notice, the affidavit of publication, if the notice was served by publication, and any return receipts for notices sent by certified mail.

§11A-3-60. Compelling service of notice or execution of deed.

If the deputy commissioner fails or refuses to prepare and serve the notice to redeem as required in sections fifty-four and fifty-five of this article, the person requesting the notice may, at any time within two weeks after discovery of such failure or refusal, but in no event later than sixty days following the date the person requested that notice be prepared and served, apply by petition to the circuit court of the county for an order compelling the deputy commissioner to procure and serve the notice, or appointing a commissioner to do so. If the person requesting the notice fails to make such application within the time allowed, he shall lose his right to the notice, but his rights against the deputy commissioner under the provisions of section sixty-seven of this article shall not be affected. Notice given pursuant to an order of the court or judge shall be valid for all purposes as if given within the time required by section fifty-five of this article.

If the deputy commissioner fails or refuses to prepare and execute the deed as required in the preceding section, the person requesting the deed may, at any time after such failure or refusal, but not more than six months after his right to the deed accrued, apply by petition to the circuit court of the county for an order compelling the deputy commissioner to prepare and execute the deed or appointing a commissioner to do so. If the person requesting the deed fails to make such application within the time allowed, he shall lose his
right to the deed, but his rights against deputy
commissioner under the provisions of section sixty-seven
of this article shall remain unaffected. Any deed
executed pursuant to an order of the court shall have
the same force and effect as if executed and delivered
by deputy commissioner within the time specified in the
preceding section.

Ten days written notice of every such application
must be given to deputy commissioner. If, upon the
hearing of such application, the court is of the opinion
that the applicant is not entitled to the notice or deed
requested, the petition shall be dismissed at his costs;
but, if the court is of the opinion that he is entitled to
such notice or deed, then, upon his deposit with the clerk
of the circuit court of a sum sufficient to cover the costs
of preparing and serving the notice, unless such a
deposit has already been made with deputy commis-
sioner, an order shall be made by the court directing the
deputy commissioner to prepare and serve the notice or
execute the deed, or appointing a commissioner for the
purpose, as the court or judge shall determine. The
order shall be filed with the clerk of the circuit court
and entered in the civil order book. If it appears to the
court that the failure or refusal of deputy commissioner
was without reasonable cause, judgment shall be given
against him for the costs of the proceedings, otherwise
the costs shall be paid by the applicant.

Any commissioner appointed under the provisions of
this section shall be subject to the same liabilities as
deputy commissioner. For the preparation of the notice
to redeem, he shall be entitled to the same fee as is
provided for deputy commissioner. For the preparation
and execution of the deed, he shall also be entitled to
a fee of fifty dollars, to be paid by the grantee upon
delivery of the deed.

§11A-3-61. One deed for separate purchases.

Whenever one purchaser at the tax sale has purchased
two or more pieces of real estate, or undivided interests
therein, charged with taxes for the same year, or years,
he, his heirs or assigns, may request the deputy
commissioner to execute a separate deed for each piece of real estate or undivided interest therein, or separate deeds for some and one deed for the remainder, or one deed for all, as he or they may prefer. Every deed for two or more pieces of real estate, or undivided interests therein, shall describe each piece of real estate and each undivided interest separately.

§11A-3-62. Title acquired by individual purchaser.

(a) Whenever the purchaser of any tax lien on any real estate sold at a tax sale, his heirs or assigns, shall have obtained a deed for such real estate from the deputy commissioner or from a commissioner appointed to make the deed, he or they shall thereby acquire all such right, title and interest, in and to the real estate, as was, at the time of the execution and delivery of the deed, vested in or held by any person who was entitled to redeem, unless such person is one who, being required by law to have his interest separately assessed and taxed, has done so and has paid all the taxes due thereon, or unless the rights of such person are expressly saved by the provisions of section forty-nine of this article or section two, three, four or six, article four of this chapter.

The tax deed shall be conclusive evidence of the acquisition of such title. If the property was sold for nonpayment of taxes, the title so acquired shall relate back to the first day of July of the year in which the taxes, for nonpayment of which the real estate was sold, were assessed. If the property was sold for nonentry pursuant to section thirteen of this article, or escheated to the state, or is waste and unappropriated property, the title shall relate back to the date of sale.

(b) Any individual purchaser to whom a tax deed has been issued may institute and prosecute actions to quiet title in any such real estate conveyed thereby. Such action may be maintained for all or any one or more of the lots or tracts conveyed.

§11A-3-63. Effect of irregularity on title acquired by purchaser.
No irregularity, error or mistake in respect to any step in the procedure leading up to and including delivery of the tax deed by the deputy commissioner shall invalidate the title acquired by the purchaser unless such irregularity, error or mistake is, by the provisions of section forty-nine of this article or section two, three, four or six, article four of this chapter, expressly made ground for instituting a suit to set aside the sale or the deed.

§11A-3-64. Sheriff to receive proceeds of deputy commissioners’ sales and redemptions from the deputy commissioner; disposition.

(a) The sheriff shall receive all proceeds of sales held by the deputy commissioner pursuant to sections forty-five and forty-eight of this article, and all redemption money paid to the deputy commissioner pursuant to this article. All funds to be paid to the deputy commissioner pursuant to any provision of this article shall be paid by check or money order payable to the sheriff of the county. The deputy commissioner shall, immediately upon receipt of any such payment, turn such moneys over to the sheriff.

(b) The sheriff shall keep in a separate fund the proceeds of all redemptions and sales paid to him under the provisions of sections forty-five, forty-eight and fifty-six of this article. Out of the total proceeds of each sale or redemption he shall, in the order of priority stated below, credit the following amount for payment as hereinafter provided: (1) To the deputy commissioner, such part as represents compensation due him under the provisions of section sixty-six of this article; (2) to the auditor, such part as represents any charges which were paid by or which are payable to him; and (3) to the general county fund, such part as represents costs paid out of such fund for publishing the sheriff’s delinquent and sales list and all other costs incurred by the sheriff pursuant to the provisions of this article; and (4) to the auditor for credit to the general school fund, such part as represents all taxes and interest chargeable in respect to any nonentered lands, and all surplus proceeds of sale of any waste and unappropriated lands.
In addition thereto, surplus proceeds from the deputy commissioner's sale of delinquent and nonentered lands, as well as the proceeds from the sale of escheated lands, shall be held by the sheriff for the periods provided in section sixty-five of this article and section seven, article four of this chapter, and if no claim is made therefore to the sheriff within the time therein specified, such amounts shall be paid to the auditor for credit to the general school fund.

The balance, if any, of the proceeds of the lands sold by the deputy commissioner shall be prorated among the various taxing units on the basis of the total amount of taxes due them in respect to the lands that were sold or redeemed. The amounts so determined shall be credited as follows, for payment as hereinafter provided:

(1) To the auditor, such part as represents state taxes and interest; and (2) to the fund kept by the sheriff for each local taxing unit, such part as represents taxes and interest payable to such unit.

(c) All amounts which under the provisions of this section were so credited by the sheriff to the deputy commissioner shall be paid to him quarterly; those credited to the auditor shall be paid to him semiannually; and those credited to the various local taxing units shall be transferred semiannually by the sheriff to the fund kept by him for each such taxing unit.

(d) The tax commissioner, in cooperation with the land department in the auditor's office, shall prescribe the form of the records to be kept by the sheriff for the purposes of this section, and the method to be used by him in making the necessary pro rata distributions.

§11A-3-65. Right of former owner to surplus proceeds.

The former owner of any delinquent or nonentered lands sold pursuant to sections forty-five and forty-eight of this article, his heirs or assigns, shall be entitled to the surplus received from the sale over and above the taxes and interest charged or chargeable thereon including all costs of the sale, if his, or their claim be filed in the circuit court of the county in which the land is situated within two years after the date of confirma-

As compensation for his services, the deputy commissioner shall be entitled to a fee of ten dollars for each item certified to him by the auditor pursuant to section forty-four of this article. In addition thereto he shall receive a commission of fifteen percent on each sale or redemption. Such commission on sales shall be based on sale price and on redemptions on the total taxes and interest due. Such compensation shall be paid as provided in this article.

PART III

§11A-3-67. Liability of officer failing to perform duty; penalty.

If any officer mentioned in this article shall refuse to perform any duty required of him, he shall forfeit not less than twenty-five nor more than one hundred dollars for each such failure or refusal, unless a different penalty is imposed by the provisions of this article.

§11A-3-68. Disposition of lands heretofore purchased by or forfeited to state.

All lands which have been heretofore purchased by the state at a tax sale pursuant to the provisions of the former article three of this chapter and which have not been redeemed from the auditor or certified to the circuit court for sale as provided in the former article four of this chapter shall be reported by the auditor to the sheriff of the county in which the lands are situated for reentry on the landbooks. Such lands shall be reentered on the landbooks in the name of the person charged with taxes on the land at the time of purchase by the state, and charged with all unpaid taxes thereon, including those taxes which have accrued since such purchase by the state, and all costs charged to such lands arising from the tax sale and purchase by the state. Such lands shall then be subject to disposition.
pursuant to this article.

All lands which have heretofore been forfeited to the state pursuant to the provisions of former article four of this chapter, and which have not been certified to the circuit court for sale pursuant to such article, shall be deemed nonentered pursuant to section thirty-seven of this article, and shall be subject to redemption and sale as provided herein.

All lands which have heretofore been certified to the circuit court for sale by the deputy commissioner pursuant to the provisions of the former article four of this chapter shall be deemed certified to the deputy commissioner for sale pursuant to section forty-four of this article, and shall be subject to redemption and sale as provided herein. All suits heretofore instituted by the deputy commissioners pursuant to the provisions of the former article four of this chapter, which have not been reduced to judgment for the sale of all lands listed in such suits, are hereby dismissed, and the lands listed in such suits shall be deemed certified to the deputy commissioner pursuant to section forty-four of this article and shall be subject to redemption and sale as provided herein. All lands subject to sale under any court order entered in any such suit, which have not yet been sold pursuant to such order, shall be deemed certified to the deputy commissioner for sale pursuant to section forty-four of this article, and shall be subject to redemption and sale as provided herein. All lands which have been sold prior to the effective date of this act under any court order entered in any such suit shall be deemed sold and any tax deed which has or shall issue for any such land pursuant to the provisions of the former article four of this chapter are hereby confirmed as valid, subject to the discretion of the court as set forth in the former section thirty-one, article four of this chapter: Provided, That if the court refuses to confirm said sale, the land shall be deemed certified to the deputy commissioner for sale pursuant to section forty-four of this article, and shall be subject to redemption and sale as provided herein.

ARTICLE 4. REMEDIES RELATING TO TAX SALES.
§11A-4-1. Declaration of legislative purpose.

In furtherance of the policy declared in section one, article three of this chapter, it is the intent and purpose of the Legislature to provide reasonable opportunities for delinquent taxpayers to protect their interests in their lands and to provide reasonable remedies in certain circumstances for persons with interests in delinquent and escheated lands.

§11A-4-2. Right to set aside sale or deed when all taxes paid before sale.

Any owner of real estate for which a tax lien was sold for nonpayment of taxes pursuant to the provisions of article three of this chapter, when all taxes thereon had in fact been paid before the sale, his heirs and assigns, or the person who paid the taxes, may, before the expiration of three years following the sale, institute a civil action to set aside the sale and to enjoin the proper official from taking any further steps in the procedure provided in this and the following article, or, if a deed has been delivered to the purchaser, before the expiration of three years following the delivery of the deed, institute a civil action to set aside the deed. If such action is instituted by or on behalf of the owner of an undivided interest which was included in a group assessment but which was separately redeemed as provided in section eighteen, article two of this chapter, the sale or the deed shall be set aside only insofar as it affects his interest.

§11A-4-3. Right to set aside deed improperly obtained.

(a) Whenever the clerk of the county commission has delivered a deed to the purchaser after the time specified in section twenty-seven of article three of this chapter, or, within that time, has delivered a deed to a
purchaser who was not entitled thereto either because of his failure to meet the requirements of section nineteen of said article three, or because the property conveyed had been redeemed, the owner of such property, his heirs and assigns, or the person who redeemed the property, may, before the expiration of three years following the delivery of the deed, institute a civil action to set aside the deed. No deed shall be set aside under the provisions of this section, except in the case of redemption, until payment has been made or tendered to the purchaser, or his heirs or assigns, of the amount which would have been required for redemption, together with any taxes which have been paid on the property since delivery of the deed, with interest at the rate of twelve percent per annum.

(b) Whenever the deputy commissioner has delivered a deed to the purchaser after the time specified in section fifty-nine of article three of this chapter, or, within that time, has delivered a deed to a purchaser who was not entitled thereto either because of his failure to meet the requirements of section fifty-two of said article three, or because the property conveyed had been redeemed, the owner of such property, his heirs and assigns, or the person who redeemed the property, may, before the expiration of three years following the delivery of the deed, institute a civil action to set aside the deed. No deed shall be set aside under the provisions of this section, except in the case of redemption, until payment has been made or tendered to the purchaser, or his heirs or assigns, of the amount which would have been required for redemption, together with any taxes which have been paid on the property since delivery of the deed, with interest at the rate of twelve percent per annum.

§11A-4-4. Right to set aside deed when one entitled to notice not notified.

(a) If any person entitled to be notified under the provisions of section twenty-two or fifty-five, article three of this chapter is not served with the notice as therein required, and does not have actual knowledge that such notice has been given to others in time to
protect his interests by redeeming the property, he, his
heirs and assigns, may, before the expiration of three
years following the delivery of the deed, institute a civil
action to set aside the deed. No deed shall be set aside
under the provisions of this section until payment has
been made or tendered to the purchaser, or his heirs or
assigns, of the amount which would have been required
for redemption, together with any taxes which have
been paid on the property since delivery of the deed,
with interest at the rate of twelve percent per annum.

(b) No title acquired pursuant to this article shall be
set aside in the absence of a showing by clear and
convincing evidence that the person who originally
acquired such title failed to exercise reasonably diligent
efforts to provide notice of his intention to acquire such
title to the complaining party or his predecessors in title.

(c) Upon a preliminary finding by the court that the
deed will be set aside pursuant to this section, such
amounts shall be paid within one month of the entry
thereof. Upon the failure to pay the same within said
period of time, the court shall upon the request of the
purchaser, enter judgment dismissing the action with
prejudice.

§11A-4-5. On whose behalf suits instituted; decree when
deed set aside.

Any civil action instituted under the provisions of
section two, three or four of this article by a person other
than the former owner, his heirs or assigns, must be
brought on his or their behalf. Whenever the deed in
such case is set aside, the decree shall be that all the
right, title and interest of the former owner, his heirs
or assigns, is revested in him or them.

§11A-4-6. Redemption by persons under disability from
purchase by individual.

In addition to and notwithstanding any other provi-
sions of this article, any infant or mentally incapacitated
person whose real estate was, during such disability,
conveyed by tax deed pursuant to this chapter to an
individual purchaser, may redeem such real estate by
paying to the purchaser, or his heirs or assigns, before
the expiration of one year after removal of the disability,
but in no event more than twenty years after the deed
was obtained, the amount of the purchase money,
together with the necessary charges incurred in obtaining
the deed, and any taxes paid on the property since
the sale, with interest on such items at the rate of twelve
percent per annum from the date each was paid. If such
person was the owner of an undivided interest in the
real estate sold, he may redeem such interest by paying
that proportion of the purchase money, charges, taxes
and interest chargeable to his interest; but after a deed
has been delivered to the purchaser, he shall not have
the right to redeem more than his own undivided
interest. If improvements have been made on such real
estate after the deed was obtained and before the offer
to redeem as herein provided, the person redeeming
shall pay to the purchaser, or his heirs or assigns, the
value of the improvements at the time of such offer,
after deducting therefrom the value of the use of such
real estate without the improvements, from the date of
the deed to the date of the offer. Upon payment or
tender of payment, the purchaser, his heirs or assigns,
shall, at the expense of the person redeeming, convey to
him by quitclaim deed the real estate so redeemed.

One entitled to redeem under the provisions of this
section may, if he is unable or is not willing to pay for
the improvements made by the purchaser, elect to
relinquish his interest in the property. If he so elects,
he shall be entitled to an amount equal to the estimated
present value of the land without the improvements less
what he would have had to pay to redeem the land had
no improvements been made. Upon payment to him of
such amount, he shall by quitclaim deed convey the land
to the purchaser, his heirs or assigns.

If in any case provided for in this section the parties
cannot agree on the amount to be paid, any of them may
upon ten days' notice in writing to the other, or others,
apply by petition, to the circuit court of the county in
which the real estate is situated to have the matter
referred to a commissioner to ascertain the proper
amount to be paid. Upon confirmation by the court or
judge of the report of the commissioner, and upon
payment or tender of the amount, if any, so ascertained
to be due, the person to whom payment or tender was
made, shall execute the quitclaim deed as provided
above. In the event of his refusal to do so, the court, or
judge, may appoint a commissioner to execute the deed.

If there is a refusal to execute the deed in any case
in which there was no dispute as to the amount
necessary for redemption, the person entitled to the deed
may, upon ten days' notice in writing to the other party
or parties, apply by petition to the circuit court for the
appointment of a commissioner to execute the deed.

§11A-4-7. Right of creditor of former owner of escheated
land.

Any surplus proceeds arising from the sale of
escheated land may be applied for by the creditors of
the decedent if application is made to the circuit court
of the county in which the land is situated within one
year after the auditor has confirmed the sale. Upon
proper application to the court within such time such
surplus may be applied to the satisfaction of the claims
of creditors of the decedent who had a lien on the land
at the time of his death, or who, being general creditors,
have properly proved their claims against his estate and
have been unable to obtain payment out of the person-
alty. In the disposition of such surplus, due preference
shall be given to lien creditors. Any part of such surplus
thereafter remaining shall be paid by the sheriff to the
auditor for credit to the general school fund.

CHAPTER 88
(Com. Sub. for H. B. 4214—By Mr. Speaker, Mr. Chambers, and
Delegates Huntwork, Houvouras, S. Williams, Linch, Fragale and Leach)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended, relating to leases
entered into by the secretary of the department of
administration.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

CHAPTER 89
(S. B. 243—By Senators Lucht and Macnaughtan)
[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article
seventeen, chapter eighteen-b of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, relating to legislative rules; authorizing
specific regulations relating to higher education includ-
ing acceptance of advanced placement credit; assess-
ment, payment and refund of fees; personnel adminis-
tration; and resource allocation.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

(a) The legislative rules filed in the state register on the third day of December, one thousand nine hundred ninety-one, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of trustees (report card), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of July, one thousand nine hundred ninety-one, relating to the board of trustees (equal opportunity and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the eighth day of September, one thousand nine hundred ninety-two, relating to the board of trustees (holidays), are authorized.

(d) The legislative rules filed in the state register on the third day of April, one thousand nine hundred ninety-two, relating to the board of trustees (alcoholic beverages on campuses), are authorized.

(e) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred ninety-three, relating to the board of trustees (acceptance of advanced placement credit), are authorized.

(f) The legislative rules filed in the state register on the thirteenth day of December, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight
Commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the board of trustees (assessment, payment and refund of fees), are authorized.

(g) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of trustees to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of trustees (personnel administration), are authorized.

§18B-17-3. Board of directors.

(a) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred ninety-one, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-two, relating to the board of directors (report card), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred ninety-one, relating to the board of directors (equal opportunity and affirmative action), are authorized.

(c) The legislative rules filed in the state register on the fourth day of December, one thousand nine hundred ninety-one, relating to the board of directors (holiday policy), are authorized.

(d) The legislative rules filed in the state register on the nineteenth day of March, one thousand nine hundred ninety-two, as modified and refiled in the state register on the tenth day of July, one thousand nine hundred ninety-two, relating to the board of directors (presidential appointments, responsibilities and evaluations), are authorized.

(e) The legislative rules filed in the state register on
the twentieth day of September, one thousand nine hundred ninety-three, relating to the board of directors (acceptance of advanced placement credit), are authorized.

(f) The legislative rules filed in the state register on the tenth day of December, one thousand nine hundred ninety-three, relating to the board of directors (resource allocation policy), are authorized.

(g) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the eleventh day of January, one thousand nine hundred ninety-four, relating to the board of directors (assessment, payment and refund of fees), are authorized.

(h) The legislative rules filed in the state register on the first day of November, one thousand nine hundred ninety-three, modified by the board of directors to meet the objections of the legislative oversight commission on education accountability and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-three, relating to the board of directors (personnel administration), are authorized.

CHAPTER 90

(Com. Sub. for H. B. 4066—By Delegate Gallagher)

[Passed February 21, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four; to amend and reenact section six, article two of said chapter; to amend and reenact sections five, nine, eleven, twelve, thirteen, fifteen, fifteen-a and fifteen-b, article three of said chapter; and to amend and reenact sections six, ten, sixteen and
sixteen-a, article three-a of said chapter, all relating to the filing of rules in the state register and the promulgation of legislative rules; providing for the application of the open governmental proceedings law; requiring the secretary of state to promulgate a procedural rule requiring the use of a uniform system of electronic transmission for the filing of rules with the secretary of state; authorizing the secretary of state to grant exceptions to such requirement; providing for notice of proposed rule making; prohibiting ex parte communications with an agency after close of public comment and before final agency approval of a proposed rule; requiring notice of a proposal of legislative rules and describing when a proposed rule shall have force and effect; authorizing the secretary of the executive department administering an agency to submit proposed rules to the legislative rule-making review committee unless an agency, board or commission proposing a rule is not administered by an executive department; allowing the Legislature to combine and group bills authorizing legislative rules by executive departments, by agencies and by bills having a unity of subject matter; providing that the single object of a bill of authorization is to authorize the promulgation of legislative rules; authorizing the secretary of the executive department administering an agency to promulgate legislatively authorized rules unless an agency, board or commission promulgating the rule is not administered by an executive department; redefining the authority of the secretary of state and the attorney general to disapprove the filing of an emergency rule or an amendment to an emergency rule; making certain technical changes throughout article three; providing for notice of proposed rule-making by the university of West Virginia board of trustees or the board of directors of the state college system; prohibiting ex parte communications with a board after close of public comment and before final board approval of a proposed rule; requiring notice of a proposal of legislative rules and describing when a proposed rule shall have force and effect; redefining the authority of the secretary of state to disapprove the filing of an
emergency rule or an amendment to an emergency rule; and making certain technical changes throughout article three-a.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Definitions and Application of Chapter.
2. State Register.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.


(a) All meetings of an agency, board or commission of the executive branch of government or of the legislative rule-making review committee which may only be convened upon the presence of a required quorum, and which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of a rule, as defined in subsection (i), section two of this article, are subject to the open governmental proceedings law as set forth in article nine-a, chapter six of this code, except as may otherwise be provided for in this section.

(b) When an agency, board or commission is considering the form and substance of a rule or proposed rule, the informal occurrence of (1) consultations between the governing members of the agency, board or commission and its staff members, (2) deliberations by the governing members, or (3) the engagement of a governing member or members in the process of making a decision, does not constitute a meeting within the meaning of article
nine-a, chapter six of this code when, during such
stages, neither a quorum nor the convening of the
governing members of the agency, board or commission
is required.

(c) When the legislative rule-making review commit-
tee is considering the form and substance of a rule or
proposed rule, the informal occurrence of (1) consulta-
tions between the members of the committee and its
staff members, (2) deliberations by the governing
members, or (3) the engagement of a governing member
or members in the process of making a decision, does
not constitute a meeting within the meaning of article
nine-a, chapter six of this code when, during such
stages, neither a quorum nor the convening of the
members of the committee is required.

(d) After public hearing or the close of the public
comment period, during which hearing or period an
agency, board or commission has received statements
concerning the form and substance of a rule or proposed
rule, the agency, board or commission shall not permit
the filing or receipt of, nor shall it consider, any
attempted ex parte communications directed to it in the
form of additional comment, prior to the submission of
its final agency-approved rule to the legislative rule-
making review committee pursuant to the provisions of
section eleven, article three of this chapter. Nothing
contained herein shall prohibit the agency, board or
commission from soliciting or receiving information
relating to the rule or proposed rule from the federal
government, from the Legislature or its members, or
from another agency, board or commission of the
executive branch of the government of this state.

(e) After a proposed rule is approved for submission
and is submitted to the legislative rule-making review
committee pursuant to the provisions of section eleven,
article three of this chapter, the right of the people to
assemble, to petition government, to consult for the
common good, to instruct their representatives, and to
apply for redress of grievances, in accordance with the
provisions of section sixteen, article III of the Constitu-
tion, shall reserve to a person the right to freely
61 communicate, ex parte or otherwise, with the agency, board or commission or the legislative rule-making review committee in attempts to influence deliberations or decision-making regarding the form and substance of the proposed rule prior to authorization being granted for promulgation of the rule.

ARTICLE 2. STATE REGISTER.


(a) Each proposed rule filed by an agency requiring a notice to be published in the state register in accordance with the provisions of section five, article three of this chapter shall include as its initial provisions: (1) A statement identifying such rule as a legislative rule, an interpretive rule or a procedural rule, as the case may be; (2) a statement of such section, article and chapter of this code to which such rule or any part thereof relates; and (3) a statement of the section, article and chapter of this code or any other provision of law which provides authority for the promulgation of such rule. The agency shall be estopped from relying on any authority for the promulgation of such rule which is not stated therein in accordance with the requirements of this subdivision.

(b) Each rule when filed, to be finally effective, shall have attached thereto an abstract of its promulgation history prepared by the agency showing the date of the filing in the state register of the content of, or notice of any procedure relating to, action necessary under this chapter to cause such rules to be finally effective: Provided, That any error or omission in such abstract shall not affect the validity of any rule or action in respect thereto.

(c) The secretary of state shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state register and he may prescribe such procedural or interpretive rules as he deems advisable to clarify and interpret the provisions in this section. The secretary of state shall refuse to accept for filing any rules which do not comply with the
specific provisions of this section, and he may refuse to accept for filing any rules which do not comply with the procedural rules issued by him pursuant to this section until the rules sought to be filed are brought into conformity with the secretary of state's procedural rules.

(d) Unless and until the secretary of state prescribes otherwise by rule issued and made effective under the provisions of subsection (c) of this section, each rule filed in this state register shall be on white paper measuring eight and one-half inches by eleven inches, typewritten and single-spaced, with a one inch margin at the top, bottom and each side of each page, and shall be reproduced photographically, or by xerography or other duplication process. The secretary of state may grant specific exceptions to such requirements in the case of maps, diagrams and exhibits, if the same may not be conveniently folded and fastened with the other pages of rules and in the case of rules which incorporate the promulgation of a federal agency or other organization which could not be submitted in the standard size and format except at undue expense. Materials submitted for inclusion in the state register shall be fastened on the left side by two or more fasteners attached through holes suitable for insertion into ring binders.

(e) The secretary of state shall also prescribe by procedural rule a uniform system for the electronic filing of a proposed rule or emergency rule or a modification thereof, or a legislatively authorized rule, either (1) by the direct electronic transmission of data to a terminal in the office of the secretary of state, or (2) by the delivery to the secretary of state of a machine-readable copy of the filing on a medium such as magnetic tape or disk, or the like, which system shall be used in the process of filing proposed rules, emergency rules, modifications and authorized rules with the secretary of state. The secretary of state may grant exceptions to the requirement for electronic filing in the case of agencies, boards or commissions which do not have reasonable access to a compatible electronic transmission system or a means of creating a machine-readable copy, but, if an exception is granted, the
secretary of state shall create a machine-readable copy of the proposed rule, emergency rule, modification or authorized rule. The electronic filing required by the provisions of this section shall not obviate any requirement for the filing of printed paper copies of the proposed rule, emergency rule, modification or authorized rule as may be required by this chapter.

ARTICLE 3. RULE MAKING.

§29A-3-5. Notice of proposed rule making.
§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.
§29A-3-12. Submission of legislative rules to Legislature.
§29A-3-13. Adoption of legislative rules; effective date.
§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.
§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the secretary of state; judicial review.
§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.

§29A-3-5. Notice of proposed rule making.

1 When an agency proposes to promulgate a rule other than an emergency rule, it shall file with the secretary of state, for publication in the state register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. At the time of filing the notice of its action, the agency shall also file with the secretary of state a copy of the full text of the rule proposed, and a fiscal note as defined in subsection (b), section four of this article. If the agency is considering alternative draft proposals, it may also file with the secretary of state the full text of such draft proposals.

14 The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements, and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the agency of the proposed rule, and shall contain a general description of the issues to be decided. If no specific findings and determinations are required as a condition precedent to
the final approval by the agency of the approved rule,
the notice shall fix a date, time and place for the receipt
of general public comment on the proposed rule.

If findings and determinations are a condition
precedent to the promulgation of such rule, then an
opportunity for general public comment on the merits
of the rule shall be afforded after such findings and
determinations are made. In such event, notice of the
hearing, or of the period for receiving public comment
on the proposed rule shall be attached to and filed as
a part of the findings and determinations of the agency
when filed in the state register.

In any hearing for public comment on the merits of
the rule, the agency may limit presentations to written
material. The time, date and place fixed in the notice
shall constitute the last opportunity to submit any
written material relevant to any hearing, all of which
may be earlier submitted by filing with the agency.

After the public hearing or the close of the public
comment period, whichever is later, the agency shall not
permit the filing or receipt of, nor shall it consider, any
attempted ex parte communications directed to it in the
form of additional comment, prior to the submission of
its final agency-approved rule to the legislative rule-
making review committee pursuant to the provisions of
section eleven of this article.

The agency may also, at its expense, cause to be
published as a Class I legal publication in every county
of the state any notice required by this section.

Any citizen or other interested party may appear and
be heard at such hearings as are required by this
section.


When an agency proposes a legislative rule, other
than an emergency rule, it shall be deemed to be
applying to the Legislature for permission, to be granted
by law, to promulgate such rule as approved by the
agency for submission to the Legislature or as amended
and authorized by the Legislature by law.
An agency proposing a legislative rule, other than an emergency rule, after filing the notice of proposed rule-making required by the provisions of section five of this article, shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the agency shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative rule-making review committee.

Such final agency approval of the rule under this section is deemed to be approval for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to the provisions of section thirteen of this article.

§29A-3-11. Submission of legislative rules to the legislative rule-making review committee.

(a) When an agency finally approves a proposed legislative rule for submission to the Legislature, pursuant to the provisions of section nine of this article, the secretary of the executive department which administers the agency pursuant to the provisions of article two, chapter five-f of this code shall submit to the legislative rule-making review committee at its offices or at a regular meeting of such committee fifteen copies of: (1) The full text of the legislative rule as finally approved by the agency, with new language underlined and with language to be deleted from any existing rule stricken through but clearly legible; (2) a brief summary of the content of the legislative rule and a description and a copy of any existing rule which the agency proposes to amend or repeal; (3) a statement of the circumstances which require the rule; (4) a fiscal note containing all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents; and (5) any other information which the committee may request or which may be required by...
law. If the agency is an agency, board or commission which is not administered by an executive department as provided for in article two, chapter five-f of this code, the agency shall submit the final agency-approved rule as required by this subsection.

(b) The committee shall review each proposed legislative rule and, in its discretion, may hold public hearings thereon. Such review shall include, but not be limited to, a determination of:

(1) Whether the agency has exceeded the scope of its statutory authority in approving the proposed legislative rule;

(2) Whether the proposed legislative rule is in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific;

(3) Whether the proposed legislative rule conflicts with any other provision of this code or with any other rule adopted by the same or a different agency;

(4) Whether the proposed legislative rule is necessary to fully accomplish the objectives of the statute under which the rule was proposed for promulgation;

(5) Whether the proposed legislative rule is reasonable, especially as it affects the convenience of the general public or of persons particularly affected by it;

(6) Whether the proposed legislative rule could be made less complex or more readily understandable by the general public; and

(7) Whether the proposed legislative rule was proposed for promulgation in compliance with the requirements of this article and with any requirements imposed by any other provision of this code.

(c) After reviewing the legislative rule, the committee shall recommend that the Legislature:

(1) Authorize the promulgation of the legislative rule,

or

(2) Authorize the promulgation of part of the legisla-
(3) Authorize the promulgation of the legislative rule with certain amendments, or

(4) Recommend that the proposed rule be withdrawn.

The committee shall file notice of its action in the state register and with the agency proposing the rule: Provided, That when the committee makes the recommendations of subdivision (2), (3) or (4) of this subsection, the notice shall contain a statement of the reasons for such recommendation.

(d) When the committee recommends that a rule be authorized, in whole or in part, by the Legislature, the committee shall instruct its staff or the office of legislative services to draft a bill authorizing the promulgation of all or part of the legislative rule, and incorporating such amendments as the committee desires. If the committee recommends that the rule not be authorized, it shall include in its report a draft of a bill authorizing promulgation of the rule together with a recommendation. Any draft bill prepared under this section shall contain a legislative finding that the rule is within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret and shall be available for any member of the Legislature to introduce to the Legislature.

§29A-3-12. Submission of legislative rules to Legislature.

(a) No later than forty days before the sixtieth day of each regular session of the Legislature, the cochairmen of the legislative rule-making review committee shall submit to the clerk of the respective houses of the Legislature copies of all proposed legislative rules which have been submitted to and considered by the committee pursuant to the provisions of section eleven of this article and which have not been previously submitted to the Legislature for study, together with the recommendations of the committee with respect to such rules, a statement of the reasons for any recommendation that a rule be amended or withdrawn, and a statement that a bill authorizing the legislative rule has been drafted.
by the staff of the committee or by legislative services pursuant to section eleven of this article. The cochairman of the committee may also submit such rules at the direction of the committee at any time before or during a special session in which consideration thereof may be appropriate. The committee may withhold from its report any proposed legislative rule which was submitted to the committee fewer than two hundred ten days before the end of the regular session. The clerk of each house shall submit the report to his or her house at the commencement of the next session.

All bills introduced authorizing the promulgation of a rule may be referred by the speaker of the House of Delegates and by the president of the Senate to appropriate standing committees of the respective houses for further consideration or the matters may be otherwise dealt with as each house or its rules provide. The Legislature may by act authorize the agency to adopt a legislative rule incorporating the entire rule, or may authorize the agency to adopt a rule with any amendments which the Legislature shall designate. The clerk of the house originating such act shall forthwith file a copy of any bill of authorization enacted with the secretary of state and with the agency proposing such rule and the clerk of each house may prepare and file a synopsis of legislative action during any session on any proposed rule submitted to the house during such session for which authority to promulgate was not by law provided during such session. In acting upon the separate bills authorizing the promulgation of rules, the Legislature may, by amendment or substitution, combine the separate bills of authorization insofar as the various rules authorized therein are proposed by agencies which are placed under the administration of one of the single separate executive departments identified under the provisions of section two, article one, chapter five-f of this code, or, the Legislature may combine the separate bills of authorization by agency or agencies within an executive department. In the case of rules proposed for promulgation by an agency which is not administered by an executive department pursuant to the provisions of article two, chapter five-f of this
code, the separate bills of authorization for the proposed
rules of that agency may, by amendment or substitution,
be combined. The foregoing provisions relating to
combining separate bills of authorization according to
department or agency are not intended to restrict the
permissible breadth of bills of authorization and do not
preclude the Legislature from otherwise combining
various bills of authorization which have a unity of
subject matter. Any number of provisions may be
included in a bill of authorization, but the single object
of the bill shall be to authorize the promulgation of
proposed legislative rules.

(b) If the Legislature fails during its regular session
to act upon all or part of any legislative rule which was
submitted to it by the legislative rule-making review
committee during such session, no agency may thereaf-
ter issue any rule or directive or take other action to
implement such rule or part thereof unless and until
otherwise authorized to do so.

(c) Nothing herein shall be construed to prevent the
Legislature by law from authorizing, or authorizing and
directing, an agency to promulgate legislative rules not
proposed by the agency or upon which some procedure
specified in this chapter is not yet complete.

(d) Whenever the Legislature is convened by procla-
mation of the governor, upon his or her own initiative
or upon application of the members of the Legislature,
or whenever a regular session of the Legislature is
extended or convened by the vote or petition of its
members, the Legislature may by act enacted during
such extraordinary or extended session authorize, in
whole or in part, any legislative rule whether submitted
to the legislative rule-making review committee, or not,
if legislative action on such rule during such session is
a lawful order of business.

(e) Whenever a date is required by this section to be
computed in relation to the end of a regular session of
the Legislature, such date shall be computed without
regard to any extensions of such session occasioned
solely by the proclamation of the governor.
(f) Whenever a date is required to be computed from or is fixed by the first day of a regular session of the Legislature, it shall be computed or fixed in the year one thousand nine hundred eighty-four, and each fourth year thereafter without regard to the second Wednesday of January of such years.

§29A-3-13. Adoption of legislative rules; effective date.

(a) Except as the Legislature may by law otherwise provide, within sixty days after the effective date of an act authorizing promulgation of a legislative rule, the rule shall be promulgated only in conformity with the provisions of law authorizing and directing the promulgation of such rule. In the case of a rule proposed by an agency which is administered by an executive department pursuant to the provisions of article two, chapter five-f of this code, the secretary of the department shall promulgate the rule as authorized by the Legislature. In the case of an agency which is not subject to administration by the secretary of an executive department, the agency which proposed the rule for promulgation shall promulgate the rule as authorized by the Legislature.

(b) A legislative rule authorized by the Legislature shall become effective thirty days after such filing in the state register, or on the effective date fixed by the authorizing act or if none is fixed by law, such later date not to exceed ninety days, as is fixed by the agency.

(c) The secretary of state shall note in the state register the effective date of an authorized and promulgated legislative rule, and shall promptly publish the duly promulgated rule in a code of state rules maintained by his or her office.

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

(a) Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a state-
ment of the facts and circumstances constituting the
emergency, shall be filed with the secretary of state, and
a notice of such filing shall be published in the state
register. Such emergency rules shall become effective
upon the approval of the secretary of state in accordance
with section fifteen-a of this article or upon the approval
of the attorney general in accordance with section
fifteen-b or upon the forty-second day following such
filing, whichever occurs first. Such emergency rules
may adopt, amend or repeal any legislative rule, but the
circumstances constituting the emergency requiring
such adoption, amendment or repeal shall be stated with
particularity and be subject to de novo review by any
court having original jurisdiction of an action challeng-
ing their validity. Fourteen copies of the rules and of
the required statement shall be filed immediately with
the secretary of state and one copy shall be filed
immediately with the legislative rule-making review
committee.

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

(1) The secretary of state, acting under the authority
provided for in section fifteen-a of this article, or the
attorney general, acting under the authority provided
for in section fifteen-b of this article, disapproves the
emergency rule because: (A) The emergency rule or an
amendment to the emergency rule exceeds the scope of
the law authorizing or directing the promulgation
thereof; (B) an emergency does not exist justifying the
promulgation of the emergency rule; or (C) the emer-
gency rule was not promulgated in compliance with the
provisions of this section. An emergency rule may not
be disapproved pursuant to the authority granted by
paragraphs (A) or (B) of this subdivision on the basis
that the secretary of state or the attorney general
disagrees with the underlying public policy established
by the Legislature in enacting the supporting legisla-
tion. An emergency rule which would otherwise be
approved as being necessary to comply with a time
limitation established by this code or by a federal statute
or regulation may not be disapproved pursuant to the
authority granted by paragraphs (A) or (B) of this
subdivision on the basis that the agency has failed to file
the emergency rule prior to the date fixed by such time
limitation. When the supporting statute specifically
directs an agency to promulgate an emergency rule, or
specifically finds that an emergency exists and directs
the promulgation of an emergency rule, the emergency
rule may not be disapproved pursuant to the authority
granted by paragraph (B) of this subdivision. An
emergency rule may not be disapproved on the basis
that the Legislature has not specifically directed an
agency to promulgate the emergency rule, or has not
specifically found that an emergency exists and directed
the promulgation of an emergency rule,

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

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

(4) The Legislature has authorized or directed
promulgation of an authorized legislative rule dealing
with substantially the same subject matter since such
emergency rule was first promulgated, and in which
case the emergency rule expires on the date the
authorized rule is made effective.

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

(b) Any amendment to an emergency rule made by
the agency shall be filed in the state register and does
not constitute a new emergency rule for the purpose of
acquiring additional time or avoiding the expiration
dates in subdivision (2), (3), (4) or (5), subsection (a) of
this section: Provided, That such emergency amendment
shall become effective upon the approval of the secretary of state in accordance with section fifteen-a of this article or upon approval of the attorney general in accordance with section fifteen-b of this article or upon the forty-second day following such filing, whichever occurs first.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (2), (3), (4) or (5), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule.

(d) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(e) The legislative rule-making review committee may review any emergency rule to determine (1) whether the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; (2) whether there exists an emergency justifying the promulgation of such emergency rule; and (3) whether the emergency rule was promulgated in compliance with the requirements and prohibitions contained in this section. The committee may recommend to the agency, the Legislature, or the secretary of state such action as it may deem proper.

(f) For the purposes of this section, an emergency exists when the promulgation of an emergency rule is necessary (1) for the immediate preservation of the public peace, health, safety or welfare, (2) to comply with a time limitation established by this code or by a federal statute or regulation, or (3) to prevent substantial harm to the public interest.

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

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

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

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

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

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

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

(1) The agency which promulgated the emergency rule;

(2) A member of the Legislature; or

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

§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.

(a) Upon the filing of an emergency rule or filing of an amendment to an emergency rule by the secretary of state under the provisions of section fifteen of this article, the attorney general shall review such rule or such amendment and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule or such amendment to an emergency rule should be disapproved.

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

12 (1) That the emergency rule or an amendment to the
13 emergency rule exceeds the scope of the law authorizing
14 or directing the promulgation thereof; or
15 (2) That an emergency does not exist justifying the
16 promulgation of the emergency rule or the filing of an
17 amendment to the emergency rule; or
18 (3) That the emergency rule or an amendment to the
19 emergency rule was not promulgated in compliance
20 with the provisions of section fifteen of this article.
21 (c) If the attorney general determines, based upon the
22 contents of the rule or the supporting information filed
23 by the secretary of state, that the emergency rule should
24 be disapproved, he may disapprove such rule without
25 further investigation, notice or hearing. If, however, the
26 attorney general concludes that the information submit-
27 ted by the secretary of state is insufficient to allow a
28 proper determination to be made as to whether the
29 emergency rule should be disapproved, he may make
30 further investigation, including, but not limited to,
31 requiring the secretary of state or other interested
32 parties to submit additional information or comment or
33 fixing a date, time and place for the taking of evidence
34 on the issues involved in making a determination under
35 the provisions of this section.
36 (d) If the attorney general determines, based upon the
37 contents of the amendment to an emergency rule or the
38 supporting information filed by the agency, that the
39 amendment to the emergency rule should be disap-
40 proved, he may disapprove such amendment without
41 further investigation, notice or hearing. If, however, the
42 attorney general concludes that the information submit-
43 ted by the agency is insufficient to allow a proper
44 determination to be made as to whether the amendment
45 should be disapproved, he may make further investiga-
46 tion, including, but not limited to, requiring the agency
47 or other interested parties to submit additional informa-
48 tion or comment or fixing a date, time and place for the
49 taking of evidence on the issues involved in making a
determination under the provisions of this section.

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

(1) The secretary of state;
(2) A member of the Legislature; or
(3) Any person whose personal property interests will be significantly affected by the approval or disapproval of the emergency rule by the attorney general.

ARTICLE 3A. HIGHER EDUCATION RULE MAKING.

§29A-3A-16a. Disapproval of emergency rules by the secretary of state; judicial review.


1 When the board proposes to promulgate a rule other than an emergency rule, it shall file with the secretary of state, for publication in the state register, a notice of its action, including therein any request for the submission of evidence to be presented on any factual determinations or inquiries required by law to promulgate such rule. At the time of filing the notice of its action, the board shall also file with the secretary of state a copy of the full text of the rule proposed, and a fiscal note as defined in subsection (b), section five of this article. If the board is considering alternative draft proposals, it may also file with the secretary of state the full text of such draft proposals.

14 The notice shall fix a date, time and place for the receipt of public comment in the form of oral statements, written statements, and documents bearing upon any findings and determinations which are a condition precedent to the final approval by the board of the proposed rule, and shall contain a general description of the issues to be decided. If no specific findings and
21 determinations are required as a condition precedent to
22 the final approval by the board of the approved rule, the
23 notice shall fix a date, time and place for the receipt of
24 general public comment on the proposed rule.

25 If findings and determinations are a condition
26 precedent to the promulgation of such rule, then an
27 opportunity for general public comment on the merits
28 of the rule shall be afforded after such findings and
29 determinations are made. In such event, notice of the
30 hearing, or of the period for receiving public comment
31 on the proposed rule shall be attached to and filed as
32 a part of the findings and determinations of the board
33 when filed in the state register.

34 In any hearing for public comment on the merits of
35 the rule, the board may limit presentations to written
36 material. The time, date and place fixed in the notice
37 shall constitute the last opportunity to submit any
38 written material relevant to any hearing, all of which
39 may be earlier submitted by filing with the board. After
40 the public hearing or the close of the public comment
41 period, whichever is later, the board shall not permit the
42 filing or receipt of, nor shall it consider, any attempted
43 ex parte communications directed to it in the form of
44 additional comment, prior to the submission of its final
45 board-approved rule to the legislative oversight commis-
46 sion on education accountability pursuant to the
47 provisions of section twelve of this article.

48 The board may also, at its expense, cause to be
49 published as a Class I legal publication in every county
50 of the state any notice required by this section.

51 Any citizen or other interested party may appear and
52 be heard at such hearings as are required by this
53 section.


1 When the board proposes a legislative rule, other than
2 an emergency rule, it shall be deemed to be applying
3 to the Legislature for permission, to be granted by law,
4 to promulgate such rule as approved by the board for
5 submission to the Legislature or as amended and
authorized by the Legislature by law.

When proposing a legislative rule, other than an emergency rule, and after filing the notice of proposed rule-making required by the provisions of section five of this article, the board shall then proceed as in the case of a procedural and interpretive rule to the point of, but not including, final adoption. In lieu of final adoption, the board shall finally approve the proposed rule, including any amendments, for submission to the Legislature and file such notice of approval in the state register and with the legislative oversight commission on education accountability.

Such final approval of the rule under this section is deemed to be approval for submission to the Legislature only and does not give any force and effect to the proposed rule. The rule shall have full force and effect only when authority for promulgation of the rule is granted by an act of the Legislature and the rule is promulgated pursuant to the provisions of section fourteen of this article.


(a) The board may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule, but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their validity. Fifteen copies of the rules and of the required statement shall be filed forthwith with the legislative oversight commission on education accountability.

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

(1) The secretary of state, acting under the authority provided for in section sixteen-a of this article, disapproves the emergency rule because: (A) The emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; (B) an emergency does not exist justifying the promulgation of the emergency rule; or (C) the emergency rule was not promulgated in compliance with the provisions of this section. An emergency rule may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the secretary of state disagrees with the underlying public policy established by the Legislature in enacting the supporting legislation. An emergency rule which would otherwise be approved as being necessary to comply with a time limitation established by this code or by a federal statute or regulation may not be disapproved pursuant to the authority granted by paragraphs (A) or (B) of this subdivision on the basis that the board has failed to file the emergency rule prior to the date fixed by such time limitation. When the supporting statute specifically directs the board to promulgate an emergency rule, or specifically finds that an emergency exists and directs the promulgation of an emergency rule, the emergency rule may not be disapproved pursuant to the authority granted by paragraph (B) of this subdivision. An emergency rule may not be disapproved on the basis that the Legislature has not specifically directed the board to promulgate the emergency rule, or has not specifically found that an emergency exists and directed the promulgation of an emergency rule.

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

(3) The board has not previously filed and fails to file the proposed rule with the legislative oversight commission on education accountability within one hundred
eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

(4) The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated, and in which case the emergency rule expires on the date the authorized rule is made effective.

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

(b) Any amendment to an emergency rule made by the board shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (2), (3), (4) or (5), subsection (a) of this section.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (2), (3), (4) or (5), subsection (a) of this section, the board may not refile the same or similar rule as an emergency rule.

(d) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(e) The provision of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and approval of proposed rules. Any emergency rule promulgated for any such purpose may be contested in a judicial proceeding before a court of competent jurisdiction.

(f) The legislative oversight commission on education accountability may review any emergency rule to determine (1) whether the board has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether there exists an emergency justifying the promulgation of such rule; and (3)
whether the rule was promulgated in compliance with the requirements and prohibitions contained in this section. The commission may recommend to the board, the Legislature, or the secretary of state such action as it may deem proper.

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

§29A-3A-16a. Disapproval of emergency rules by the secretary of state; judicial review.

(a) Upon the filing of an emergency rule by the board, under the provisions of section sixteen of this article, the secretary of state shall review such rule and, within forty-two days of such filing, shall issue a decision as to whether or not such emergency rule should be disapproved.

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

(1) That the emergency rule or an amendment to the emergency rule exceeds the scope of the law authorizing or directing the promulgation thereof; or

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

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

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

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

(1) The board;
(2) A member of the Legislature; or
(3) Any person whose personal property interests will
be significantly affected by the approval or disapproval
of the emergency rule by the secretary of state.

CHAPTER 91
(S. B. 143—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the secretary of the department of
administration to promulgate legislative rules relating
to the use of domestic aluminum, glass or steel products
in public works projects.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMIN-
ISTRATION TO PROMULGATE LEGISLATIVE RULES.
§64-2-7. Secretary of the department of administration.

(a) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred ninety, modified by the secretary of the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-one, relating to the secretary of the department of administration (plan of operation for the information and communication services division), are authorized.

(b) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred ninety, modified by the secretary of the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-one, relating to the secretary of the department of administration (parking), are authorized.

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred ninety, modified by the secretary of the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-one, relating to the secretary of the department of administration (leasing space on behalf of state spending units), are authorized.

(d) The legislative rules filed in the state register on the nineteenth day of June, one thousand nine hundred ninety-one, modified by the secretary of the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred ninety-one, relating to the secretary of the department of administration (reporting of state assets by financial institutions), are authorized.

(e) The legislative rules filed in the state register on
the sixth day of October, one thousand nine hundred ninety-two, modified by the secretary of the department of administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of July, one thousand nine hundred ninety-three, relating to the secretary of the department of administration (use of domestic aluminum, glass or steel products in public works projects), are authorized.

CHAPTER 92
(S. B. 161—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of culture and history to promulgate legislative rules relating to standards and procedures for granting permits to excavate archaeological sites and unmarked graves.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-3. Division of culture and history.

(a) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety, modified by the division of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety-one, relating to the division of culture and history (standards and procedures for granting permits to
excavate archaeological sites and unmarked graves), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred ninety-three, relating to the division of culture and history (standards and procedures for granting permits to excavate archaeological sites and unmarked graves), are authorized.

CHAPTER 93
(S. B. 158—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of corrections to promulgate legislative rules relating to parole supervision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Division of corrections.

(a) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of the department of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine,
relating to the commissioner of the department of corrections (parole supervision), are authorized.

(b) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of the department of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of the department of corrections (furlough programs for inmates under the custody and control of the commissioner of the department of corrections), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of corrections 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-three, relating to the division of corrections (parole supervision), are authorized.

CHAPTER 94
(S. B. 186—By Senators Manchin, Anderson, Grubb and Minard)
[Passed March 12, 1994: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 the insurance commissioner to promulgate legislative rules relating to insurance company reporting forms, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to substandard motor vehicle insurance notice requirements, as modified; 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 continuation of coverage under automobile liability policies, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to West Virginia life and health insurance guaranty association act notice requirements, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to group accident and sickness insurance minimum policy coverage standards, as modified and amended; authorizing the lottery commissioner to promulgate legislative rules relating to the state lottery, as modified; authorizing the racing commissioner to promulgate legislative rules relating to greyhound racing; authorizing the racing commissioner to promulgate legislative rules relating to thoroughbred racing; authorizing the division of tax to promulgate legislative rules relating to bingo; authorizing the division of tax to promulgate legislative rules relating to charitable raffle boards and games, as modified; authorizing the division of tax to promulgate legislative rules relating to business investment and jobs expansion tax credit, small business tax credit, corporate headquarters relocation tax credit; authorizing the division of tax to promulgate legislative rules relating to preneed cemetery companies, as modified and amended; and authorizing the division of tax to promulgate legislative rules relating to pollution control facilities.

Be it enacted by the Legislature of West Virginia:
That sections two, four, five and six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-2. Insurance commissioner.
§64-7-4. Lottery commission.
§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.

1 (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-
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 classification), are authorized.

(n) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred ninety-one, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred ninety-two, relating to the insurance commissioner (permanent regulations on Medicare supplement insu-
(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 amendment 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 determination 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 amendment 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
187 commissioner (standards for uniform health care administration), are authorized.

189 (w) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (insurance holding company systems reporting forms), are authorized.

198 (x) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (substandard motor vehicle insurance notice requirements), are authorized.

207 (y) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (filing fees for purchasing groups and for risk retention groups not chartered in this state), are authorized.

217 (z) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (continuation of coverage under automobile liability policies), are authorized.

226 (aa) The legislative rules filed in the state register on
the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (West Virginia life and health insurance guaranty association act notice requirements), are authorized.

(bb) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the insurance commissioner (group accident and sickness insurance minimum policy coverage standards), are authorized with the amendments set forth below:

On page two, section one, by inserting five new subsections to read as follows:

“1.2.j. Coverage under a managed care program.
1.2.k. Bona Fide Associations.
1.2.l. Basic Hospital and Medical-Surgical Expense Coverage.
1.2.m. Coverage under policies issued to groups of 61 or more under which the coverage is negotiated by the policy holder.
1.2.n. Individual limited benefits policies subject to the requirements of West Virginia Code §§ 33-16E-1, et. seq.”

And,

On page two, section two, by inserting two new subsections, designated subsections 2.2 and 2.3, to read as follows, and renumbering the remaining subsections:

“2.2 ‘Basic Hospital and Medical Surgical Expense Coverage’ means policies designed to provide coverage
for hospital and medical surgical expenses only incurred
as a result of a covered accident or sickness. Coverage
is provided for daily hospital room and board, miscel-
aneous hospital services, hospital out-patient services,
surgical services, anesthesia services, and in-hospital
medical services, subject to any limitations, deductibles
and copayment requirements set forth in the policy.
Coverage is not provided for unlimited hospital or
medical surgical expenses.

2.3 'Bona Fide Association' means plans with a
minimum of one hundred members which shall have
been organized in good faith for purposes other than
that of obtaining or providing insurance: Provided,
however, That the association shall also have been in
active existence for at least two years and shall have a
constitution and bylaws which provide that: (1) The
Association holds annual meetings to further purposes
of its members; (2) except in the case of credit unions,
the association collects dues or solicits contributions
from members; (3) the members have voting privileges
and representation on the governing board and commit-
tees that exist under the authority of the association.

And,

On page four, subsection 3.1, by deleting references
to "or certificate" and "or certificate holder" and by
adding to the end of the subsection the following:
"Certificates issued under a policy subject to this rule
and the terms used therein shall be consistent with this
section."

And,

On page nine, subsection 5.1, by deleting the following
"on certificates" and by adding the following at the end
thereof:
"The benefits described in a certificate issued under
a policy subject to this rule shall be consistent with the
benefits contained in the policy and shall be no less than
those required under this section."
On page nine, subsection 5.1.b, by striking out subsection 5.1.b in its entirety and inserting in lieu thereof the following:

“5.1.b If an insurer terminates coverage under a policy providing pregnancy coverage, such policy shall provide for an extension of benefits as to pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force: Provided, That this subsection shall not apply when termination of coverage is due to fraud, nonpayment of premium or any breach of the terms of the policy for which termination is authorized under chapter thirty-three of the code.”;

And,

On page ten, subsection 5.1.3, by adding at the end of such subsection the following:

“provided such benefits may be limited to those expenses directly relating to the organ donation.”;

And,

On page ten, subsection 5.1.i, by striking said subsection in its entirety and inserting in lieu thereof the following:

“5.1.i. Termination of coverage under a policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period the policy was in force may be predicated upon the continuous disability of the insured or limited to the duration of the policy benefit period if any: Provided, That this subsection shall not apply when termination of coverage is due to fraud, nonpayment of premium or any breach of the terms of the policy for which termination is authorized under chapter thirty-three of the code.”;

And,

On page nineteen, subsection 6.1, by deleting the references to “or certificate” and “or certificate holder”;

And,
On page twenty, subsection 6.9, by adding at the end of the section the following:

"The notice shall also state that in the event the policy holder exercises this right, the insurer shall not be obligated to pay any benefits under the policy for claims submitted to the insurer during such ten (10) day period."

§64-7-4. Lottery commission.

(a) The legislative rules filed in the state register on the twenty-first day of April, one thousand nine hundred eighty-seven, modified by the state lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the state lottery commission (state lottery), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of June, one thousand nine hundred ninety, modified by the state lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of September, one thousand nine hundred ninety, relating to the state lottery commission (state lottery), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the lottery commission 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-four, relating to the lottery commission (state lottery), are authorized.

§64-7-5. Racing commission.

(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on
the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 819), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(d) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(e) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) greyhound racing, are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing, are authorized with the amendment set forth below:

Following the word “Association” insert a period and strike the remainder of the sentence.

(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia.
(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.

(ff) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the racing commission (greyhound racing), are authorized.

(gg) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the racing commission (thoroughbred 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 "Mineable Coal," by striking the subsection and substituting in lieu thereof the following: "(11) Mineable Coal. Coal which can be mined under present day mining technology and economics."

On page 25, section 11.04(c)(2)(C), entitled "Property Tax Component," by striking the subsection and inserting in lieu thereof the following: "(C) Property Tax Component — This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property."

On page 30, section 11.04(c)(4), entitled "Valuation of Mined-Out/Unmineable/Barren Coal Properties," by striking the numbers "$5.00" and inserting in lieu thereof the following: "$1.00."

On page 31, section 11.04(c)(5)(B), by striking the words and numbers "Five Dollars ($5.00)" and inserting in lieu thereof the following: "One Dollar ($1.00)."

On page 53, section 11.05(h) by striking the symbol and figures "($5.00)" and inserting in lieu thereof the following: "($1.00)."

On page 73, section 11.06(h) by striking the symbol and figures "$5.00" and inserting in lieu thereof 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
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; follow-
ing the words “Valuation of Farmland” add the words
“and of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARMLAND”
insert the words “AND STRUCTURES SITUATED
THEREON.”

Page 10.1, Section 10, Title; following the word
“Farmland” add the words “and Structures Situated
Thereon.”

Page 10.1, Section 10.01(b); following the word
“farmland” insert the words “and structures situated
thereon.”

Page 10.2, Section 10.02(a), first sentence; following
the word “farmland” insert the words “and structures
situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following
the word “farmland” insert the words “and structures
situated thereon.” Delete the words “for purposes of the
statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following
the word “farmland” insert the words “and structures
situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the
period and add “or the incapability to be adapted to
alternative uses.”

Page 10.9, Section 10.04(6), first sentence; following
the words “land currently being used” insert the words
“as part of a farming operation.”

Page 10.9, Section 10.04(6), following the last sent-
ence; add the sentence "For the purposes of this
definition, 'contiguous tracts' are farmlands which are
in close proximity, but not necessarily adjacent: Pro-
vided, 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 "No-
vember" and insert in lieu thereof the word "Sep-
tember." Delete the period following the word "valua-
tion" 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 consump-
tion" 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.¹ Both of these determinations shall be made in accordance with the tax department’s real property appraisal manual² as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.”

Page 10.28, Section 10.05(f)(3)(B)(1); following the words “or more of the” insert the word “usual.”
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 refiled in the state
register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.

(h) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by a circuit court on certiorari), are authorized with the following amendment:

On page 3, §18.3.1 is stricken in its entirety and a new §18.3.1 is inserted in lieu thereof to read as follows:

“§18.3.1 Who May Request Review. — The property owner, Tax Commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari. Parties to the proceeding wherein review by the circuit court is sought shall pay costs and fees as they are incurred: Provided, That the circuit court upon rendering judgment or making any order may award costs to any party in accordance with the provisions of W. Va. Code §53-3-5.”

(i) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (additional review and implementation of property appraisals), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, relating to the state tax commissioner (guidelines for assessors to assure fair and uniform personal property values), are authorized.

(l) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred eighty-six, relating to the state tax commissioner (registration of transient vendors), are authorized.

(m) The legislative rules filed in the state register on the fourth day of February, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business and occupation tax), are authorized.

(n) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, one thousand nine hundred eighty-seven, relating to the state tax commissioner (telecommunications tax), are authorized.

(o) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business franchise tax), are authorized.
(p) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the state tax commissioner to meet the objections of the legislative rule-making 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 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 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 committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the state tax commissioner (solid waste assessment fee), are authorized.

(t) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review
committee and refiled in the state register on the twenty-first day of September, one thousand nine hundred eighty-eight, relating to the state tax commissioner (electronic data processing system network for property tax administration), are authorized.

(u) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the state tax commissioner (exemption of property from ad valorem property taxation), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the state tax commissioner (consumers sales and service tax and use tax), are authorized.

(w) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred eighty-nine, relating to the state tax department (personal income tax), are authorized.

(x) The legislative rules filed in the state register on the twenty-ninth day of June, one thousand nine hundred eighty-nine, relating to the state tax department (severance tax), are authorized.

(y) The legislative rules filed in the state register on the fourth day of August, one thousand nine hundred eighty-nine, modified by the state tax department to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the state tax department (solid waste assessment fee), are authorized.
(z) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business franchise tax), are authorized.

(aa) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (business and occupation tax), are authorized.

(bb) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety, relating to the department of tax and revenue (consumers sales and service tax and use tax), are authorized with the amendments set forth below:

On page eight, Section 2.28, after the word “as” by inserting the words “art, science,”.

On pages eight and nine, Section 2.28.1, after the word “intellectual” by deleting the word “or” and inserting in lieu thereof the words “physical and”.

On page nine, Section 2.28.2, by deleting the words “or instruction.”

On page nine, Section 2.28.2, after the word “training” by adding the word “or”.

On page nine, Section 2.28.2, by deleting the words “or any portion of a school curriculum classified as physical education.”
On page nine, by deleting all of Section 2.28.2.1.

On page nine, Section 2.28.2.2, by deleting the section number.

On page nine, Section 2.28.2.2, by deleting the words "or instruction."

On page nine, Section 2.28.2.2, after the word "training" by adding the word "or".

On page nine, Section 2.28.2.2, after the word "conditioning" by inserting a period and striking the remainder of the sentence.

On page one hundred twelve, Section 59.2, after the words "sales of the service of cremation" by adding the words "sales on perpetual care trust fund deposits."

And,

On page one hundred twenty-eight, Section 91.2, after the words "include food" by inserting the following: ", as defined in section 2.30 of this rule,"

(cc) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (motor carrier road tax), are authorized.

(dd) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (gasoline and special fuel excise tax), are authorized.

(ee) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred
eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand ninety-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.

(ii) 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-
ing to the division of tax (exceptions to confidentiality of taxpayer information and disclosure of certain taxpayer information), are authorized.

(rr) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred ninety-one, modified by the division of tax to meet the objections of the legislative rule-making review 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.”

(ss) 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.

(tt) 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."

(uu) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (bingo), are authorized.

(vv) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, 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 twelfth day of January, one thousand nine hundred ninety-four, relating to the division of tax (charitable raffle boards and games), are authorized.

(ww) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (business investment and jobs expansion tax credit, small business tax credit, corporate headquarters relocation tax credit), are authorized with the amendment set forth below:

On page thirty-nine, section 5.16.3.1, by striking section 5.16.3.1 and inserting in lieu thereof the
"This exception shall not be applicable if the taxpayer failed to provide information requested by the Department of Tax and Revenue, or its predecessor, the West Virginia Tax Department, or if the taxpayer had knowledge or should have had knowledge of information necessary for the Department of Tax and Revenue to make an informed analysis and determination pertaining to the actual application of the credit but failed to disclose such information to the Department."

(xx) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, 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 twelfth day of January, one thousand nine hundred ninety-four, relating to the division of tax (preneed cemetery companies), are authorized with the amendment set forth below:

"On page four, section 3.1, by striking out '§400.00' and inserting in lieu thereof '§200.00'."

(yy) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (pollution control facilities), are authorized with the amendment set forth below:

On page one, section 2.2 after the word "be" by inserting the following: "The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only such equipment and devices as are installed primarily and immediately to abate air or water pollution. These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, or add to the economic value of a business enterprise or have a market value after installation in excess of salvage value, will not be deemed eligible for salvage tax treatment."
AN ACT to amend and reenact sections one and two, article eight, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the promulgation of administrative rules and regulations by the governmental agencies within the department of transportation; authorizing the division of highways and the division of motor vehicles to promulgate legislative rules with modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of highways to promulgate legislative rules relating to traffic and safety rules and regulations, as modified; and authorizing the division of motor vehicles to promulgate legislative rules relating to motor vehicle alcohol test and lock program, as modified.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of highways.

§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

1 (a) The legislative rules filed in the state register on 2 the twenty-first day of October, one thousand nine 3 hundred eighty-three, relating to the commissioner of 4 highways (transportation of hazardous waste by high- 5 way transporters), are authorized with the amendments 6 set forth below:
Pages 3 and 7, after "40 CFR part 262" add the words "as amended through March 8, 1986."

Page 7, after "49 CFR parts 171-179" add the words "as amended through March 8, 1986," and,

Page 11, after "49 CFR part 171.16" add the words "as amended through March 8, 1986."

(b) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-four, relating to the commissioner of highways (construction and reconstruction of state roads), are authorized with the amendments set forth below:

Page 16, Sec. 8.08, line 21, (unnumbered), by inserting after the word "all" the following language: "reasonable and necessary" and after the word "project" inserting the following language: "by the Railroad."

Page 16, Sec. 8.08, line 22, (unnumbered), after the word the by striking the words "Railroad's Chief."

Page 19, Sec. 8.08, line 25, (unnumbered), by striking "Railroad's Chief" and adding the following new language:

"Any approval by the Department of any activity by the Contractor upon the right-of-way or premises of any Railroad which is provided for in this Section (8.08) (including, but not limited to, approval of work, methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor) shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter, indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the
Page 18, Sec. 8.08, subdivision (a), line 22, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence.”

Page 19, Sec. 8.08, subdivision (b), line 8, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence.”

Page 19, Sec. 8.08, subdivision (c), line 18, (unnumbered), by inserting after the word “occurrence” the following language: “of”; and after the word “injury” insert a comma and strike the word “or.”

(c) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (transportation of hazardous waste), are authorized with the amendment set forth below:

Page 5, amend §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows: “(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.”

(d) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (disqualification and suspension of prequalified contractors), are authorized.

(e) The legislative rules filed in the state register on the twelfth day of December, one thousand nine hundred eighty-five, relating to the commissioner of highways...
(transportation of hazardous wastes by vehicle upon the roads and highways of this state), are authorized with the amendments set forth below:

On page 18, the first line of §3.03 shall read as follows:

"3.03. Transporters who only accept Hazardous Waste from."

(f) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of highways (traffic and safety rules and regulations), are authorized with the amendment set forth below:

On page 8, section 7.2, line 9, (unnumbered), by striking everything after the word "structures."

(g) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, relating to the commissioner of highways (construction and reconstruction of state roads), are authorized.

(h) The legislative rules filed in the state register on the twenty-fifth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-seven, relating to the commissioner of highways (transportation of hazardous wastes upon the roads and highways), are authorized.

(i) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-nine, relating to the division of highways (use of state road rights-of-way and areas
adjacent thereto), are authorized with the amendments set forth below:

On Pages 14 and 15, Section 7.5, by deleting the following language:

"Upon receipt of a permit application an application number shall be assigned by the Division of Highways. The applicant shall be notified of the temporary application number and shall then be required to publish a Class II legal advertisement in the newspaper(s) serving the area where the proposed outdoor advertising sign, display or device is proposed to be located. A copy of the certificate of publication shall be provided to the Department within ten (10) days of the final publication date.

As a minimum the advertisement shall include the application number, the location (including ownership of the property upon which the sign is to be placed) and shall notify the public that comments will be received by the Division of Highways, Highway Services Section, until 10 days after the final publication. The advertisement shall also state that all comments must include the specific application number to which they refer.

Any person who claims to be affected by the proposed sign may submit written comments to the Division of Highways, Highway Services Section, and may request a public hearing within ten days of the final publication. Within ten working days of the close of the comment period the Division shall determine whether to approve, deny, or hold a public hearing for said permit.

When the Division determines that a public hearing is required it shall notify the person(s) who requested the hearing and the permit applicant. The Division shall cause notice to be published and hold the hearing in accordance with Administrative Regulations, Commissioner of Highways, Chapter 17-2A, Series I (1982), Section 3, Hearing Procedures (hereinafter WV Adm. Reg. 17-2A).

The Division Administrator shall assess the Division's costs of the hearing against the permit applicant or
against the party requesting the hearing if he finds that
either the application for the permit or the request for
hearing was filed in bad faith.

Any party adversely affected by the final decision of
the Division Administrator may apply for judicial
review through application for a writ of certiorari to the
Circuit Court of Kanawha County in accordance with W.

The regulations in the preceding six paragraphs
relating to publication of notice of an application,
comments on a pending application, notice of hearing,
hearing on permit, assessment of costs and judicial
review shall not apply to an application for a permit for
an advertising sign, display or device to be located
within the boundaries of an incorporated municipality
or of a county-zoned commercial or industrial area.”

(j) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
eighty-nine, modified by the division of highways to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
seventh day of November, one thousand nine hundred
eighty-nine, relating to the division of highways
(construction and reconstruction of state roads), are
authorized.

(k) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-nine, modified by the division of
highways to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the seventh day of December, one thousand
nine hundred eighty-nine, relating to the division of
highways (acquisition, disposal, lease and management
of real property and appurtenant structures and
relocation assistance), are authorized.

(l) The legislative rules filed in the state register on
the seventh day of September, one thousand nine
hundred ninety, modified by the division of highways to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
eighteenth day of January, one thousand nine hundred ninety-one, relating to the division of highways (traffic and safety rules and regulations), are authorized.

(m) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of November, one thousand nine hundred ninety-three, relating to the division of highways (traffic and safety rules and regulations), are authorized.

§64-8-2. Division of motor vehicles.

(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States” after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

(b) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, 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
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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.

(o) The legislative rules filed in the state register on the twenty-third day of June, one thousand nine hundred ninety-three, 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 tenth day of August, one thousand nine hundred ninety-three, relating to the division of motor vehicles (motor vehicle alcohol test and lock program), are authorized.

CHAPTER 96
(S. B. 145—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 10, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, twenty-four and twenty-nine, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to auctioneers, as modified; authorizing the attorney general to promulgate legislative rules relating to the West Virginia consumer goods rental protection act, as modified; authorizing the secretary of state to promulgate legislative rules relating to official election forms and vendor authorization, as modified; and authorizing the board of accountancy to promulgate legislative rules relating to board rules and rules of professional conduct, as modified.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-29. Board of accountancy.

§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
eighty-three, relating to the commissioner of agriculture (licensing of auctioneers), are authorized.

(c) The legislative rules filed in the state register on the eighth day of February, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (conduct of beef industry self-improvement assessment program referendum), are authorized.

(d) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (feeding untreated garbage to swine), are authorized.

(e) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (registration, taxation and control of dogs), are authorized.

(f) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (public markets), are authorized.

(g) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (noxious weed rules), are authorized.

(h) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (animal disease control), are authorized.

(i) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(j) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, relating to the commissioner of agriculture (increasing certain fees by rules and regulations), are authorized.

(k) The legislative rules filed in the state register on
the thirteenth day of January, one thousand nine
hundred eighty-six, modified by the commissioner of
agriculture to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirty-first day of January, one thousand
nine hundred eighty-six, relating to the commissioner of
agriculture (licensing of livestock dealers), are
authorized.

(l) The legislative rules filed in the state register on
the eighteenth day of June, one thousand nine hundred
eighty-six, modified by the commissioner of agriculture
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
fifth day of January, one thousand nine hundred eighty-
seven, relating to the commissioner of agriculture (West
Virginia pesticide use and application act), are
authorized.

(m) The legislative rules filed in the state register on
the eighteenth day of August, one thousand nine hundred
eighty-six, modified by the director of the
division of forestry of the department of agriculture to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the fifth
day of January, one thousand nine hundred eighty-
seven, relating to the director of the division of forestry
of the department of agriculture (ginseng), are
authorized.

(n) The legislative rules filed in the state register on
the tenth day of April, one thousand nine hundred
eighty-seven, relating to the commissioner of agriculture
(schedule of charges for inspection services: fruit), are
authorized.

(o) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
eighty-seven, modified by the commissioner of agricul-
ture to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
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 (avoirdupois) of the commercial feed and each feed ingredient used in the feed shall not be required to be listed."

(y) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of August, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (wood destroying insect treatment standards), are authorized.

(z) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred ninety, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of April, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (fee structure for the pesticide control act of 1990), are authorized.

(aa) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of November, one thousand nine hundred ninety-one, relating to the commissioner of agriculture...
(animal disease control), are authorized.

(bb) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (West Virginia plant pest act), are authorized.

(cc) The legislative rules filed in the state register on the twenty-sixth day of July, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (licensing of pesticide businesses), are authorized.

(dd) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (certified pesticide applicators), are authorized.

(ee) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (assessment of civil penalties and procedures for consent agreements and negotiated settlements), are authorized.

(ff) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred ninety-one, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the
twenty-fourth day of September, one thousand nine
hundred ninety-one, relating to the commissioner of
agriculture (aerial application of herbicides to rights-of-
way), are authorized.

(gg) The legislative rules filed in the state register on
the eighth day of August, one thousand nine hundred
ninety-one, modified by the commissioner of agriculture
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-fourth day of September, one thousand nine
hundred ninety-one, relating to the commissioner of
agriculture (frozen desserts and imitation frozen
desserts), are authorized, with the amendment set forth
below:

On page twelve, by striking out all of section 15 and
substituting a new section 15, to read as follows:


15.1. The commissioner may assess a violation of W.
Va. Code §19-11B-1 et seq. or of these rules against the
manufacturer of product and/or the distributor of the
mix used to manufacture the product.

15.2. The commissioner will assess any violations of
W. Va. Code §19-11B-1 et seq. or of this rule to the
distributor for mix sampled from unopened containers.
The company will not be assessed additional cumulative
notices of violations until the commissioner has 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 approp-
riate. This notice shall notify the manufacturer or
distributor of the violation of W. Va. Code §19-11B-1 et
seq. or of these rules and the enforcement policy
established by this section of the rule.

15.4. Whenever two of the last five consecutive official
product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written "Second Notice" to the manufacturer or distributor whichever is appropriate.

15.4.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of a Second Notice to the manufacturer or distributor, but shall not collect product samples before the lapse of 7 days from the sending of a Second Notice.

15.5. Whenever three of the last five consecutive official product sample(s) taken on separate days within a one year period are found to be adulterated or misbranded the commissioner shall send a written "Third Notice" to the manufacturer or distributor whichever is appropriate.

15.5.a. The commissioner shall collect additional official product sample(s) within 21 days of the sending of the Third Notice to the manufacturer or distributor, but shall not collect additional product samples before the lapse of 7 days from the date of sending of the notice.

15.6. The commissioner will issue a "Shut-down Order" for a period of 24 hours to a manufacturer or distributor when the record of the firm indicates that effective action has not been taken to correct the causes of the violations, for instance when three out of the last five samples from the same machine are violative. The "Shut-down Order" will normally be issued with the "Third Notice". The "Shut-down Order" will give the reasons for the order, state the portion of the manufacturing or distributing operation that is prohibited from operating while the order is in effect, give conditions of the order, state the length of time that the Shut-down Order will be in effect and specify a time and place for a hearing to be held in this matter. Except that in the case where the public health, safety or welfare is at risk, the commissioner will issue an immediate Shut-down Order and give notice to the manufacturer or distributor under the provisions of subdivision 15.6.a. of this rule.

15.6.a. The commissioner will issue an immediate
322 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 subdivision 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 subdivision 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 subdivision 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 review committee and refiled in the state register on the twenty-fourth day of September, one thousand nine hundred ninety-one, relating to the commissioner of agriculture (disposal of dead poultry), are authorized with the amendments set forth below:

On page two, section two, by adding a new subsection to read as follows:

“2.8 ‘Disposal pit’ means an opening dug in the ground to a minimum depth of six feet, containing a minimum
capacity of 150 cubic feet, covered with a minimum of 12 inches of dirt, and provided with one or more openings for the introduction of poultry. The openings shall be a minimum size of eight inches square and equipped with tight lids. A disposal pit shall be located in a site which will prevent contamination of the groundwater or the surface water. This site should conform to the standards established in this rule.”

On page two, subsection 3.1 after the word “incinerator,” by adding the words “disposal pit,”

And,

On page two, by adding a new section, designated section 4, to read as follows:

“§61-1C-4. Standards for Site Location for Disposal Pits.

4.1 No part of a disposal pit system shall be located in a poorly drained or filled area, or in any area where seasonal flooding occurs.

4.2 No part of a disposal pit system shall be located within 10 feet of a building, foundation or property line.

4.3 No part of a disposal pit system shall be located within 50 feet of a public water supply line or within 10 feet of a private water supply system.

4.4 A disposal pit shall be located at least 50 feet from 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
475 inches in diameter at the site where the disposal pit will be installed. The holes should be at least 24 inches in depth.

478 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.

482 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.

485 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.

488 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.

493 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."

501 (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.

510 (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.'"
(nn) 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.

(oo) 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.

(pp) 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.

(qq) The legislative rules filed in the state register on the sixteenth day of April, one thousand nine hundred ninety-three, 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 July, one thousand nine hundred ninety-three, relating to the commissioner of agriculture (animal disease control), are authorized.

(rr) The legislative rules filed in the state register on the third day of August, one thousand nine hundred ninety-three, 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...

(a) The legislative rules filed in the state register on the sixth day of December, one thousand nine hundred eighty-four, relating to the attorney general (third party dispute mechanisms), are authorized.

(b) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the attorney general (fair treatment of crime victims and witnesses), are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in home improvement and home construction transactions), are authorized. These rules were proposed by the attorney general pursuant to section one hundred three, article six and section one hundred two, article seven of chapter forty-six-a of this code with the following amendments:

“Amending the title to the proposed legislative rule wherever said title may appear, on lines three and four thereof, by striking the words ‘and home construction’.

On the index page following ‘3.’ by striking the words ‘and home construction’.”

On page 1, §1.2, line three, after the first word “transactions” on line three, by striking the comma and the words “and home construction transactions” and on line five, by striking the period and inserting the words “but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.”
Page 2, section 2.2 by striking all of lines seven and eight and inserting in lieu thereof the following:

"unless: (a) it appears in printed or typed face larger than the largest type used in the written contract, apart".

On page 2, section 2.4, by striking all of section 2.4 and inserting in lieu thereof a new section 2.4, to read as follows:

"2.4 'Home Construction' means, for the purpose of this Rule, the repair, remodeling or the building of additions to existing single-family dwelling units, including single-family homes, condominium units or any other dwelling unit to be used by any person primarily for personal or family use, but shall not include new single-family home construction or the rebuilding of all or substantially all of an existing or preexisting single-family dwelling."

Page 3, section 2.6, on line two thereof, after the second comma by inserting the word "replacement."

Page 3, section 3, by striking the words "and home construction" from the section heading.

Page 3, section 3.1, lines one and two, by striking the words "or home construction."

Page 4, section 3.1.4, on lines one and two thereof, by striking the words "or home construction."

Page 4, section 3.1.8, on line two thereof, by striking the words "or home construction."

Page 4, section 3.1.9, on lines two and three thereof, by striking the words "or home construction."

Page 5, section 3.1.12, on lines one and two thereof, by striking the words "or home construction."

Page 6, section 3.1.26, by striking all of section 3.1.26 and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof, by striking the words "or home construction."

Page 7, section 3.1.29, on line six thereof, following
the word “contract” by inserting a period and striking
the remainder of the section.

Page 7, following section 3.1.29 by adding a new
section to be designated section 3.1.29, to read as follows:

“failed to file a certificate in the office of the Clerk of
the County Commission in the county in which the
principal place of business of the seller is located, setting
forth the assumed name in or by which the business is
being conducted in conformity with the provisions of
Chapter 47, Article 8, Section 2 of the Code of West
Virginia, 1931, as amended.”

Page 7, section 3.2, on lines two and three thereof, by
striking the words, “or home solicitation sale of home
construction” and the comma on line three.

Page 9, section 4.1, on line eight thereof, by deleting
the period and inserting the following:

‘to the extent permitted by statute’.

Page 10, section 4.2, on line 9 thereof, by striking the
period and inserting the following:

‘to the extent permitted by statute’.

(d) The legislative rules filed in the state register on
the twenty-third day of September, one thousand nine
hundred eighty-six, modified by the attorney general to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the first
day of December, one thousand nine hundred eighty-six,
relating to the attorney general (prevention of unfair or
deceptive acts or practices in the sale of damaged goods
or products), are authorized.

(e) The legislative rules filed in the state register on
the twenty-third day of September, one thousand nine
hundred eighty-seven, modified by the attorney general
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-fifth day of November, one thousand nine
hundred eighty-seven, relating to the attorney general
(administration of preneed burial contracts), are
authorized with the following amendments set forth below:
On page 9, section 8.2, by striking the words “within thirty days after the death of a contract beneficiary,” and inserting in lieu thereof the following: “On or before the first day of January and the first day of July of each year,” and after the word “provided” by striking the comma and inserting in lieu thereof “after the death of any contract beneficiary during the previous six-month period.”;

On page 12, section 9.7, by striking all of 9.7;

Beginning on page 15, by striking the entirety of section 15;

And,

Beginning on page 18, by striking the entirety of section 16, and by renumbering the remaining sections.

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-nine, relating to the attorney general (allowing persons who are indirectly injured by violations of the West Virginia antitrust act to recover damages), are authorized.

(g) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-nine, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-nine, relating to the attorney general (health spas), are authorized.

(h) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the attorney general (authorizing the attorney general to require persons upon whom subpoenas are served to answer written questions under oath), are authorized.
(i) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the attorney general (obtaining assistance of public officials in investigations and the commencement of proceedings to compel compliance), are authorized.

(j) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety, relating to the attorney general (limitation of action and recovery of investigative costs and a reasonable attorney's fee by the attorney general in an enforcement action), are authorized.

(k) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety-one, relating to the attorney general (regulated business exemption under the West Virginia antitrust act), are authorized.

(l) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-one, relating to the attorney general (defining the term "federal antitrust laws" and prohibiting tying and reciprocity), are authorized.

(m) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one thousand nine
hundred ninety-four, relating to the attorney general
(West Virginia consumer goods rental protection act),
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 commit-
tee 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 commit-
tee 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.

(h) The legislative rules filed in the state register on
the sixteenth day of August, one thousand nine hundred
ninety-three, 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 November, one thousand nine
hundred ninety-three, relating to the secretary of state
(official election forms and vendor authorization), are
authorized.

§64-9-29. Board of accountancy.

(a) The legislative rules filed in the state register on
the fifth day of December, one thousand nine hundred
ninety, modified by the board of accountancy to meet the
objections of the legislative rule-making review commit-
tee and refiled in the state register on the fourth day
of June, one thousand nine hundred ninety-one, relating
to the board of accountancy (professional conduct), are
authorized.

(b) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred ninety-three, modified by the board of accountancy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-three, relating to the board of accountancy (board rules and rules of professional conduct), are authorized.

CHAPTER 97

(S. B. 159—By Senators Manchin, Anderson, Grubb and Minard)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, ten, eleven, sixteen, eighteen, nineteen and thirty-one, article nine, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty and forty-one, 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 the board of examiners to promulgate legislative rules relating to the board of examiners in counseling, licensing, as modified; authorizing the board of dental examiners to promulgate legislative rules relating to the West Virginia board of dental examiners, as modified; authorizing the board of
embalmers and funeral directors to promulgate legislative rules relating to the West Virginia board of embalmers and funeral directors, as modified; authorizing the board of medicine to promulgate legislative rules relating to licensing, disciplinary and complaint procedures, physicians, podiatrists, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to disciplinary action, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to standards for professional nursing practice, as modified; authorizing the nursing home administrators licensing board to promulgate legislative rules relating to rules and regulations of the nursing home administrators licensing board, as modified; authorizing the real estate appraiser licensing and certification board to promulgate legislative rules relating to requirements for licensure and certification, as modified; authorizing the board of osteopathy to promulgate legislative rules relating to osteopathic physician assistants, as amended; authorizing the board of osteopathy to promulgate legislative rules relating to the licensing, disciplinary and complaint procedures for osteopathic physicians, as modified; authorizing the board of physical therapy to promulgate legislative rules relating to general provisions, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to the licensure of speech-language pathology and audiology, as modified; authorizing the board of examiners for speech-language pathology and audiology to promulgate legislative rules relating to licensure of speech-language pathology and audiology assistants, as modified; authorizing the commercial hazardous waste management facility siting board to promulgate legislative rules relating to the commercial hazardous waste management facility siting board certification requirements, as modified; authorizing the family protection services board to promulgate legislative rules relating to operation of the family protection services board and licensure and funding of domestic violence programs, as modified and amended;
authorizing the board of investments to promulgate legislative rules relating to the rules for the administration of the consolidated pension fund, as modified; and authorizing the board of investments to promulgate legislative rules relating to the administration of the consolidated fund of the state board of investments.

Be it enacted by the Legislature of West Virginia:

That sections eight, ten, eleven, sixteen, eighteen, nineteen and thirty-one, article nine, 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 six new sections, designated sections thirty-six, thirty-seven, thirty-eight, thirty-nine, forty and forty-one, all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-8. West Virginia board of examiners in counseling.

§64-9-10. West Virginia board of dental examiners.


§64-9-16. Board of medicine.

§64-9-18. Board of examiners for registered professional nurses.


§64-9-31. Real estate appraiser licensing and certification board.

§64-9-36. Board of osteopathy.

§64-9-37. Board of physical therapy.

§64-9-38. Board of examiners for speech-language pathology and audiology.


§64-9-40. Family protection services board.

§64-9-41. Board of investments.

§64-9-8. West Virginia board of examiners in counseling.

1 (a) The legislative rules filed in the state register on the twentieth day of March, one thousand nine hundred eighty-nine, modified by the West Virginia board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of September, one thousand nine hundred eighty-nine, relating to the West Virginia board of examiners in counseling (licensing), are authorized.

10 (b) The legislative rules filed in the state register on
the eighteenth day of July, one thousand nine hundred ninety-one, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of December, one thousand nine hundred ninety-one, relating to the board of examiners in counseling (licensing), are authorized.

(c) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-four, relating to the board of examiners in counseling (licensing), are authorized.

§64-9-10. West Virginia board of dental examiners.

(a) The legislative rules filed in the state register on the eighth day of August, one thousand nine hundred eighty-nine, modified by the West Virginia board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred eighty-nine, relating to the West Virginia board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.

(b) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety, modified by the West Virginia board of dental examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of August, one thousand nine hundred ninety, relating to the West Virginia board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of August, one thousand nine hundred ninety-three, modified by the board of dental examiners to meet the objections of the legislative rule-
making review committee and refilled in the state register on the twelfth day of October, one thousand nine hundred ninety-three, relating to the board of dental examiners (rules and regulations of the West Virginia board of dental examiners), are authorized.


(a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refilled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refilled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

(c) The legislative rules filed in the state register on the sixth day of May, one thousand nine hundred ninety-three, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refilled in the state register on the fifteenth day of November, one thousand nine hundred ninety-three, relating to the board of embalmers and funeral directors (rules of the West Virginia board of embalmers and funeral directors), are authorized.

§64-9-16. Board of medicine.

(a) The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-three, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry;
physicians assistants), are authorized with the modifications set forth below:

§24.12.
(b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before Type A physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.

§24.16.
(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
(dispatching of legend drugs by physicians and podiat-
trists), 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 podia-
trists 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 pro-
grams: Provided, That all labeling provisions of section
8 shall be applicable except the requirements of section
8.3(a)."

(f) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
ninety, modified by the board of medicine to meet the
objections of the legislative rule-making review commit-
The legislative rules filed 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”.

(l) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twentieth day of October, one thousand nine hundred ninety-three, relating to the board of medicine (licensing, disciplinary and complaint procedures, physicians; podiatrists), are authorized.

§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),
(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.

(d) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 eleventh day of January, one thousand nine hundred ninety-four, relating to the board of examiners for registered professional nurses (disciplinary action), are authorized.

(e) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 eleventh day of January, one thousand nine hundred ninety-four, relating to the board of examiners for registered professional nurses (standards for professional nursing practice), are authorized.


(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators), are
(b) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the nursing home administrators licensing board 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 ninety-three, relating to the nursing home administrators licensing board (rules and regulations of the nursing home administrators licensing board), are authorized.

§64-9-31. Real estate appraiser licensing and certification board.

(a) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (rules and regulations of the real estate appraiser licensing and certification board), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (requirements of licensure and certification), are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of July, one thousand nine hundred ninety-one, modified by the real estate appraiser licensing and certification board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of
November, one thousand nine hundred ninety-one, relating to the real estate appraiser licensing and certification board (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.

(e) The legislative rules filed in the state register on the twenty-eighth day of May, one thousand nine hundred ninety-three, 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 seventh day of July, one thousand nine hundred ninety-three, relating to the real estate appraiser licensing and certification board (requirements for licensure and certification), are authorized.

§64-9-36. Board of osteopathy.

(a) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety-three, relating to the board of osteopathy (osteopathic physician assistants), are authorized with amendment set forth below:

On page one by striking out the entire rule and inserting in lieu thereof the following:

§11-1B-1. General.

1.1. Scope. — W. Va. Code §30-14A-1 requires the Board of Osteopathy to adopt rules governing the extent to which osteopathic physician assistants may function in this State.

§11-1B-2. Rules for Osteopathic Physician Assistants.

2.1. For purposes of this section, the following definitions are in effect:

2.1.1. Licensure. — The approval of individuals by the Board to serve as osteopathic physician assistants. It also means the approval of programs by the Board for the training and education of osteopathic physician assistants.

2.1.2. Crimes involving moral turpitude. — Those crimes which have dishonesty as a fundamental and necessary element; including, but not limited to, crimes involving theft, embezzlement, false swearing, perjury, fraud or misrepresentation.

2.1.3. NCCPA. — The National Commission on the Certification of Physician Assistants.

2.1.4. Protocol. — Written treatment instructions prepared by a supervising osteopathic physician for use by an osteopathic physician assistant. Such instructions should be flexible, in accordance with the setting where the osteopathic physician assistant is employed.

2.1.5. Satellite operation. — An office or clinic separate and apart from the office of the supervising osteopathic physician, established by the osteopathic physician and manned in part by an osteopathic physician assistant.

2.1.6. Supervision. — The opportunity or ability of the osteopathic physician to provide or exercise control and direction over the services of osteopathic physician assistants. Constant physical presence of the supervising osteopathic physician of an osteopathic physician assistant certified by the NCCPA is not required so long as the supervising osteopathic physician and the osteopathic physician assistant are or can easily be in contact with each other by radio, telephone or telecommunication. Supervision requires the availability of the supervising osteopathic physician. An appropriate
degree of supervision includes:

a. Personal supervision by the osteopathic physician of a minimum of twenty-five percent of the weekly hours worded by each osteopathic physician assistant;

b. The active and continuing overview of the osteopathic physician assistant’s activities to determine that the supervising osteopathic physician’s directions are being implemented;

c. The availability of the supervising osteopathic physician to the osteopathic physician assistant for all necessary consultations;

d. Personal and regular (at least monthly) review by the supervising osteopathic physician of selected patient records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected for review on the basis of written criteria established by the supervising osteopathic physician and the osteopathic physician assistant and shall be of sufficient number to assure adequate review of the osteopathic physician assistant’s scope of practice, and;

e. Periodic (at least monthly) education and review sessions discussing specific conditions, protocols, procedures and specific patients, held by the supervising osteopathic physician for the osteopathic physician assistant under his or her supervision.

In the case of an osteopathic physician assistant who has not been certified by the NCCPA, the presence of the supervising osteopathic physician or alternate supervising osteopathic physician is required on the premises where the noncertified osteopathic physician assistant performs delegated medical tasks.

2.2. Employment of osteopathic physician assistants by licensed osteopathic physician; services that may be performed by osteopathic physician assistants.

2.2.1. An osteopathic physician fully licensed under W. Va. Code §30-14-1 et seq. may submit a job description to the Board to employ an osteopathic physician assistant.
2.2.2. The delegation of certain acts to an osteopathic physician assistant shall be stated on the job description in a manner consistent with sound medical practice and with the protection of the health and safety of the patient in mind. The services shall be limited to those which are educational, diagnostic, therapeutic or preventive in nature and may, according to the standards set by his or her supervising osteopathic physician, allow the osteopathic physician assistant to formulate a provisional diagnosis and treatment plan which may be set by standard protocols of his or her supervising osteopathic physician and are under his or her direction.

2.3. Submission of application; job description. — An application completed by the applicant and a job description written and signed by the supervising osteopathic physician listing in numerical order the duties which will be performed by the assistant must be in the office of the Board of Osteopathy, thirty (30) days prior to a Board meeting. The filing of an application and job description does not entitle an osteopathic physician assistant to licensure. The only legal authority for such approval must be given by the Board.

2.4. Biennial report of osteopathic physician assistant's performance; biennial report of the Board. — Osteopathic physician assistants and their supervising osteopathic physicians must submit biennial signed reports either individually or combined, on the professional conduct, capabilities and performance of the osteopathic physician assistant. The report must accompany each application for licensure and must be submitted to the office of the Board by April 1. In addition thereto, the Board shall compile and publish a biennial report that includes a list of currently licensed osteopathic physician assistants, their employers and location in the state and a list of approved programs in West Virginia, the number of graduates per year of the approved programs and the number of osteopathic physician assistants from other states' approved programs practicing in West Virginia.

2.5. Supervision and control of osteopathic physician assistant. — The osteopathic physician assistant,
whether employed by a health care facility or the
supervising osteopathic physician, shall perform only
under the supervision and control of the supervising
osteopathic physician. Supervision and control of an
osteopathic physician assistant certified by the NCCPA
requires the availability of an osteopathic physician for
consultation and direction of the actions of the assistant,
but does not necessarily require the personal presence
of the supervising osteopathic physician at the place or
places where services are rendered, if the osteopathic
physician assistant certified by the NCCPA is perform-
ing (specified) duties at the direction of the supervising
osteopathic physician. In the case of an osteopathic
physician assistant who has not been certified by the
NCCPA, the presence of the supervising osteopathic
physician or alternate supervising osteopathic physician
on the premises where the noncertified assistant
performs delegated medical tasks is required. The
osteopathic physician assistant may function in any
setting within which the supervising osteopathic
physician routinely practices, but in no instance shall a
separate place of work for the osteopathic physician
assistant be established. The supervising osteopathic
physician shall be an osteopathic physician permanently
licensed in this State.

2.6. Limitations on employment and scope of duties of
osteopathic physician assistants.

2.6.1. A supervising osteopathic physician shall not
employ at any one time more than two (2) osteopathic
physician assistants.

2.6.2. An osteopathic physician assistant shall not sign
prescriptions except in the case of certain osteopathic
physician assistants authorized to do so by the Board in
accordance with the provisions of 2.13 of this rule.

2.6.3. An osteopathic physician assistant shall not
perform any services which his or her supervising
osteopathic physician is not qualified to perform.

2.6.4. An osteopathic physician assistant may sign
orders to be countersigned later by his or her supervising
osteopathic physician: Provided, That they are not
in conflict with hospital regulations.

2.6.5. An osteopathic physician assistant shall not perform any services which are not included in his or her job description and approved by the Board.

2.6.6. No osteopathic physician assistant shall be supervised by and work for more than three supervising osteopathic physicians at one time.

2.7. Identification of osteopathic physician assistant. — When functioning as a osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag which identifies the osteopathic physician assistant as an osteopathic physician assistant.

2.8. Supervising osteopathic physician; responsibilities.

2.8.1. The supervising osteopathic physician is responsible for observing, directing and evaluating the work, records and practices performed by the osteopathic physician assistant.

2.8.2. The supervising osteopathic physician shall notify the Board in writing of any termination of the employment of his or her osteopathic physician assistant within ten (10) days of the termination.

2.8.3. The legal responsibility for any osteopathic physician assistant remains that of his or her supervising osteopathic physician at all times, except in temporary situations not to exceed twenty one days, in cases when a licensed and fully qualified osteopathic physician assistant is substituting for another licensed osteopathic physician assistant, the acts and omissions of the substituting osteopathic physician assistant are the legal responsibility of the absent osteopathic physician assistant’s designated supervising osteopathic physician. The temporary change in supervisory responsibility shall be provided to the Board in writing, within ten (10) days of the effective date of the substitution, signed by the affected supervising osteopathic physicians and osteopathic physician assistants, and clearly specifying the dates of substitution.
2.9. The license of an osteopathic physician assistant shall be restricted, suspended or revoked by the Board in accordance with all the alternatives set out at W. Va. Code §30-14A-1 when, after due notice and a hearing in accordance with the manner and form prescribed by the contested case hearing procedure, W. Va. Code §29A-5-1 et seq. and regulations of the Board set out at 24 CSR 1 if it is found:

2.9.1. That the assistant has held himself or herself out or permitted another person to represent him or her as a licensed osteopathic physician;

2.9.2. That the assistant has in fact performed other than at the direction and under the supervision of a supervising osteopathic physician licensed by the Board;

2.9.3. That the assistant has been delegated and performed a task or tasks beyond his or her competence and not in accordance with his or her job description as approved by the Board;

2.9.4. That the assistant is a habitual user of intoxicants or drugs to such an extent that he or she is unable to safely perform as an assistant to the osteopathic physician;

2.9.5. That the assistant has been convicted in any court, state or federal, of any felony or other criminal offense involving moral turpitude;

2.9.6. That the assistant has been adjudicated a mental incompetent or his or her mental condition renders him or her unable to safely perform as an assistant to an osteopathic physician;

2.9.7. That the assistant has failed to comply with any of the provisions of this rule or W. Va. Code §30-14-1 et seq.; and

2.9.8. That the assistant is guilty of unprofessional conduct which includes, but is not limited to, the following:

a. Misrepresentation or concealment of any material fact in obtaining any certificate or license or a reinstatement thereof;
b. The commission of an offense against any provision of state law related to the practice of osteopathic physician assistants, or any rule or regulation promulgated thereunder;

c. The commission of any act involving moral turpitude, dishonesty or corruption, when the act directly or indirectly affects the health, welfare or safety of citizens of this State. If the act constitutes a crime, conviction thereof in a criminal proceeding is not a condition precedent to disciplinary action;

d. Conviction of a felony, as defined under the laws of this State or under the laws of any other state, territory or country;

e. Misconduct in his or her practice as an osteopathic physician assistant or performing tasks fraudulently, beyond his or her authorized scope, with incompetence or with negligence on a particular occasion or negligence on repeated occasions;

f. Performing tasks as an osteopathic physician assistant while the ability to do so is impaired by alcohol, drugs, physical disability or mental instability;

g. Impersonation of a licensed osteopathic physician or another certified or licensed osteopathic physician assistant;

h. Offering, undertaking or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine; treating or prescribing for any human condition by a method, means or procedure which the osteopathic physician assistant refuses to divulge upon demand of the Board; or using such methods or treatment processes not accepted by a reasonable segment of the medical profession;

i. Prescribing a prescription drug, including any controlled substance under state or federal law, other than in good faith and a therapeutic manner in accordance with accepted medical standards;

j. Prescribing a controlled substance under state or federal law, to or for himself or herself, or to or for any
285 member of his or her immediate family; and
286 k. Prescribing a prescription drug, including any
287 controlled substance under state or federal law, which
288 is not included in the approved job description for that
289 osteopathic physician assistant or which is not included
290 in the approved state formulary for osteopathic physi-
291 cian assistants.
292 2.10. Denial of licensure of osteopathic physician
293 assistant. Whenever the Board determines that an
294 applicant has failed to satisfy the Board that he or she
295 should be licensed, the Board shall immediately notify
296 the applicant of its decision and indicate in what respect
297 the applicant has failed to satisfy the Board. The
298 applicant shall be given a formal hearing before the
299 Board upon request of the applicant filed with or mailed
300 by registered or certified mail to the Secretary of the
301 Board, which request must be filed within thirty (30)
302 days after receipt of the Board's decision, stating the
303 reasons for the request. The Board shall within twenty
304 (20) days of receipt of the request, notify the applicant
305 of the time and place of a public hearing, which shall
306 be held within a reasonable time. The burden of
307 satisfying the Board of his or her qualifications for
308 licensure is upon the applicant. Following the hearing,
309 the Board shall determine on the basis of this rule
310 whether the applicant is qualified to be licensed, and
311 this decision of the Board is final as to that application.
312 2.11. Disciplinary procedures. — The disciplinary
313 process and procedures set forth in the contested case
314 hearing procedure, W. Va. Code §29A-5-1 et seq. and in
315 regulations of the Board set out at 24 CSR 1 also apply
316 to disciplinary actions instituted against osteopathic
317 physician assistants with the same provisions regarding
318 the appeal of decisions made to circuit courts.
320 2.12.1. The osteopathic physician assistant shall,
321 under appropriate direction and supervision by an
322 osteopathic physician, augment the osteopathic physi-
323 cian's data gathering abilities in order to assist the
324 supervising osteopathic physician in reaching decisions
and instituting care plans for the osteopathic physician's patients. An osteopathic physician assistant shall have, as a minimum, the knowledge and competency to perform the following functions and may under appropriate supervision perform them; this list is not intended to be specific or all-inclusive:

- a. Screen patients to determine the need for medical attention;
- b. Review patient records to determine health status;
- c. Take a patient history;
- d. Perform a physical examination;
- e. Perform development screening examinations on children;
- f. Record pertinent patient data;
- g. Make decisions regarding data gathering and appropriate management and treatment of patients being seen for the initial evaluation of a problem or the follow-up evaluation of a previously diagnosed and stabilized condition;
- h. Prepare patient summaries;
- i. Initiate requests for commonly performed initial laboratory studies;
- j. Collect specimens for and carry out commonly performed blood, urine and stool analyses and cultures;
- k. Identify normal and abnormal findings in history physical examination and commonly performed laboratory studies;
- l. Initiate appropriate evaluation and emergency management for emergency situations; for example, cardiac arrest, respiratory distress, injuries, burns and hemorrhage;
- m. Perform clinical procedures such as:
  - A. Venipuncture;
  - B. Electrocardiogram;
C. Care and suturing of minor lacerations;
D. Casting and splinting;
E. Control of external hemorrhage;
F. Application of dressings and bandages;
G. Removal of superficial foreign bodies;
H. Cardiopulmonary resuscitation;
I. Audiometry screening;
J. Visual screening; and
K. Aseptic and isolation techniques; and
n. Provide counseling and instruction regarding common patient problems.

2.12.2. The tasks an osteopathic physician assistant may perform are those which require technical skill, execution of standing orders, routine patient care tasks and such diagnostic and therapeutic procedures as the supervising osteopathic physician may wish to delegate to the osteopathic physician assistant after the supervising osteopathic physician has satisfied himself or herself as to the ability and competence of the osteopathic physician assistant. The supervising osteopathic physician may, with due regard for the safety of the patient and in keeping with sound medical practice, delegate to the osteopathic physician assistant such medical procedures and other tasks as are usually performed within the normal scope of the supervising osteopathic physician’s practice, subject to the limitations set forth in this section and W. Va. Code §30-14-1 et seq., and the training and expertise of the osteopathic physician assistant.

2.12.3. A supervising osteopathic physician shall not permit an osteopathic physician assistant to independently practice medicine. Supervision must be maintained at all times.

2.12.4. An osteopathic physician assistant shall not:
a. Maintain or manage an office separate and apart from the supervising osteopathic physician’s primary
office for treating patients, unless the Board has granted
the supervising osteopathic physician specific permis-
sion to establish a satellite operation;

b. Independently bill patients for services provided;

c. Independently delegate a task assigned to him or
her by his or her supervising osteopathic physician to
another individual;

d. Perform acupuncture in any form; or

e. Pronounce a patient dead, except in a setting where
state or federal government regulations permit a
registered nurse or an osteopathic physician assistant to
do so.

2.12.5. The supervising osteopathic physician shall
monitor and supervise the activities of the osteopathic
physician assistant and require documentation, includ-
ing organized medical records with symptoms, pertinent
physical findings, impressions and treatment plans
indicated. The supervising osteopathic physician may
also provide written protocols for the use of the
osteopathic physician assistant in the performance of
delegated tasks. The established protocols shall be
available for public inspection upon request and may be
reviewed by the Board as required.

2.12.6. If the supervising osteopathic physician
absents himself or herself in such a manner or to such
an extent that he or she is unavailable to aid the
osteopathic physician assistant when required, the
supervising osteopathic physician shall not delegate
patient care to his or her osteopathic physician assistant
unless he or she has made appropriate arrangements for
an alternate supervising osteopathic physician. The
legal responsibility for the acts and omissions of the
osteopathic physician assistant remains with the superv-
vising osteopathic physician at all times.

2.12.7. It is the responsibility of the supervising
osteopathic physician to ensure that supervision is
maintained in his or her absence.

2.12.8. No osteopathic physician assistant may be
utilized in an office or clinic separate and apart from the supervising osteopathic physician’s primary place for meeting patients unless the supervising osteopathic physician has obtained specific approval from the Board. A supervising osteopathic physician may supervise only two (2) satellite operations. The criteria for granting approval is that the supervising osteopathic physician demonstrate the following to the satisfaction of the Board:

a. That the osteopathic physician assistant will be utilized in a designated manpower shortage area or an area of medical need as defined by the Board;

b. That there is adequate provision for direct communication between the osteopathic physician assistant and the supervising osteopathic physician and that the distance between the main office and the satellite operation is not so great as to prohibit or impede appropriate emergency services;

c. That provision is made for the supervising osteopathic physician to see each regular patient periodically; for example, every third visit; and

d. That the supervising osteopathic physician visit the remote office at least once every fourteen days and demonstrate that he or she spends enough time on site to provide supervision and personal and regular review of the selected records upon which entries are made by the osteopathic physician assistant. Patient records shall be selected on the basis of written criteria established by the supervising osteopathic physician and the osteopathic physician assistant and shall be of sufficient number to assure adequate review of the osteopathic physician assistant’s scope of practice.

2.12.9. Appropriate records of supervisory contact must be maintained and made available for Board review if required. Failure to maintain the standards required for such an operation may result in the loss of the privilege to maintain a satellite operation.

2.12.10. Designated representatives of the Board will be authorized to make on-site visits to the offices of
supervising osteopathic physicians and medical care facilities utilizing osteopathic physician assistants to review the following:

a. The supervision of osteopathic physician assistants;

b. The maintenance of and compliance with, any protocols;

c. Utilization in conformity with the provisions of this section;

d. Identification of osteopathic physician assistants; and

e. Compliance with licensure and registration requirements.

2.12.11. The Board reserves the right to review osteopathic physician assistant utilization without prior notice to either the osteopathic physician assistant or the supervising osteopathic physician. It is a violation of this rule for a supervising osteopathic physician or an osteopathic physician assistant to refuse to undergo a review by the Board.

2.12.12. The provisions of this section shall not be construed to require medical care facilities to accept osteopathic physician assistants or to use them within their premises. It is appropriate for the osteopathic physician assistant to provide services to the hospitalized patients of his or her supervising osteopathic physician under the supervision of the osteopathic physician, if the medical care facility permits it.

2.12.13. Osteopathic physician assistants employed directly by medical care facilities shall perform services only under the supervision of a clearly identified supervising osteopathic physician, and the osteopathic physician shall supervise no more than two (2) osteopathic physician assistants, except that a supervising osteopathic physician may supervise up to four (4) hospital employed osteopathic physician assistants.

2.12.14. So long as the facility permits, an osteopathic physician assistant may:
509 a. Assess and record the patient's progress within the
parameters of an established protocol or regimen and
report the patient's progress to the supervising osteopa-
thic physician; and

513 b. Make entries in medical records and patient charts
so long as an appropriate mechanism is established for
authentication by the supervising osteopathic physician
through countersignature.

517 2.12.15. An osteopathic physician assistant may
provide medical care or services in an emergency
department so long as he or she has training in
emergency medicine, functions under specific protocols
which govern his or her performance and is under the
supervision of an osteopathic physician with whom he
or she has ready contact and who is willing to assume
full responsibility for the osteopathic physician assist-
ant's performance.

526 2.12.16. No osteopathic physician assistant shall
render nonemergency outpatient medical services until
the patient has been informed that the individual
providing care is an osteopathic physician assistant.

530 2.12.17. It is the supervising osteopathic physician's
responsibility to be alert to patient complaints concern-
ing the type or quality of services provided by the
osteopathic physician assistant.

534 2.12.18. In the supervising osteopathic physician's
office and any satellite operation, a notice plainly visible
to all patients shall be posted in a prominent place
explaining the meaning of the term "Osteopathic
physician Assistant". The osteopathic physician assist-
ant's license must be prominently displayed in the office
and any satellite operation in which he or she may
function. Duplicate licenses may be obtained from the
Board if required.

543 2.12.19. The osteopathic physician assistant is re-
quired to notify the Board of changes in his or her
employment within thirty (30) days. The osteopathic
physician assistant must provide the Board with his or
her new address and telephone number of residence,
address and telephone number of employment and name
of supervising osteopathic physician.

2.12.20. The supervising osteopathic physician is
required to notify the Board of any changes in his or
her supervision of an osteopathic physician assistant
within ten (10) days.

2.13. Limited prescriptive privileges for osteopathic
physician assistants.

2.13.1. An osteopathic physician assistant may be
authorized by the Board to issue written or oral
prescriptions for certain medicinal drugs at the direc-
tion of his or her supervising osteopathic physician if all
of the following conditions are met:

a. The osteopathic physician assistant has performed
patient care services for a minimum of two (2) years
immediately preceding the submission to the Board of
the job description requesting limited prescriptive
privileges;

b. The osteopathic physician assistant has successfully
completed an accredited course of instruction in clinical
pharmacology approved by the Board of not less than
four (4) semester hours;

c. The osteopathic physician assistant obtains Board
approval of his or her job description which includes the
categories of drugs the osteopathic physician assistant
proposes to prescribe at the direction of his or her
supervising osteopathic physician.

d. The osteopathic physician assistant continues to
maintain national certification as a osteopathic physi-
cian assistant, and in meeting such national certification
requirements, completes a minimum of ten (10) hours
of continuing education in rational drug therapy in each
certification period.

2.13.2. Evidence of completion of all conditions for the
granting of limited prescriptive privileges shall be
included with the osteopathic physician assistant's
biennial renewal application and report to the Board.

2.13.3. The Board shall approve a formulary classify-
ing pharmacologic categories of all drugs which may be
prescribed by an osteopathic physician assistant autho-
ized by the Board to prescribe drugs. The formulary
shall exclude Schedules I and II of the Uniform
Controlled Substances Act, anticoagulants, antineoplas-
tics, radiopharmaceuticals, general anesthetics and
radiographic contrast materials. The formulary may be
revised annually, and shall include the following
designated sections:

a. Section a. — A choice of drugs commonly used in
primary care outpatient settings to be prescribable by
osteopathic physician assistants who have completed an
additional accredited course of study in clinical pharma-
cology approved by the Board of not less than four (4)
semester hours; and

b. Section b. — Additional drugs used less commonly
in primary care outpatient settings to be prescribable
by osteopathic physician assistants who have satisfied
the requirements set forth under Section 2.13.3.a of this
rule. In addition, Section b. drugs may be prescribed by
osteopathic physician assistants only under the following
limited situations:

A. On a direct order from the supervising osteopathic
physician to the osteopathic physician assistant during
consultation at the time of the patient's examination by
the osteopathic physician assistant, and specifically
noted in the patient's chart; or

B. On a refill prescription for a previously diagnosed
and stable patient whose prescription was initiated by
the supervising osteopathic physician.

2.13.4. A prescription drug not included in the
approved formulary shall not be contained in the job
description of any osteopathic physician assistant.

2.13.5. Prescriptions issued by an osteopathic physi-
cian assistant shall be issued consistent with the
supervising osteopathic physician's directions or treat-
ment protocol provided to his or her osteopathic
physician assistant. The maximum dosage shall be
indicated in the protocol and in no case may the dosage
exceed the manufacturer's recommended average therapeutic dose for that drug.

2.13.6. Each prescription and subsequent refills given by the osteopathic physician assistant shall be entered on the patient's chart.

2.13.7. The prescription form utilized by an osteopathic physician assistant approved for limited prescriptive privileges shall be imprinted with the name of the supervising osteopathic physician, the name of the approved osteopathic physician assistant, the address of the health care facility, the telephone number of the health care facility, the categories of drugs or drugs within a category which the assistant may prescribe and the statement, "Osteopathic physician Assistant Prescription - it is a violation of state law to dispense drugs not imprinted on this prescription." The osteopathic physician assistant shall write the name of the patient, the patient's address and the date on each prescription form. The osteopathic physician assistant shall sign his or her name to each prescription followed by the letters "PA-C." The supervising osteopathic physician must provide the Board with a copy of the prescription form utilized by his or her osteopathic physician assistant prior to its use. A copy of this prescription form shall be provided by the osteopathic physician assistant to area pharmacies where the osteopathic physician assistant may issue a prescription by word of mouth, telephone or other means of communication in his or her name at the direction of the supervising osteopathic physician.

2.13.8. Osteopathic physician assistants authorized to issue prescriptions for Schedules III through V controlled substances shall write on the prescription form the Federal Drug Enforcement Administration number issued to that osteopathic physician assistant. Prescriptions written for Schedule III drugs shall be limited to a seventy-two (72) hour supply and may not authorize a refill. The maximum amount of Schedule IV or Schedule V drugs shall be no more than ninety (90) dosage units or a thirty (30) day supply, whichever is less.
2.13.9. Other prescription drugs shall not be prescribed or refillable for a period exceeding six (6) months.

2.13.10. The Board of Osteopathy shall provide the Board of Pharmacy with a list of osteopathic physician assistants with limited prescriptive privileges and shall update the list within ten (10) days after additions or deletions are made.

2.13.11. Nothing in this rule shall be construed to permit any osteopathic physician assistant to independently prescribe or dispense drugs.


2.14.1. Each osteopathic physician assistant, as a condition of biennial renewal of osteopathic physician assistant license, shall provide written documentation of participation in and successful completion during the preceding two (2) year period of a minimum of twenty (20) hours of continuing education in courses approved by the Board for the purposes of continuing education of osteopathic physician assistants.

2.14.2. All written documentation must be submitted to and received by the Board, with the completed biennial renewal form, prior to the first day of April of the year of renewal of the osteopathic physician assistant license.

2.14.3. Failure to timely submit written documentation as set forth in subsection 2.14.3 of this rule shall result in the automatic suspension of the license of an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the Board.


If any provision of these rules or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the provisions or application of this rules which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.
(b) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred ninety-three, modified by the board of osteopathy 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-four, relating to the board of osteopathy (licensing, disciplinary and complaint procedures for osteopathic physicians), are authorized.

§64-9-37. Board of physical therapy.

The legislative rules filed in the state register on the nineteenth day of July, one thousand nine hundred ninety-three, modified by the board of physical therapy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-three, relating to the board of physical therapy (general provisions), are authorized.

§64-9-38. Board of examiners for speech-language pathology and audiology.

(a) The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-three, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of September, one thousand nine hundred ninety-three, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology), are authorized.

(b) The legislative rules filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-three, modified by the board of examiners for speech-language pathology and audiology to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of September, one thousand nine hundred ninety-three, relating to the board of examiners for speech-language pathology and audiology (licensure of speech-language pathology and audiology assistants), are authorized.

The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the commercial hazardous waste management facility siting board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-four, relating to the commercial hazardous waste management facility siting board (commercial hazardous waste management facility siting board certification requirements), are authorized.

§64-9-40. Family protection services board.

The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, modified by the family protection services board 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 ninety-three, relating to the family protection services board (operation of the family protection services board and licensure and funding of domestic violence programs), are authorized with the amendment set forth below:

On page twelve, section 5.5.3, after the word “suspended” by striking out the word “or” and inserting in lieu thereof the following words “but the board shall provide funds to a shelter/program”.

§64-9-41. Board of investments.

(a) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the board of investments 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-four, relating to the board of investments (administration of the consolidated pension fund), are authorized.

(b) The legislative rules filed in the state register on
the sixteenth day of August, one thousand nine hundred ninety-three, relating to the board of investments (administration of the consolidated fund by the West Virginia state board of investments), are authorized.

CHAPTER 98
(H. B. 4163—By Mr. Speaker, Mr. Chambers)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duties of the legislative auditor; allowing the legislative auditor to charge the costs of conducting a post audit to the agency being audited; use of funds received; and filing copies of audit.

Be it enacted by the Legislature of West Virginia:

That section four, article two, 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 2. LEGISLATIVE AUDITOR; POWERS; FUNCTIONS; DUTIES; COMPENSATION.

§4-2-4. Duties of auditor; filing reports.

(a) It is the duty of the legislative auditor to compile fiscal information for the Senate and the House of Delegates, to make a continuous audit and analysis of the state budget, revenues and expenditures, during and between sessions of the Legislature, to make post audits of the revenues and expenditures of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units.
(b) The legislative auditor may collect, and the department, agency or board shall pay, any or all of the costs associated with conducting the post audits from the department, agency or board being audited, when necessary and desirable. The legislative auditor shall render to the department, agency or board liable for the costs a statement of the costs as soon after the costs were incurred as practicable, and it is the duty of the department, agency or board to pay promptly in the manner that other claims and accounts are paid. All money received by the legislative auditor from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

(c) A copy of each report of audit when completed and certified shall be filed in the office of the department of finance and administration as a public record and a copy shall be filed with the attorney general for any action he or she may consider necessary.

CHAPTER 99

(Com. Sub. for H. B. 4031—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 11, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nine, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, five, six, seven and eight of said article; to amend and reenact sections two and two-a, article seven, chapter six of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; to amend and reenact section thirteen, article two of said chapter; and to amend and reenact section four, article nine of said chapter, all generally relating to the salaries of elected or appointed state officers; increasing the basic compensation and expense reimbursement for members of the Legislature; increasing the daily allowance for members during sessions and during the
interim; providing for additional compensation for presiding officers and specified committee chairs, as well as certain other members to be designated by the presiding officers; increasing the salaries of state constitutional officers; changing the salaries of certain state administrators; updating the provisions related to state administrators' salaries; increasing the salary for circuit court judges; increasing the salaries of justices of the supreme court of appeals; and increasing required contributions to retirement system for judges of courts of record.

Be it enacted by the Legislature of West Virginia:

That section nine, article two-a, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, three, four, five, six, seven and eight of said article be amended and reenacted; that sections two and two-a, article seven, chapter six be amended and reenacted; that section ten-a, article one, chapter fifty-one be amended and reenacted; that section thirteen, article two of said chapter be amended and reenacted; and that section four, article nine of said chapter fifty-one be amended and reenacted, all to read as follows:

Chapter

4. The Legislature.
51. Courts and Their Officers.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 2A. COMPENSATION FOR AND EXPENSES OF MEMBERS OF THE LEGISLATURE.

§4-2A-2. Basic compensation for services; proration.
§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.
§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.
§4-2A-5. Interim compensation for members.
§4-2A-6. Travel expenses.
§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.
PART II. COMPENSATION.

§4-2A-2. Basic compensation for services; proration.

(a) Each member of the Legislature shall receive as basic compensation for his or her services the sum of six thousand five hundred dollars per calendar year. Beginning in the calendar year one thousand nine hundred ninety-five, and for each calendar year thereafter, each member of the Legislature shall receive as basic compensation for his or her services the sum of fifteen thousand dollars. In addition to such basic compensation, members shall receive the additional compensations as are expressly provided for in sections three, four and five of this article. The increased basic compensation as set forth in this subsection and all other increased amounts or new amounts in respect to the compensation or expenses of members of the Legislature, set forth in the resolution of the citizens legislative compensation commission, dated the third day of March, one thousand nine hundred ninety-four, and implemented in sections two through eight of this article providing for new amounts or amounts increased to new amounts greater than those in force and effect on the first day of January, one thousand nine hundred ninety-four, shall all become effective only for calendar year one thousand nine hundred ninety-five, and each calendar year thereafter.

(b) The basic compensation shall be payable twice a month during each regular session of the Legislature, without regard to any extension of such regular session. In the event of the death, resignation or removal of a member of the Legislature during a regular session of the Legislature and the appointment and qualification of his or her successor during any such regular session, the basic compensation provided for in this section shall be prorated between the original member and his or her successor on the basis of the number of days served (including Saturdays and Sundays) as a member of the Legislature by each during such regular session of sixty calendar days.

(c) In the event of the death, resignation or removal
of a member of the Legislature and the appointment and qualification of his or her successor subsequent to the regular session of the Legislature held in the calendar year in which such successor was appointed and qualified, none of the basic compensation provided for in this section shall be paid to such successor.

§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.

Each member of the Legislature shall receive, in addition to the basic compensation provided for in section two of this article, additional compensation of one hundred dollars per day for each day of attendance in person upon any business of the Senate or House of Delegates, as the case may be, on each day upon which said Senate or House of Delegates is actually called to order during each extension of regular session or during extraordinary session of the Legislature. Such additional compensation shall be paid from time to time during any such extended session or extraordinary session, as may be prescribed by rules established by the legislative auditor.

§4-2A-4. Additional compensation for president of Senate, speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

(a) In addition to the basic and additional compensation provided for in sections two and three of this article, the president of the Senate and the speaker of the House of Delegates shall each receive additional compensation of:

(1) Fifty dollars per day for each day actually served during any regular, extension of regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

(2) One hundred dollars per day up to a maximum of eighty such days per calendar year for attending to legislative business in their offices in the capitol building when the Legislature is not in regular,
extension of regular or extraordinary session and interim committees are not meeting.

(b) In addition to the basic and additional compensation provided for in sections two and three of this article, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of twenty-five dollars per day for each day actually served during any regular, extension of regular or during extraordinary session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) Such presiding officer and majority and minority leader compensation shall be paid from time to time during any such session or interim period, as the case may be, as may be prescribed by rules established by the legislative auditor.

(d) In addition to the basic and additional compensation provided for in sections two and three of this article, the chairpersons of the committees on finance and committees on the judiciary of the respective houses and up to four additional persons from each house, to be named by the presiding officer, shall each receive an additional compensation of one hundred dollars per day up to a maximum of thirty days for attending to legislative business in their offices in the capitol building when the Legislature is not in regular, extended or extraordinary session and interim committees are not meeting.

§4-2A-5. Interim compensation for members.

In addition to the basic and any additional compensation provided for in sections two, three and four of this article, each member shall receive interim compensation of one hundred dollars per day for each day actually engaged in the performance of interim duties as a member of any interim committee between regular sessions of the Legislature: Provided, That the total additional interim compensation payable to any member and his replacement, if any, on a committee or commission under the provisions of this section shall not exceed the sum of three thousand dollars per calendar year.
§4-2A-6. Travel expenses.

Each member of the Legislature shall be entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at a rate equal to that paid by the travel management office of the department of administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of such means of transportation actually used, plus the cost of necessary taxi or limousine service, tolls and parking fees in connection therewith, but during any regular, extension of regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his or her place of residence for each week of any such session.

In addition to the above travel expense, the president of the Senate and the speaker of the House of Delegates shall be entitled to be reimbursed as provided above, upon submission of an expense voucher, for expenses incurred incident to travel for up to a maximum of eighty days per calendar year in connection with their visits to the capitol building for business which is related to their duties as presiding officers of the respective houses of the Legislature, but which takes place when the Legislature is not in regular, extension of regular or extraordinary session and interim committees are not meeting.

The rate paid for mileage pursuant to this section may change from time to time in accordance with changes
§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

(a) Each member of the Legislature who does not commute daily shall receive the sum of eighty-five dollars per day as per diem allowance in connection with any regular, extended, extraordinary session, interim assignment or for any member so authorized by the presiding officer. Any member of the Legislature who does commute daily shall receive the sum of forty-five dollars per day as said per diem allowance and, in addition to such allowance, shall be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the department of administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of such means of transportation actually used, plus the costs of necessary taxi or limousine service, tolls and parking fees in connection therewith: Provided, That the total of this per diem allowance plus travel expense for a daily commuting member shall not exceed eighty-five dollars per day. The amount for mileage paid pursuant to this paragraph may change from time to time in accordance with changes in the level of reimbursement by the said travel management office.

(b) The president of the Senate and the speaker of the House of Delegates, the chairman of the house committee on finance, the chairman of the senate committee on finance, the chairman of the house committee on the judiciary, the chairman of the senate committee on the judiciary, and up to four additional persons from each house designated by the presiding officer pursuant to section four of this article, shall be reimbursed for travel at the rate established in subsection (a) above, and shall further receive the per diem allowance established in said subsection in connection with their visits to the capitol for business which is related to their duties as such officers at the times when the Legislature is not

In addition to reimbursement for travel expenses as authorized in section six of this article, each member of the Legislature traveling from West Virginia to an out-of-state point or points and returning incident to the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether such committee is operating under general law or resolution, which travel has been duly authorized, shall be entitled to be reimbursed, upon submission of an expense voucher therefor, for all reasonable and necessary expenses actually incurred incident thereto, but the total of any and all such reimbursed expenses, exclusive of reimbursement for such travel expenses, shall not under any circumstances exceed the actual cost of housing at the least expensive available single rate and meal and miscellaneous expenses of forty-five dollars per day. A receipt for the amount paid for housing and for travel by any public transportation to and from West Virginia shall be submitted with the expense voucher, but a receipt shall not be required to be submitted with any such expense voucher for meal and miscellaneous expenses.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

The salaries for each of the state constitutional officers shall be as follows:

(a) The salary of the governor shall be ninety thousand dollars per year;

(b) The salary of the attorney general shall be seventy-five thousand dollars per year;
(c) The salary of the auditor shall be seventy thousand dollars per year;

(d) The salary of the secretary of state shall be sixty-five thousand dollars per year;

(e) The salary of the commissioner of agriculture shall be seventy thousand dollars per year; and

(f) The salary of the state treasurer shall be sixty-five thousand dollars per year.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Notwithstanding any other provision of this code to the contrary enacted prior to the first day of January, one thousand nine hundred ninety-four, each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of such appointive state officers shall hereafter be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office.

Beginning on the first day of July, one thousand nine hundred ninety-four, the annual salary of each such named appointive state officer shall be as follows:

Administrator, division of highways, sixty-five thousand dollars; administrator, division of health, fifty-seven thousand two hundred dollars; administrator, division of human services, forty-seven thousand eight hundred dollars; administrator, state tax division, forty-nine thousand nine hundred dollars; administrator, division of energy, sixty-five thousand dollars; administrator, division of corrections, fifty-five thousand dollars;
29 administrator, division of natural resources, sixty-five thousand dollars; administrator, division of public safety, sixty thousand dollars; administrator, lottery division, sixty thousand dollars; director, public employees insurance agency, fifty-five thousand dollars; administrator, division of banking, fifty-five thousand dollars; administrator, division of insurance, fifty-five thousand dollars; administrator, division of culture and history, fifty thousand dollars; administrator, alcohol beverage control commission, sixty thousand dollars; administrator, division of motor vehicles, fifty-five thousand dollars; director, division of personnel, fifty thousand dollars; adjutant general, fifty thousand dollars; chairman, health care cost review authority, fifty-five thousand dollars; members, health care cost review authority, fifty-one thousand two hundred dollars; director, human rights commission, forty thousand dollars; administrator, division of labor, fifty-five thousand dollars; administrator, division of veterans affairs, forty thousand dollars; administrator, division of emergency services, forty thousand dollars; members, board of parole, forty thousand dollars; members, employment security review board, seventeen thousand dollars; members, workers' compensation appeal board, seventeen thousand eight hundred dollars.

54 Prior to the first day of July, one thousand nine hundred ninety-four, each of the aforesaid officers shall continue to receive the annual salaries they were receiving as of the last day of December, one thousand nine hundred ninety-three.

59 (b) Notwithstanding any other provisions of this code to the contrary enacted prior to the first day of January, one thousand nine hundred ninety-four, each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and, prior to the first day of July, one thousand nine hundred ninety-four, each of the state officers named in this subsection shall continue to receive the annual salaries they were receiving as of the last day of December, one thousand nine hundred ninety-three, and shall thereafter be paid an annual salary as follows: State superin-
tendent of schools, seventy-five thousand dollars; administrator, division of risk and insurance management, fifty thousand dollars; director, division of rehabilitation services, fifty-five thousand dollars; executive director, educational broadcasting authority, forty-seven thousand five hundred dollars; secretary, library commission, forty-seven thousand five hundred dollars; director, geologic and economic survey, forty-seven thousand five hundred dollars; executive director, water development authority, fifty-four thousand two hundred dollars; executive director, public defender services, fifty-five thousand dollars; director, commission on aging, forty thousand dollars; commissioner, oil and gas conservation commission, forty thousand dollars; director, farm management commission, thirty-two thousand five hundred dollars; director, railroad maintenance authority, fifty thousand dollars; executive secretary, women's commission, thirty thousand one hundred dollars; director, regional jail authority, fifty-five thousand dollars; director, hospital finance authority, twenty-five thousand eight hundred dollars.

(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless such appointive state officer shall have first filed with the state auditor and the legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The attorney general shall prepare and distribute such form to the affected spending units: Provided, That no decrease in salary shall be effective for any current appointive state officer appointed prior to the first day of January, one thousand nine hundred eighty-nine: Provided, however, That such decreases shall take effect at such time as any appointive office is vacated: Provided further, That the increase provided for the state superintendent of schools enacted during the regular session, one thousand nine hundred ninety-four, should not become effective until the first day of January, one thousand nine hundred ninety-seven.
CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.
1 The salary of each of the justices of the supreme court of appeals shall be seventy-two thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety-five, the salary of each of the justices of the supreme court shall be eighty-five thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

1 The salaries of the judges of the various circuit courts shall be paid solely out of the state treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.
6 The annual salary of all circuit judges shall be sixty-five thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety-five, the annual salary of all circuit judges shall be eighty thousand dollars per year.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

*§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; military service credit and maximum allowable; qualifiable prosecutorial service.
1 (a) Every person who is now serving or shall hereafter serve as a judge of any court of record of this state shall pay into the judges' retirement fund six percent of the salary received by such person out of the state treasury:

*Clerk's Note: This section was also amended by H. B. 4063 (Chapter 33), which passed subsequent to this act.
Provided, That when a judge becomes eligible to receive benefits from such trust fund by actual retirement, no further payment by him or her shall be required, since such employee contribution, in an equal treatment sense, ceases to be required in the other retirement systems of the state, also, only after actual retirement: Provided, however, That on and after the first day of January, one thousand nine hundred ninety-five, every person who is then serving or shall thereafter serve as a judge of any court of record in this state shall pay into the judges' retirement fund nine percent of the salary received by that person. Any prior occurrence or practice to the contrary, in any way allowing discontinuance of required employee contributions prior to actual retirement under this retirement system, is rejected as erroneous and contrary to legislative intent and as violative of required equal treatment and is hereby nullified and discontinued fully, with the state auditor to require such contribution in every instance hereafter, except where no contributions are required to be made under any of the provisions of this article.

In drawing warrants for the salary checks of judges, the state auditor shall deduct from the amount of each such salary check six percent thereof, which amount so deducted shall be credited by the state treasurer to the trust fund.

Any judge seeking to qualify military service to be claimed as credited service, in allowable aggregate maximum amount up to five years, shall be entitled to be awarded the same without any required payment in respect thereof to the judges' retirement fund. Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its regular session in the year one thousand nine hundred eighty-seven, who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year one thousand nine hundred eighty-seven, shall be required to pay into the judges' retirement fund six percent of the annual salary which was actually received by such person as prosecuting attorney during the time such
prosecutorial service was rendered prior to the year one thousand nine hundred eighty-seven, and for which credited service is being sought, together with applicable interest. No judge whose term of office shall commence after the effective date of such amendments to this article shall be eligible to claim any credit for service rendered as a prosecuting attorney as eligible service for retirement benefits under this article, nor shall any time served as a prosecutor after the year one thousand nine hundred eighty-eight be considered as eligible service for any purposes of this article.

(b) The Legislature finds that any increase in salary for judges of courts of record directly affects the actuarial soundness of the retirement system for judges of courts of record and therefore, an increase in the required percentage contributions of members of that retirement system is the same subject for purposes of determining the single object of this bill.

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CHAPTER 100

(Com. Sub. for S. B. 289—By Senators Sharpe, Ross and Helmick)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to mechanics' liens; granting a mechanic's lien to surveyors for materials furnished, work done or services provided; and providing for the perfection and preservation of certain mechanics' liens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

§38-2-6a. Lien of architect, surveyor, engineer or landscape architect.
An architect, surveyor, engineer or landscape architect shall have a lien for his or her compensation as provided for in sections one through six, inclusive, of this article for all materials furnished and all work done, or all services provided by such architect, surveyor, engineer and landscape architect as a contractor, subcontractor, materialman, mechanic or laborer, as the case may be. The lien shall be perfected and preserved in accordance with, and shall otherwise be subject to, the provisions of this article governing liens for contractors, subcontractors, materialmen, mechanics or laborers, as the case may be.

CHAPTER 101
(H.B. 4666—By Delegates P. White, Doyle, Leach, S. Cook, Petersen, H. White and McKinley)

[Passed March 12, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section three, article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two-a of said article, relating to authorization to use moneys from the medical services trust fund to make the required state match payment for the medicaid disproportionate share hospital program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§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.

(3) Payment of the required state match for medicaid disproportionate share payments in order to receive federal financial participation in the disproportionate share hospital program.

(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.

CHAPTER 102
(H. B. 4482—By Delegates Whitman, Collins, Preece, Dempsey, Hendricks, Browning and Staton)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground mines; miners' health, safety and training; increasing the fee to operator for certificate of approval and permit; entities performing construction or services at mine deemed operators; exceptions; and procedure for obtaining certificate or permit.

Be it enacted by the Legislature of West Virginia:

That section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

(a) After the first day of July, one thousand nine hundred seventy-one, no mine shall be opened or reopened unless prior approval has been obtained from the director of the office of miners' health, safety and training, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of one hundred dollars, which payment shall be tendered with the application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within thirty days after the first day of January of each year, the holder of such permit to open a mine shall apply for the extension of such permit for an additional year. Such permit, evidenced by a document issued by the director, shall be granted as a matter of right for a fee of one hundred dollars if, at the time such application is made, the permit holder is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one of this chapter. Applications for extension of such permits not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of one hundred dollars.

(b) Permits issued pursuant to this section shall not be transferable.

(c) If the operator of a mine is not the permit holder as defined in subsection (a) above, then such operator must apply for and obtain a certificate of approval to operate the mine on which the permit is held prior to
commencing operations. An operator who is not the
permit holder operating such mine on the tenth day of
April, one thousand nine hundred ninety-three, must
apply for a certificate of approval on or before the first
day of July, one thousand nine hundred ninety-three.

The operator shall pay a fee of one hundred dollars,
which payment shall be tendered with the application
for approval. Such approval, evidenced by a certificate
issued by the director, shall be granted if, at the time
such application is made, the applicant is in compliance
with the provisions of section seventy-seven of this
article and has paid or otherwise appealed all coal mine
assessments imposed on such applicant for the certifi-
cate of approval under article one of this chapter.

(d) In addition to the authority to file a petition for
enforcement under subdivision (4), subsection (a),
section twenty-one, article one of this chapter, if an
operator holding a certificate of approval issued
pursuant to subsection (c) of this section, against whom
a civil penalty is assessed in accordance with section
twenty-one, article one of this chapter, and implement-
ing regulations, and which has become final, fails to pay
the penalty within the time prescribed in such order, the
director or the authorized representative of the director,
by certified mail, return receipt requested, shall send a
notice to such operator advising the operator of the
unpaid penalty. If the penalty is not paid in full within
sixty days from the issuance of the notice of delinquency
by the director, then the director may revoke such
operator’s certificate of approval: Provided, That such
operator to whom the delinquency notice is issued shall
have thirty days from receipt thereof to request, by
certified mail, return receipt requested, a public
hearing held in accordance with the procedures of
section seventeen, article one of this chapter, and
implementing rules, including application for tempo-
rary relief. Once such operator’s certificate of approval
is revoked pursuant to this subsection, such operator
shall be prohibited from obtaining any certificate of
approval under the provisions of this section to operate
any other mine until such time as that operator pays the
delinquent penalties that have become final.
(e) Every firm, corporation, partnership or individual that contracts to perform services or construction at a coal mine shall be deemed to be an operator and beginning the first day of January, one thousand nine hundred ninety-five, must apply for and obtain a certificate of approval prior to commencing operations: Provided, That such persons shall only be required to obtain one certificate annually: Provided, however, That persons such as, but not limited to, consultants, mine vendors, office equipment suppliers, and maintenance and delivery personnel are excluded from this requirement. Any such operator shall pay a fee of one hundred dollars which shall be tendered with the application for approval. Such approval, evidenced by a certificate issued by the director, shall be granted if, at the time such application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on such applicant under article one of this chapter.

Within thirty days after the first day of January of each year, the holder of such certificate of approval shall apply for the extension of such approval for an additional year. Applications for extension must be accompanied by a fee of one hundred dollars. An extension shall be granted if, at the time such application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on such applicant under article one of this chapter. All delinquent assessments which have been imposed upon a certificate of approval holder or applicants under this section shall not be imposed upon any permit holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of section sixty-three.

(f) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) and certificate of approval issued under subsection (d) herein.

(g) The district mine inspector shall be contacted for a pre-inspection of the area proposed for underground mining prior to issuance of any new opening permit approval.
AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of registration for motor vehicles; privilege tax on effecting certificate of title; requirements; exceptions for certain classes of vehicles; eliminating privilege tax on leased vehicles; imposing a privilege tax upon the monthly payments for leased vehicles; payments to the division of motor vehicles; additional charges; duration of certificate of title; exceptions for certain types of vehicles; affidavits; criminal penalties for false affidavits; and exceptions for military personnel.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; privilege tax on payments for leased vehicles; revenue allocations; transfers; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle.

The application shall be upon a blank form to be
furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the division of motor vehicles may require. The application shall be signed and sworn to by the applicant.

(b) A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser thereof is the value of the vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value thereof for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the same be new or secondhand; if the vehicle is acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value thereof for the purposes of this section.

(2) No certificate of title for any vehicle shall be issued to any applicant unless the applicant has paid to the division of motor vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever except gifts between husband and wife or between parents and children: Provided, That the husband or
(3) The division of motor vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the division of motor vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: Provided, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles, or Class S vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate
commerce. Nor does the tax imposed by this section apply to the titling of Class B, Class K or Class E vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C or Class L semitrailers, full trailers, pole trailers and converter gear: *Provided,* That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner must surrender to the commissioner the exempted registration, the exempted certificate of title, and pay the tax imposed by this section based upon the current market value of the vehicle: *Provided, however,* That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B, Class K or Class E vehicles in excess of fifty-five thousand pounds and Class C or Class L semitrailers, full trailers, pole trailers and converter gear shall not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is hereby imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life
or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided, That this state or any political subdivision thereof, or any volunteer fire department, or duly chartered rescue squad, is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the same is owned or held by the original holder of the certificate, and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid, to the division of motor vehicles, on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of five dollars for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, is not subject to the tax imposed by this section: Provided, however, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehi-
cles, except recreational vehicles, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section, who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, is on the first offense guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned in the county jail for a period not to exceed six months, or, in the discretion of the court, both fined and imprisoned. For a second or any subsequent conviction within five years, that person is guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years or, in the discretion of the court, fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia, or his or her dependents who possess a motor vehicle with valid registration, are exempt from the provisions of this article for a period of nine months from the date that that person returns to this state or the date his or her dependent returns to this state, whichever is later.
AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article ten of said chapter, all relating to special registration plates and fees; requirements for design of license plates; permitting special plates for certain individuals, officials and judges, national guardsmen, various classes of veterans, nonprofit charitable or educational organizations and emergency personnel; vanity plates; special ten-year registration for exempted persons and antique automobiles; plates for amateur radio station operators; and fees and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, be amended and reenacted; and that section fourteen, article ten of said chapter be amended and reenacted, all to read as follows:

Article
3. Original and Renewal of Registration; Issuance of Certificates of Title.

10. Fees for Registration, Licensing, Etc.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.
(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division shall not issue, permit to be issued, or distribute any special registration plates except as follows:

(1) The governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of free schools, auditor, treasurer, commissioner of agriculture, and the attorney general, the members of both houses of the Legislature, including the elected officials thereof, the justices of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle owned by the official or his or her spouse: Provided, That the division shall not issue more than two plates for each official.
(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner, and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official's term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) An annual fee of fifteen dollars shall be charged for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) Members of the national guard forces may be issued special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, or the commanding officer of any United States Armed Forces Reserve Unit that the applicant is a member thereof, the division shall issue to any member of the national guard of this state or a member of any reserve unit of the United States Armed Forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member.

(B) An initial application fee of ten dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this section.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a registration plate bearing specially arranged letters or
numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) Honorably discharged veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section shall be construed to exempt any veteran from any other provision of this chapter.

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.
(6) Disabled veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any disabled veteran, who is exempt from the payment of registration fees under the provisions of this chapter, a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red, and also the regular identification numerals in red.

(B) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

(7) Recipients of the distinguished purple heart medal may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished purple heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the commissioner of motor vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

(8) Survivors of the attack on Pearl Harbor may be issued special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the
armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, shall be issued a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the commissioner of motor vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) Special registration plates issued pursuant to this subdivision are not transferable to any other person. Any special registration issued under this subdivision terminates upon the death of the registered owner of the special registration plate.

(9) Nonprofit charitable and educational organizations may be issued special registration plates as follows:

(A) Nonprofit charitable and educational organizations may design a logo or emblem for inclusion on a special registration plate and submit the logo or emblem to the commissioner for approval and authorization. Upon the approval and authorization, the nonprofit charitable and educational organizations may market the special registration plate to organization members and the general public.

(B) Approved nonprofit charitable and educational organizations may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations' logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(C) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-
of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(D) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(10) Specified emergency or volunteer registration plates may be issued as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia, and who is a certified paramedic or emergency medical technician, a member of a volunteer fire company or a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal's assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant, stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a
special initial application fee of ten dollars, which is in
addition to any other registration or license fee required
by this chapter. All special fees shall be collected by the
division and deposited into a special revolving fund to
be used for the purpose of compensating the division of
motor vehicles for additional costs and services required
in the issuing of such special registration and for the
administration of this section.

(d) The commissioner shall promulgate rules in
accordance with the provisions of chapter twenty-nine-
a of this code regarding the proper forms to be used in
making application for the special license plates
authorized by this section.

(e) Nothing in this section shall be construed to
require a charge for a free prisoner of war license plate
or a free recipient of the congressional medal of honor
license plate for a vehicle titled in the name of the
qualified applicant as authorized by other provisions of
this code: Provided, That the registration plates are not
transferable to any person, and the registration plates
terminate upon the death of the registered owner of the
special registration plate.

(f) Special ten-year registration plates may be issued
as follows:

(1) The commissioner may issue or renew for a period
of no more than ten years any registration plate
exempted from registration fees pursuant to any
provision of this code or any restricted use antique
motor vehicle license plate authorized by section three-
a, article ten of this chapter: Provided, That the
provisions of this subsection shall not apply to any
person who has had a special registration suspended for
failure to maintain motor vehicle liability insurance as
required by section three, article two-a, chapter
seventeen-d of this code or failure to pay personal
property taxes as required by section three-a of this
article.

(2) An initial nonrefundable fee shall be charged for
each special registration plate issued pursuant to this
subsection, which is the total amount of fees required
by section fifteen, article ten of this chapter, section three, article three of this chapter, or section three-a, article ten of this chapter for the period requested.

(3) Special registration plates issued pursuant to this subsection are not transferable to any other person. Any special registration issued under this subsection terminates upon the death of the registered owner of the special registration plate.

(g) The provisions of this section shall not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached thereto to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, shall be void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-14. Registration plate for amateur radio station operators; fees; rules and forms.

1 (a) Any owner of a motor vehicle who is a resident of the state of West Virginia, and who holds an unrevoked and unexpired official amateur radio station license and/or amateur class operators' license issued by the federal communications commission, may apply for a special registration plate for a Class A motor vehicle
which, in lieu of the registration numbers required by
this article, shall be inscribed with the official amateur
radio call letters of the applicant as assigned by the
federal communications commission.

(b) Each application shall be accompanied by proof of
ownership of the amateur radio station license; proof of
compliance with the motor vehicle laws of the state
relative to registration and licensing of motor vehicles;
payment of the registration, license and other fees
required by law; and payment of a special initial
application fee in the amount of ten dollars, which is in
addition to all other fees required by law. This special
fee shall be collected by the division and deposited into
a special revolving fund to be used for the purpose of
compensating the division of motor vehicles for addi-
tional costs and services required in the issuing of the
licenses.

(c) The commissioner shall promulgate rules in
accordance with the provisions of chapter twenty-nine-
a of this code regarding proper forms to be used in
making application for the special license plates
authorized by this section.

CHAPTER 105
(Com. Sub. for H. B. 4328—By Delegates Warner and Campbell)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section twenty-four, relating to motor vehicle
registration; waiver of any permits, authorities or
licenses required to operate a motor vehicle in this state
during times of declared emergencies; conditions and
requirements; statement of purpose; and length of
emergency waiver period.

Be it enacted by the Legislature of West Virginia:
That article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-four, to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-24. Emergency waiver of registration and licensing requirements; conditions and limitations; statement of purpose; length of emergency waiver period; promulgation of rules.

1 (a) The governor may authorize the commissioner of motor vehicles or his or her designee to waive temporarily any requirements under the provisions of this chapter, or any other provision of this code relating to any permits, authorizations or licenses required to operate a motor vehicle in this state: Provided, That such temporary waiver shall be for the sole purpose of facilitating the response of motor carriers providing humanitarian relief during time of emergency officially declared by the president of the United States, the governor of this state or the chief executive of any other state or jurisdiction: Provided, however, That the following conditions are satisfied:

   (1) The driver of any such vehicle shall be properly licensed in his state of residency;

   (2) The motor vehicle to be operated is properly licensed and registered in this or any other state; and

   (3) The motor vehicle to be operated satisfies all motor vehicle insurance requirements or provisions of its state of registration.

(b) Proof of the insurance required by subdivision (3), subsection (a) of this section shall be carried in the cab of the motor vehicle.

(c) Any motor vehicle operating pursuant to this section shall be issued a statement from the person or entity authorizing the transport of such goods or materials certifying that the motor carrier is providing humanitarian relief without compensation on a volunteer
basis and including a description of materials or goods being transported during the time of declared emergency while it is in this state. Such statement shall be carried in the cab of the motor vehicle and be made available for inspection upon request of the commissioner, any of his or her designees, or any law-enforcement officer.

(d) The commissioner of motor vehicles shall determine at the time the temporary waiver is issued the length of time such waiver shall be in effect: Provided, That all temporary waivers issued pursuant to this section shall become void upon the termination of the time of emergency as determined by the president of the United States, the governor of this state or the chief executive of any other state or jurisdiction.

CHAPTER 106
(Com. Sub. for H. B. 4106—By Delegate Bennett)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of title for salvaged or reconstructed vehicles; surrender of certificate of title for salvaged vehicles; inspection requirements; fees; deleting the exception permitting unmarked certificates of title for certain reconstructed vehicles; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a total loss or otherwise designated as “totaled” by any
insurance company or insurer, and upon payment of an agreed price as a claim settlement to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer shall receive the certificate of title and the vehicle. The insurance company or insurer shall within ten days surrender the certificate of title and a copy of the claim settlement to the division of motor vehicles. The division shall issue a "salvage certificate," on a form prescribed by the commissioner, in the name of the insurance company or the insurer. Such certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle the insurance company or insurer shall endorse the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (c) of this section. In the event a motor vehicle is determined to be damaged in excess of seventy-five percent of its retail price as described in the national automobile dealers association official used car guide, a junk card will be issued in lieu of a salvage certificate.

(b) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title or salvage certificate to the division for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the division. Should a vehicle less than eight years old be determined to be a complete loss as a result of fire, flood or a basket, a photograph of the vehicle shall accompany the surrendered certificate: Provided, That the term "basket" means a vehicle which has been damaged more than seventy-five percent of the retail price as described in the national automobile dealers association official used car guide. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (c) of this section.

(c) If the motor vehicle is a "reconstructed vehicle" as
defined in section one, article one of this chapter, it may
not be titled or registered for operation until it has been
inspected by an official state inspection station and by
a representative of the division of motor vehicles who
has been designated by the commissioner as an inves-
tigator. Following an approved inspection, an applica-
tion for a new certificate of title may be submitted to
the division; however, the applicant shall be required to
retain all receipts for component parts, equipment and
materials used in the reconstruction. The salvage
certificate must also be surrendered to the division
before a certificate of title may be issued.

(d) The division shall charge a fee of fifteen dollars
for the issuance of each salvage certificate but shall not
require the payment of the five percent privilege tax.
However, upon application for a certificate of title for
a reconstructed vehicle, the division shall collect the five
percent privilege tax on the fair market value of the
vehicle as determined by the commissioner unless the
applicant is otherwise exempt from the payment of such
privilege tax. A wrecker/dismantler/rebuilder is ex-
empt from the five percent privilege tax upon titling a
reconstructed vehicle. The division shall collect a fee of
thirty-five dollars per vehicle for inspections of recon-
structed vehicles. These fees shall be deposited in a
special fund created in the state treasurer's office and
may be expended by the division to carry out the
provisions of this article. Licensed wreckers/dismantlers/
rebuilders may charge a fee not to exceed twenty-five
dollars for all vehicles owned by private rebuilders
which are inspected at the place of business of a
wrecker/dismantler/rebuilder.

(e) A certificate of title issued by the division for a
reconstructed vehicle shall contain markings in bold
print on the face of the title that it is for a reconstructed
or salvaged vehicle.

Any person who violates the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than five hundred dollars
nor more than one thousand dollars, or imprisoned in
the county jail for not more than one year, or both fined
and imprisoned.
CHAPTER 107
(S. B. 516—By Senators Wooton, Minard, Ross, Yoder, Dittmar, Wagner, Humphreys, Wiedebusch and Dalton)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited practices of automobile manufacturers and distributors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.


1 (1) A manufacturer or distributor shall not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory thereof, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor.

(c) Participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices or display decorations or materials at the expense of the new motor vehicle dealer.
(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of this article.

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

(f) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products: Provided, That the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor shall not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the
failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor.

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor.

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone or region, whichever geographical area is the smallest.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to, the same retail consumer for whom the vehicle was ordered if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar.

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters.
(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line make.

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent.

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose.

(h) Establish a dealership which would unfairly compete with a new motor vehicle dealer of the same line make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions.

(i) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.

(j) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized
by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days shall be deemed to be consent.

(k) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership.

(l) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service incentives, rebates or other forms of sales incentive compensation more than two years after the claim for payment or reimbursement has been made by the automobile dealer: Provided, That the provisions of this subsection shall not apply where a claim is fraudulent.

(3) A manufacturer or distributor, either directly or through any subsidiary, shall not terminate, cancel, fail to renew or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

CHAPTER 108

(Com. Sub. for H. B. 4295—By Delegates Staton, Huntwork, Pino, Whitman, Kessel, Trump and L. White)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article eight, chapter seventeen-a of said code; to amend and reenact section nine-a, article one, chapter fifty of said code; to amend and reenact section one, article two of said chapter; to amend and reenact sections eight, twelve and thirteen, article five of said chapter; to amend and reenact sections thirteen, twenty-four, twenty-four-a, twenty-seven, thirty-four and thirty-nine, article three, chapter sixty-one of said code; and to amend and reenact section three, article three-a of
said chapter, all relating to jurisdiction of magistrate
courts and circuit courts; defining the offenses of injury
or tampering with a vehicle or special mobile equipment
and providing penalties therefor; providing that offenses
involving special mobile equipment may be either a
misdemeanor or felony, depending on the dollar amount
of any injury, damage, or breakage or removal of parts;
increasing the number of magistrate court deputy
clerks; prescribing the civil jurisdiction of magistrate
courts and increasing the amount in controversy which
defines the civil jurisdiction of magistrate courts;
providing for election or demand for trial by jury in
magistrate court or trial to the court without a jury;
providing for appeals in civil cases from magistrate
court to circuit court; time periods, bonds, and fees for
such appeals; electronic recording of jury trials;
preparing and designating records for appeal; circuit
court discretion to schedule oral argument, receive
memoranda of law, and take evidence; time frame for
circuit court review of magistrate proceedings; appeals
in criminal cases; time frames, bonds, and stays for such
appeals; electronic recording of jury trials, designation
of records, and preparation of transcripts of magistrate
proceedings; discretion of circuit court to hear oral
argument and receive evidence; defining the felony and
misdemeanor offenses of grand and petit larceny and
establishing penalties therefor; defining the offenses of
obtaining money, property, and services by false
pretenses, disposing of property to defraud creditors,
and theft of services and establishing penalties therefor;
defining the misdemeanor and felony offenses of false
pretenses and establishing penalties therefor; preserv­
ing existing rights, liabilities, and remedies for such
offenses; defining offenses involving the attempted or
fraudulent use, possession, forgery, and traffic of credit
cards and possession and transfer of credit cards and
credit card making equipment and establishing penal­
ties therefor; defining the offense of false or fraudulent
use of telephonic services and establishing penalties
therefor; defining terminology related to credit card
offenses; defining the misdemeanor and felony offenses
involving the attempted or fraudulent use, possession,
forgey, and traffic of credit cards and establishing penalties therefor; defining the offenses of malicious killing of animals by poison or otherwise and establishing penalties therefor; defining the misdemeanor and felony offenses involving taking or carrying away or injuring or destroying fruit, vegetables, grain or grass and establishing penalties therefor; defining misdemeanor and felony offenses of obtaining property in return for worthless checks and establishing penalties therefor; defining the misdemeanor and felony offenses of shoplifting and establishing penalties therefor; and authorizing home detention as an alternative sentence for felony shoplifting.

Be it enacted by the Legislature of West Virginia:

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

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
50. Magistrate Courts.
61. Crimes and Their Punishment.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-6. Injuring or tampering with vehicle or special mobile equipment.
1 (a) Any person who either individually or in association with one or more persons willfully injures or tampers with any vehicle or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor.

   Any person who with intent to commit any malicious mischief, injury, or other crime climbs into or upon a vehicle whether it is in motion or at rest or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended is guilty of a misdemeanor.

(b) Any person, either individually or in association with one or more persons, who shall willfully injure or damage any item of special mobile equipment or break or remove any parts from an item of special mobile equipment, without the consent of the owner, which injury, damage, or breakage or removal of parts shall be of an amount of one thousand dollars or more, is guilty of a felony. If the injury, damage, or breakage or removal of parts shall be of an amount which is less than one thousand dollars, such person is guilty of a misdemeanor.

CHAPTER 50. MAGISTRATE COURTS.

Article
1. Courts and Officers.
2. Jurisdiction and Authority.
3. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by workload and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for the appointment of magistrate court deputy clerks, not to exceed fifty-four in number. Such magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court, with
such appointee to serve at his will and pleasure under
the immediate supervision of the magistrate court clerk.

Such magistrate court deputy clerk shall have such
duties, clerical or otherwise, as may be assigned by the
magistrate court clerk and as may be prescribed by the
rules of the supreme court of appeals or the judge of the
circuit court, or the chief judge thereof if there is more
than one judge of the circuit court. Such magistrate
court deputy clerks shall also have authority to exercise
the power and perform the duties of the magistrate
court clerk as may be delegated or assigned by such
magistrate court clerk.

Such magistrate court deputy clerk shall not be a
member of the immediate family of any magistrate,
magistrate court clerk, magistrate assistant or circuit
court judge within the same county, shall not have been
convicted of a felony or any misdemeanor involving
moral turpitude and shall reside in the state of West
Virginia. For the purpose of this section, “immediate
family” shall mean the relationships of mother, father,
sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a
monthly salary by the state. Such salary shall be paid
on the same basis and in the same applicable amounts
as for magistrate assistants in each county as provided
in section nine of this article.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdic-
tion granted elsewhere to magistrate courts, such courts
shall have jurisdiction of all civil actions wherein the
value or amount in controversy or the value of property
sought, exclusive of interest and cost, is not more than
five thousand dollars. Magistrate courts shall have
jurisdiction of all matters involving unlawful entry or
detainer of real property or involving wrongful occupa-
tion of residential rental property, so long as the title
to such property is not in dispute. Except as the same
may be in conflict with the provisions of this chapter,
the provisions of article three, chapter fifty-five of this code, regarding unlawful entry and detainer, shall apply to such actions in magistrate court. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter. Magistrate courts shall have continuing jurisdiction to entertain motions in regard to post-judgment process issued from magistrate court and decisions thereon may be appealed in the same manner as judgments.

Magistrate courts shall not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks, magistrate court deputy clerks, and magistrate assistants shall have the authority to administer any oath or affirmation, to take any affidavit or deposition, unless otherwise expressly provided by law, and to take, under such regulations as are prescribed by law, the acknowledgment of deeds and other writings.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-8. Trial by jury; trial to the court.

(a) A party to a civil action in magistrate court has the right to elect that the matter be tried with a jury when the amount in controversy exceeds twenty dollars or involves possession of real estate. The election must be made in writing at any time after the commencement of the action and not later than twenty days after the service of any first timely filed answer to the complaint. Failure to elect within such time constitutes a waiver of the right to trial by jury.

(b) A defendant in any criminal trial for a misdemea-
nor offense triable before a magistrate has the right to demand that the matter be tried with a jury, and the defendant shall be advised of the right to trial by jury in writing. A demand by the defendant for a jury trial must be made in writing not later than twenty days after the defendant's initial appearance before the magistrate. Provided, That in the case of an indigent for whom counsel is to be appointed, the twenty-day period shall not commence to run until counsel is appointed. Failure to demand within such time constitutes a waiver of the right to trial by jury.

(c) If a jury trial is elected or demanded to determine the issues of fact, the election or demand may not be withdrawn over the objection of any party appearing at the trial, and the magistrate shall cause a jury to be selected, empaneled and sworn which will hear the parties and their evidence, receive the instructions of the court relative to the law involved, and, after deliberation, deliver a verdict. Provided, That in a criminal proceeding, any such verdict must be unanimous.

(d) A magistrate court jury shall consist of six persons, to be selected from a panel of ten persons. The selection and summoning of jurors shall be conducted in accordance with the provisions of article one, chapter fifty-two of this code and the supervisory rules of the supreme court of appeals. Jurors shall be paid by the state in accordance with such rules.

(e) For purposes of appeal, when a jury trial is had in magistrate court, the magistrate court shall be a court of limited record. Trials before a magistrate when a jury is empaneled shall be recorded electronically. A magnetic tape or other electronic recording medium on which a trial is recorded shall be indexed and securely preserved by the magistrate court clerk. When requested by either of the parties in a civil action, by the state or the defendant in a criminal proceeding, or by any interested person, the magistrate court clerk shall provide a duplicate copy of the tape or other electronic recording medium of each trial held. For evidentiary purposes, a duplicate of such electronic recording prepared by the magistrate court clerk shall be a
“writing” or “recording” as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an “original” under such rule. Unless a party requesting the copy has been permitted to proceed in a civil action without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code, or in a criminal proceeding as an indigent, the party shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.

(f) If neither party to a civil action demands a jury trial, or if the defendant in a criminal proceeding waives the right to trial by jury, the matter shall be tried by the magistrate sitting without a jury. For purposes of appeal, when a nonjury trial is had in magistrate court, the magistrate court shall not be a court of limited record and the magistrate shall not electronically record the action or proceeding.

(g) The designation in this section of magistrate courts as “courts of limited record” shall not be construed to give standing or eligibility to magistrates to participate or be included in the retirement system for judges of courts of record established under the provisions of article nine, chapter fifty-one of this code.

§50-5-12. Appeals in civil cases.

(a) Any person may appeal the judgment of a magistrate court to the circuit court as a matter of right by requesting such appeal not later than twenty days after such judgment is rendered or not later than twenty days after a decision is rendered upon a motion to set aside such judgment. Such person shall be required to post a bond with good security in a reasonable amount not less than the reasonable court costs of the appeal nor more than the sum of the judgment and the reasonable court costs of the appeal, upon the condition that such person will satisfy the judgment and any court costs which may be rendered against him on any such appeal.
The bond and the circuit court filing fee shall be collected by the magistrate court clerk or deputy clerk at the time the appeal is filed, and be forwarded to the clerk of the circuit court along with other appropriate documents regarding the appeal. No bond shall be required of any governmental agency or authority or of a person who has been permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. If an appeal is not perfected within such twenty-day period, the circuit court of the county may, not later than ninety days after the date of judgment, grant an appeal upon a showing of good cause why such appeal was not perfected within such twenty-day period. The filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment.

(b) In the case of an appeal of a civil action tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a civil action tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

(c) In the case of an appeal of a civil action tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the party seeking the appeal shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The responding party or parties may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the designated portions of the recording and the payment of the cost thereof shall be the responsibility of the party requesting the transcript: Provided, That a party may be permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. The circuit court may, by general order or by order entered in a specific case, dispense
with preparation of a transcript and review the designated portions of the recording aurally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the magistrate is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by substantial evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the parties:

(A) Dismiss the appeal;

(B) Reverse, affirm, or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the magistrate;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the
provisions of subdivision (5) of this subsection.

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the party appealing the judgment is also a party who elected to try the action before a jury in the magistrate court, and if the circuit court finds that the proceedings below were subject to error to the extent that the party was effectively denied a jury trial, the circuit court may, upon motion of the party, empanel a jury to re-examine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(d) In the case of an appeal of a civil action tried without a jury, the following provisions shall apply:

(1) The party seeking the appeal shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(2) If, after the appeal is regularly placed upon the docket of the circuit court, neither party brings the matter on to hearing before the end of the second term thereafter at which it is called for trial, unless good cause for a continuance is shown, the appeal shall be considered as abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance and the judgment of the magistrate court shall stand. No appeal which shall have been so dismissed by the circuit court shall be reinstated after the close of the next regular term after such dismissal.

(a) Any person convicted of an offense in a magistrate court may appeal such conviction to circuit court as a matter of right by requesting such appeal within twenty days after the sentencing for such conviction. The magistrate may require the posting of bond with good security conditioned upon the appearance of the defendant as required in circuit court, but such bond may not exceed the maximum amount of any fine which could be imposed for the offense. The bond may be upon the defendant's own recognizance. If no appeal is perfected within such twenty-day period, the circuit court may, not later than ninety days after the sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within the twenty-day period. The filing or granting of an appeal shall automatically stay the sentence of the magistrate.

(b) In the case of an appeal of a criminal proceeding tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a criminal proceeding tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

(c) In the case of an appeal of a criminal proceeding tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the defendant shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The prosecuting attorney may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the portions of the recording designated by the defendant, and the payment of the cost thereof shall be the responsibility of the defendant: Provided, That such costs may be waived due to the defendant's indigency. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording aurally.
(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal, and shall be made available to the defendant and the prosecuting attorney.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the magistrate is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by substantial evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the defendant and the state:

(A) Dismiss the appeal;

(B) Reverse, affirm, or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the magistrate;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.
(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the party appealing the judgment is also a party who elected to try the action before a jury in the magistrate court, and if the circuit court finds that the proceedings below were subject to error to the extent that the party was effectively denied a jury trial, the circuit court may, upon motion of the party, empanel a jury to re-examine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

(d) In the case of an appeal of a criminal proceeding tried without a jury, the party seeking the appeal shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(e) Notwithstanding any other provision of this code to the contrary, there shall be no appeal from a plea of guilty where the defendant was represented by counsel at the time the plea was entered: Provided, That the defendant shall have an appeal from a plea of guilty where an extraordinary remedy would lie or where the magistrate court lacked jurisdiction.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
3. Crimes Against Property.
3A. Shoplifting.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

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

§61-3-27. Malicious killing of animals by poison or otherwise; penalty.

§61-3-34. Taking or injuring garden or field crops; penalties.

§61-3-39. Obtaining property in return for worthless check; penalty.


1 (a) If a person commits simple larceny of goods or chattels of the value of one thousand dollars or more, such person is guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars.

(b) If a person commits simple larceny of goods or chattels of the value of less than one thousand dollars, such person is guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed two thousand five hundred dollars, or both, in the discretion of the court.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

1 (a) (1) If a person obtains from another by any false pretense, token or representation, with intent to defraud, any money, goods or other property which may be the subject of larceny; or

(2) If a person obtains on credit from another any money, goods or other property which may be the subject of larceny, by representing that there is money due him or her or to become due him or her, and assigns the claim for such money, in writing, to the person from whom he or she obtains such money, goods or other property, and afterwards collects the money due or to become due, without the consent of the assignee, and
with the intent to defraud;

(3) Such person is guilty of larceny. If the value of the money, goods or other property is one thousand dollars or more, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and be fined not more than two thousand five hundred dollars. If the value of the money, goods or other property is less than one thousand dollars, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than two thousand five hundred dollars, or both.

(b) If a person obtains by any false pretense, token or representation, with intent to defraud, the signature of another to a writing, the false making of which would be forgery, the person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or, in the discretion of the court, be confined in jail not more than one year and fined not more than two thousand five hundred dollars.

(c) (1) If a person removes any of his or her property out of any county with the intent to prevent the same from being levied upon by any execution; or

(2) If a person secretes, assigns or conveys, or otherwise disposes of any of his or her property with the intent to defraud any creditor or to prevent the property from being made liable for payment of debts; or

(3) If a person receives the property of another with the intent to defraud any creditor or to prevent the property from being made liable for the payment of debts;

(4) The person is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars and be confined in jail not more than one year.

(d) If a person, firm or corporation obtains labor,
services or any other such thing of value from another
by any false pretense, token or representation, with
intent to defraud, the person, firm or corporation is
guilty of theft of services. If the value of the labor,
services or any other such thing of value is one thousand
dollars or more, the person, firm or corporation is guilty
of a felony, and, upon conviction thereof, shall be
imprisoned in the penitentiary not less than one year nor
more than ten years, or, in the discretion of the court,
be confined in jail not more than one year and be fined
not more than two thousand five hundred dollars. If the
value of the labor, services or any other such thing of
value is less than one thousand dollars, the person, firm
or corporation is guilty of a misdemeanor, and, upon
conviction thereof, shall be confined in jail not more
than one year or fined not more than two thousand five
hundred dollars, or both, in the discretion of the court.

(e) Theft of services includes the obtaining of a stop
payment order on a check, draft or order for payment
of money owed for services performed in good faith and
in substantial compliance with a written or oral contract
for services, with the fraudulent intent to permanently
deprive the provider of such labor, services or other such
thing of value of the payment represented by such
check, draft or order. Notwithstanding the penalties set
forth elsewhere in this section, any person, firm or
corporation violating the provisions of this subsection is
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than two times the face value
of the check, draft or order.

(f) Prosecution for an offense under this section does
not bar or otherwise affect adversely any right or
liability to damages, forfeiture or other civil remedy
arising from any or all elements of the criminal offense.

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

(a) As used in this section:
(1) "Counterfeit credit card" means the following:

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

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

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

(3) "Traffic" means:

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

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

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

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

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

(3) Any person who violates any provision of this
subsection, if the credit, goods, property, service or
transmission is of the value of one thousand dollars or
more, is guilty of a felony, and, upon conviction thereof,
shall be imprisoned in the penitentiary not less than one
year nor more than ten years or, in the discretion of the
court, be confined in jail not more than one year and
be fined not more than two thousand five hundred
dollars; and if of less value, is guilty of a misdemeanor,
and, upon conviction thereof, shall be confined in jail not
more than one year or fined not more than two thousand
five hundred dollars, or both.

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

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

86 (e) A person who receives, possesses, transfers, buys,
87 sells, controls or has custody of any credit card making
88 equipment with intent that the equipment be used in the
89 production of counterfeit credit cards is guilty of a
90 felony, and, upon conviction thereof, shall be imprisoned
91 in the penitentiary not less than one year nor more than
92 ten years, or, in the discretion of the court, be confined
93 in jail not more than one year and fined not less than
94 one thousand nor more than five thousand dollars.

95 (f) A person who knowingly receives, possesses,
96 acquires, controls or has custody of a counterfeit credit
97 card is guilty of a misdemeanor, and, upon conviction
98 thereof, shall be confined in jail not exceeding six
99 months or fined not more than five hundred dollars, or
100 both.

§61-3-27. Malicious killing of animals by poison or
otherwise; penalty.

1 If a person maliciously administers poison to, or
2 exposes poison with the intent that it should be taken
3 by, any horse, cow or other animal of another person.
4 or if any person maliciously maims, kills, or causes the
5 death of any horse, cow or other animal of another
6 person, of the value of one hundred dollars or more, the
7 person is guilty of a felony, and, upon conviction, shall
8 be imprisoned in the penitentiary not less than one year
9 nor more than ten years; and, if the horse, cow or other
10 animal is of less value than one hundred dollars, the
11 person is guilty of a misdemeanor, and, upon conviction,
12 shall be confined in jail not more than three months and
13 fined not more than five hundred dollars: Provided, That
14 this section shall not be construed to include dogs.

§61-3-34. Taking or injuring garden or field crops;
penalties.

1 If a person enters the orchard, field, garden or market
§61-3-39. Obtaining property in return for worthless check; penalty.

It is unlawful for any person, firm or corporation to obtain any money, services, goods or other property or thing of value by means of a check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing at the time of the making, drawing, issuing, uttering or delivering of the check, draft or order that there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation. The making, drawing, issuing, uttering or delivery of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalties of this section to the same extent as though such check, draft or order was his own personal act, when such agent or officer knows that such corporation does not have sufficient funds on deposit in or credit with such bank or depository from which such check, draft or order can legally be paid upon presentation.

This section shall not apply to any such check, draft or order when the payee or holder knows or has been
expressly notified prior to the acceptance of same or has
reason to believe that the drawer did not have on deposit
or to his credit with the drawee sufficient funds to
insure payment as aforesaid, nor shall this section apply
to any postdated check, draft or order.

No prosecution shall be confined to the provisions of
this section by virtue of the fact that worthless checks,
drafts or orders may be employed in the commission of
some other criminal act.

A person who violates the provisions of this section,
if the amount of the check, draft or order is less than
five hundred dollars, is guilty of a misdemeanor, and,
upon conviction thereof, the person shall be fined not
more than two hundred dollars, or confined in jail not
more than six months, or both. A person who violates
the provisions of this section, if the amount of the check,
draft or order is five hundred dollars or more, is guilty
of a felony, and, upon conviction thereof, the person shall
be fined not more than five hundred dollars, or
imprisoned in the penitentiary not less than one year nor
more than ten years, or both.

ARTICLE 3A. SHOPLIFTING.


1 A person convicted of shoplifting shall be punished as
follows:

(a) First offense conviction. — Upon a first shoplifting
conviction:

(1) When the value of the merchandise is less than or
equal to five hundred dollars, the person is guilty of a
misdemeanor and shall be fined not more than two
hundred fifty dollars.

(2) When the value of the merchandise exceeds five
hundred dollars, the person is guilty of a misdemeanor
and shall be fined not less than one hundred dollars nor
more than five hundred dollars, and such fine shall not
be suspended, or the person shall be confined in jail not
more than sixty days, or both.

(b) Second offense conviction. — Upon a second
shoplifting conviction:
(1) When the value of the merchandise is less than or equal to five hundred dollars, the person is guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.

(2) When the value of the merchandise exceeds five hundred dollars, the person is guilty of a misdemeanor and shall be fined not less than five hundred dollars and shall be confined in jail for not less than six months nor more than one year.

(c) **Third offense conviction.** — Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise, the person is guilty of a felony and shall be fined not less than five hundred dollars nor more than five thousand dollars, and shall be imprisoned in the penitentiary for not less than one year nor more than ten years. At least one year shall actually be spent in confinement and not subject to probation: Provided, That an order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to the incarceration required by this subsection.

(d) **Mandatory penalty.** — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of fifty dollars, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

(e) In determining the number of prior shoplifting convictions for purposes of imposing punishment under this section, the court shall disregard all such convictions occurring more than seven years prior to the shoplifting offense in question.
CHAPTER 109
(S. B. 489—By Senator Miller)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to antique motorcycles; defining antique motorcycles; establishing special registration fees; imposing certain restrictions on use; and establishing license and registration requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is two dollars. "Antique motor vehicle" means any motor vehicle which is over twenty-five years old and is owned solely as a collector's item. "Antique motorcycle" means any motorcycle which is over thirty-five years old and is owned solely as a collector's item.

(b) Except as otherwise provided in this section, antique motor vehicles or motorcycles may not be used for general transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades and similar events;

(2) The purpose of testing their operation, obtaining repairs or maintenance and transportation to and from events as described in subdivision (1); and

(3) Recreational purposes on Saturdays, Sundays and holidays.

(c) A West Virginia motor vehicle or motorcycle displaying license plates of the same year of issue as the
model year of the antique motor vehicle or motorcycle, as authorized in this section, may be used for general transportation purposes if the following conditions are met:

(1) The license plate's physical condition has been inspected and approved by the division of motor vehicles;

(2) The license plate is registered to the specific motor vehicle or motorcycle by the division of motor vehicles;

(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays an annual registration fee for the motor vehicle or motorcycle equal to that charged to obtain regular state license plates;

(4) The motor vehicle or motorcycle passes an annual safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle or motorcycle may be used for general transportation.

(d) If more than one request is made for license plates having the same number, the division shall accept only the first application.

(e) The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this section.
to the issuance of driver's licenses; requiring a Class D commercial driver's license for certain persons whose primary function or employment is the transportation of persons or property for compensation or wages; and creating an exception for operators of Class A motor vehicles with gross vehicle weight ratings of less than eight thousand one pounds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.

(a) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight of this code, when the use of such subdivision street is generally used by the public unless the person has a valid driver's license under the provisions of this code for the type or class of vehicle being driven.

Any person licensed to operate a motor vehicle as provided in this code may exercise the privilege thereby granted as provided in this code and, except as otherwise provided by law, shall not be required to obtain any other license to exercise such privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with the provisions of this code, federal law or rule.
(c) Driver's licenses issued by the division shall be classified in the following manner:

(1) Class A, B or C license shall be issued to those persons eighteen years of age or older with two years driving experience and who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal commercial motor vehicle safety act of 1986, Title XII of public law 99870 and subsequent rules, and have paid the required fee.

(2) Class D license shall be issued to those persons eighteen years and older with one year driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purposes of the regulation of the operation of a motor vehicle, wherever the term chauffeur's license is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: Provided, That anyone who is not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle which is registered or which is required to be registered as a Class A motor vehicle as that term is defined in section three, article ten, chapter seventeen-a of this code with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) Class E license shall be issued to those persons who have qualified under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b, article two of this chapter for motorcycle operation.

(4) Class F license shall be issued to those persons who
successfully complete the motorcycle examination procedure provided for by this chapter and have paid the required fee, but who do not possess a Class A, B, C and D or E driver's license.

(d) No person, except those hereinafter expressly exempted, shall drive any motorcycle upon a street or highway in this state or upon any subdivision street, as used in article twenty-four, chapter eight, when the use of such subdivision street is generally used by the public unless the person has a valid motorcycle license or a valid license which has been endorsed under section seven-b, article two of this chapter for motorcycle operation or has a valid motorcycle instruction permit.

(e) (1) A nonoperator identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Does not have a valid driver's license;

(C) Has reached the age of sixteen years;

(D) Has paid the required fee of ten dollars: Provided, That such fee is not required if the applicant is sixty-five years or older or is legally blind; and

(E) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The nondriver identification card shall contain the same information as a driver's license, except that such identification card shall be clearly marked as identification card. The identification card shall expire every four years. It may be renewed on application and payment of the fee required by this section.

(3) The identification card shall be surrendered to the division when the holder is issued a driver's license. The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, cancelled, suspended or revoked under the provisions of this code.
AN ACT to repeal section two, article five, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and seven, article two, chapter seventeen-b of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections one, four, nine and twelve, article three, chapter seventeen-b of said code; to amend and reenact sections one and three, article four of said chapter; to amend and reenact section twenty-eight, article one, chapter seventeen-c of said code; to amend and reenact sections two, four and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one, two, three and three-a, article five-a of said chapter; to amend and reenact section seven, article two-a, chapter seventeen-d of said code; to amend and reenact section fifteen, article one, chapter seventeen-e of said code; to amend and reenact section eighteen, article seven, chapter twenty of said code; to amend and reenact section six, article seven, chapter twenty-four-a of said code; to amend and reenact section one, article six-a, chapter thirty-three of said code; to amend and reenact section nine, article six, chapter sixty of said code, all relating to the revision of criminal offenses and administrative sanctions for persons driving under the influence of alcohol, controlled substances or drugs; describing persons who shall not be licensed and providing exceptions thereto; providing for the issuance of junior driver’s licenses to persons under the age of eighteen; establishing the examination requirements for applicants for a driver’s license; requiring, before a license is issued, attendance at a class on the dangers and social consequences of driving under the influence;
authorizing the division of motor vehicles to cancel licenses; requiring an abstract of judgment of conviction for violation of motor vehicle laws to be sent to the division of motor vehicles; providing that the surrender and return of license is not required; requiring a mandatory suspension for fraudulent use of driver's license; defining offenses relating to the unlawful use of license or nonoperator's identification, and providing penalties therefor; describing license and nonoperator's identification violations generally, and providing penalties therefor; operating a motor powered boat while under the influence of alcohol, controlled substances or while having a blood alcohol level of ten hundredths or more; defining offenses relating to driving while a license is suspended or revoked, driving while a license is revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, and providing penalties therefor; defining the offense of driving while a license is suspended for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; defining the term "division" to mean the division of motor vehicles; defining offenses relating to driving under influence of alcohol, controlled substances or drugs, and providing penalties therefor; defining the offense of driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and providing penalties therefor; authorizing home detention as an alternative to mandatory sentences for offenses relating to driving under the influence of alcohol, controlled substances or drugs; redefining the term "law-enforcement officer" to include special police officers appointed by the governor; establishing procedures for taking a child into custody for driving a motor vehicle with any amount of blood alcohol; describing the interpretation
and use of a secondary chemical test for blood alcohol; providing for implied consent to administrative procedure for suspension and revocation of a license for driving under the influence of alcohol, controlled substances or drugs; authorizing the revocation of a license for driving under the influence of alcohol, controlled substances or drugs or refusing to submit to secondary chemical test; providing for the suspension of a license for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for the revocation of a license upon a conviction for driving under the influence of alcohol, controlled substances or drugs; providing for the suspension of a license upon a conviction for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight; providing for an administrative hearing and judicial review of an order of revocation or suspension; establishing a safety and treatment program as a precondition to the reissuance of a license; establishing a motor vehicle alcohol test and lock program; providing for suspension or revocation of license, registration and reinstatement for failure to have adequate security; correcting an incorrect code citation relating to disqualification of a commercial driver for a refusal to submit to a secondary test or submitting to a test which discloses an alcohol concentration of four hundredths or more; authorizing an inspector for the public service commission to detain a driver until a law-enforcement officer is summoned to investigate and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered; setting forth restrictions for the handling of watercraft; duty to render aid after a collision, accident or casualty; accident reports; providing that an automobile liability insurance policy may not be canceled because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but
less than ten hundredths of one percent, by weight; describing conditions under which a law-enforcement official may take a child into custody; and defining offenses relating to intoxication or drinking in public places and the illegal possession of alcoholic liquor and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

17B. Motor Vehicle Driver's Licenses.
17C. Traffic Regulations and Laws of the Road.
17E. Uniform Commercial Driver's License Act.
20. Natural Resources.
24A. Motor Carriers of Passengers and Property for Hire.

33. Insurance.


60. State Control of Alcoholic Liquors.

CHAPTER 17B.
MOTOR VEHICLE DRIVER'S LICENSES.

Article

2. Issuance of License, Expiration and Renewal.

3. Cancellation, Suspension or Revocation of Licenses.


ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons shall not be licensed; exceptions.

§17B-2-3a. Junior driver's license.

§17B-2-7. Examination of applicants.

§17B-2-3. What persons shall not be licensed; exceptions.

1. The division shall not issue any license hereunder:

2. (1) To any person, as an operator, who is under the age of eighteen years: Provided, That the division may issue a junior driver's license to a person under the age of eighteen years in accordance with the provisions of section three-a of this article;

3. (2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

4. (3) To any person, whose license has been suspended, during such suspension, nor to any person whose license (other than a junior driver's license) has been revoked, except as provided in section eight, article three of this chapter;

5. (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

6. (5) To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certif-
icate of the superintendent of the institution that the person is competent, and not then unless the commis-
sioner is satisfied that the person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

(6) To any person who is required by this chapter to take an examination, unless the person has successfully passed the examination;

(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

§17B-2-3a. Junior driver's license.

(a) In accordance with rules established by the commissioner and with the provisions hereinafter set forth in this section, a junior driver's license may be issued to any person between the ages of sixteen and eighteen years, if the person is in compliance with section eleven, article eight, chapter eighteen of this code and is not otherwise disqualified by law. Application for a junior driver's license shall be on a form prescribed by the commissioner. A junior driver's license may be issued upon the applicant's successful completion of all examinations and driving tests required by law for the issuance of a driver's license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding a junior driver's license, and the conditions or restrictions shall be printed on the license.

(b) In addition to all other provisions of this chapter for which a driver's license may be revoked, suspended or canceled, whenever a person holding a junior driver's license operates a motor vehicle in violation of the conditions or restrictions set forth on the license, or has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver's license of the person shall be permanently revoked, with like effect as if the person had never held a junior driver's license:
Provided, That a junior driver's license shall be revoked upon one final conviction for any offense described in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor vehicles.

(c) A junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance.

(d) A person whose junior driver's license has been revoked, or has been suspended without reinstatement, shall not thereafter receive a junior driver's license, but the person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. If a person has had his or her junior driver's license revoked for a violation pursuant to section one or two, article five-a, chapter seventeen-c of this code or any offense specified in subsection (6), section five, article three of this chapter, or has been adjudicated delinquent upon a charge which would be crime under the provisions of section two, article five, chapter seventeen-c of this code if committed by an adult, the person shall be disqualified for examination and driver testing for a regular driver's license until that person (1) has attained the age of eighteen years, (2) has successfully completed the safety and treatment program provided for in section three, article five-a, chapter seventeen-c of this code, and (3) has had his or her junior driver's license revoked or suspended for the applicable statutory period of revocation or suspension or a period of time equal to the period of revocation or suspension which would have been imposed pursuant to section two, article five-a, chapter seventeen-c if the person had had a regular driver's license at the time of the violation.

(e) No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance
69 of the junior driver's license and executed by the parents
70 of the applicant; or if only one parent is living, then by
71 such parent; or if the parents be living separate and
72 apart, by the one to whom the custody of the applicant
73 was awarded; or if there is a guardian entitled to the
74 custody of the applicant, then by the guardian.

75 (f) Upon attaining the age of eighteen years, a person
76 holding an unrevoked, unsuspended or reinstated junior
77 driver's license shall, upon payment of the prescribed
78 fee, be entitled to receive a regular driver's license
79 without further examination or driver testing.

§17B-2-7. Examination of applicants.

1 (a) Upon the presentment by the applicant under the
2 age of eighteen years of the applicant's birth certificate,
3 or a certified copy thereof, as evidence that the applicant
4 is of lawful age, the division of public safety shall
5 examine every applicant for a license to operate a motor
6 vehicle in this state, except as otherwise provided in this
7 section. The examination shall include a test of the
8 applicant's eyesight, the applicant's ability to read and
9 understand highway signs regulating, warning, and
10 directing traffic, the applicant's knowledge of the traffic
11 laws of this state, and the applicant's knowledge of the
12 effects of alcohol upon persons and the dangers of
13 driving a motor vehicle under the influence of alcohol,
14 and shall include an actual demonstration of ability to
15 exercise ordinary and reasonable control in the opera-
16 tion of a motor vehicle, and such further physical and
17 mental examination as the division of motor vehicles and
18 the division of public safety deems necessary to deter-
19 mine the applicant's fitness to operate a motor vehicle
20 safely upon the highways.

21 (b) The commissioner and superintendent of public
22 safety shall promulgate legislative rules in accordance
23 with the provisions of chapter twenty-nine-a of this code
24 concerning the examination of applicants for licenses
25 and the qualifications required of applicants, and the
26 examination of applicants by the division of public
27 safety shall be in accordance with such rules. The rules
28 shall provide for the viewing of educational material or
films on the medical, biological, and psychological
effects of alcohol upon persons, the dangers of driving
a motor vehicle while under the influence of alcohol and
the criminal penalties and administrative sanctions for
alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination
required by this section or section seven-b of this article,
and prior to the issuance of a license pursuant to the
provisions of section eight of this article, every applicant
for a driver's license, junior driver's license or motor-
cycle-only license shall attend a mandatory education
class on the dangers and social consequences of driving
a motor vehicle while under the influence of alcohol. To
the extent practicable, the commissioner shall utilize as
lecturers at such classes persons who can relate first-
hand experiences as victims or family members of
victims of alcohol-related accidents or drivers who have
been involved in alcohol-related accidents which caused
serious bodily injury or death.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.

§17B-3-1. Authority of division to cancel license.
§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle
laws to be sent to division.
§17B-3-9. Surrender and return of license not required.
§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

§17B-3-1. Authority of division to cancel license.

1 The division is hereby authorized to cancel any
2 operator's or chauffeur's license in any of the following
3 events:

4 (1) When the division determines that the licensee was
5 not entitled to the issuance thereof hereunder; or

6 (2) When said licensee failed to give the required or
7 correct information in his application; or

8 (3) When said licensee committed any fraud in
9 making such application; or

10 (4) When the division determines that the required fee
11 has not been paid and the same is not paid upon
12 reasonable notice or demand.
§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

Whenever a conviction is had in any court of record, or in a justice's court, or in the police court or mayor's court of any incorporated municipality, for the violation of any law of this state governing or regulating the licensing or operation of any motor vehicle, or for the violation of any provision of a charter, or bylaw, or ordinance of such incorporated municipality governing or regulating the operation of motor vehicles, except regulations governing standing or parking, the clerk of every such court, or the justice, or the clerk or recorder of such municipality, as the case may be, shall in each case transmit to the division within seventy-two hours after such conviction is had a certified abstract of the judgment on such conviction.

For the purposes of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

Willful failure, refusal or neglect to comply with the provisions of this section shall subject the person who is guilty thereof to a fine of not less than ten dollars nor more than fifty dollars and may be the grounds for removal from office.

§17B-3-9. Surrender and return of license not required.

The division, upon suspending or revoking a license, shall not require that such license be surrendered to and be retained by the division. The surrender of a license shall not be a precondition to the commencement and tolling of any applicable period of suspension or revocation: Provided, That before such license may be reinstated, the licensee shall pay a fee of fifteen dollars, in addition to all other fees and charges, which fee shall be collected by the department and deposited in a special revolving fund to be appropriated to the department for use in the enforcement of the provisions of this section.
§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

(a) The commissioner shall suspend for a period of ninety days the driver's license of any person upon receipt of a sworn affidavit from any law-enforcement officer, employee of the alcohol beverage control commission or employee of the division of motor vehicles stating that the person committed any one of the following acts:

(1) Displayed or caused or permitted to be displayed to any law-enforcement officer or employee of the division of motor vehicles or have in his or her possession any fictitious or fraudulently altered driver's license;

(2) Loaned or gave his or her driver's license to any other person or knowingly permitted the use thereof by another for an unlawful or fraudulent purpose;

(3) Displayed or represented as one's own any driver's license not issued to him or her; or

(4) Used a false or fictitious name or birth date on any application for a driver's license or knowingly made a false statement, knowingly concealed a material fact or otherwise committed a fraud in making application for a driver's license.

(b) For the purposes of this section, "driver's license" means any permit, camera card, identification card or driver's license issued by this state or any other state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon.

(c) No person shall have his or her driver's license suspended under any provision of this section unless he or she shall first be given written notice of such suspension sent by certified mail, return receipt requested, at least twenty days prior to the effective date of the suspension. Within ten days of the receipt of the notice of suspension, the person may submit a written request by certified mail for a hearing and request a stay of the suspension pending the results of the hearing. Upon receipt of the request for a hearing and request
for a stay of the suspension, the commissioner shall
grant a stay of the suspension pending the results of the
hearing. If the commissioner shall after hearing make
and enter an order affirming the earlier order of
suspension, the person affected shall be entitled to
judicial review as set forth in chapter twenty-nine-a of
this code and, pending the appeal, the court may grant
a stay or supersedeas of such order. If the person does
not appeal the suspension or if the suspension is
affirmed by the court, the order of suspension shall be
effective and the period of suspension shall commence
to run.

(d) The suspended driver's license shall be reinstated
following the period of suspension and upon compliance
with the conditions set forth in this chapter.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

It is a misdemeanor for any person to commit any one
of the following acts:

(1) To display or cause or permit to be displayed or
have in his possession any fictitious or fraudulently
altered operator's or chauffeur's license or nonoperator's
identification;

(2) To lend his operator's or chauffeur's license or
nonoperator's identification to any other person or
knowingly permit the use thereof by another;

(3) To display or represent as one's own any operator's
or chauffeur's license or nonoperator's identification not
issued to him;

(4) To use a false or fictitious name in any application
for an operator's or chauffeur's license or nonoperator's identification or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(5) To permit any unlawful use of an operator's or chauffeur's license or nonoperator's identification issued to him; or

(6) To do any act forbidden or fail to perform any act required by this chapter.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

(a) Except as otherwise provided in subsection (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars nor more than five hundred dollars; for the second offense, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or
other drugs, or for driving while having an alcoholic concentration in his or her blood of ten hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content, shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for six months and in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a period of one year and, in addition to such mandatory jail sentence, shall be fined not less than one thousand dollars nor more than three thousand dollars; for the third or any subsequent offense, such person is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one year nor more than three years and, in addition to such mandatory prison sentence, shall be fined not less than three thousand dollars nor more than five thousand dollars.

(c) Upon receiving a record of the conviction of any person under subsection (a) or (b) of this section upon a charge of driving a vehicle while the license of such person was lawfully revoked, the division shall extend the period of such suspension for an additional period of one year from and after the date such person would otherwise have been entitled to apply for a new license.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any
CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.

Article
1. Words and Phrases Defined.
5. Serious Traffic Offenses.
5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-28. Division.

“Division” means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents. Wherever in this chapter reference is made to “the department of motor vehicles” or “the department”, unless a different meaning is clearly required, the reference shall be deemed to be a reference to the division of motor vehicles.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officers; designation of type of test; definition of law-enforcement officer.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

§17C-5-8. Interpretation and use of chemical test.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol, or

(B) He is under the influence of any controlled substance, or

(C) He is under the influence of any other drug, or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure; and

(3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while:

(A) He is under the influence of alcohol, or

(B) He is under the influence of any controlled substance, or

(C) He is under the influence of any other drug, or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who is:

(A) Under the influence of alcohol, or

(B) Under the influence of any controlled substance, or

(C) Under the influence of any other drug, or

(D) Under the combined influence of alcohol and any controlled substance or any other drug, or

(E) Has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person who:

Knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, shall, for a first offense under this subsection, be guilty of a misdemeanor, and, upon conviction thereof, shall be
fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this section may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this section shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.
(k) For purposes of subsections (i) and (j) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after June tenth, one thousand nine hundred eighty-three.

(l) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In such case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(m) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating
subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(n) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(o) The sentences provided herein upon conviction for a violation of this article are mandatory and shall not be subject to suspension or probation: Provided, That the court may apply the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to a term of one year or less. An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

Any person who drives a motor vehicle in this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a preliminary breath analysis and a secondary chemical test of either his blood, breath or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person to have committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said section two of this article. A secondary test of blood, breath or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer having reasonable grounds to believe the person to have committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said section two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall
designate which one of the aforesaid secondary tests
shall be administered: Provided. That if the test so
designated is a blood test and the person so arrested
refuses to submit to such blood test, then the law-
enforcement officer making such arrest shall designate
in lieu thereof, either a breath or urine test to be
administered, and notwithstanding the provisions of
section seven of this article, such refusal to submit to
a blood test only shall not result in the revocation of the
arrested person's license to operate a motor vehicle in
this state. Any person to whom a preliminary breath test
is administered who is then arrested shall be given a
written statement advising him that his refusal to
submit to the secondary chemical test finally designated
as provided in this section, will result in the revocation
of his license to operate a motor vehicle in this state for
a period of at least one year and up to life.

For the purpose of this article, the term "law-
enforcement officer" or "police officer" shall mean and
be limited to (1) any member of the department of
public safety of this state, (2) any sheriff and any deputy
sheriff of any county, (3) any member of a police
department in any municipality as defined in section
two, article one, chapter eight of this code, (4) any
conservation officer of the division of natural resources,
and (5) any special police officer appointed by the
governor pursuant to the provisions of section forty-one,
article three, chapter sixty-one of this code who has
completed the course of instruction at a law-enforcement
training academy as provided for under the provisions
of section nine, article twenty-nine, chapter thirty of this
code. If any municipality or the division of natural
resources does not have available to its law-enforcement
officers the testing equipment or facilities necessary to
conduct any secondary test which a law-enforcement
officer may administer under this article, or if the
person to be tested is arrested by a special police officer,
then any member of the department of public safety, the
sheriff of the county wherein the arrest is made or any
deputy of such sheriff or any municipal law-enforcement
officer of another municipality within the county
wherein the arrest is made may, upon the request of such arresting law-enforcement officer and in his presence, conduct such secondary test and the results of such test may be used in evidence to the same extent and in the same manner as if such test had been conducted by such arresting law-enforcement officer. Only the person actually administering or conducting such test shall be competent to testify as to the results and the veracity of such test.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood, for the purpose of determining the child's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, and should therefore be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than two hundredths of one percent, by weight, the child may not be taken into
Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath or urine: Provided, That if the test so designated is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of section seven of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least thirty days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: Provided, That the breath test shall be administered in the presence of the
official who took the child into custody. The results of such breath test may be used in evidence to the same extent and in the same manner as if such test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the division of public safety, the sheriff of the county wherein the child was taken into custody or any deputy of such sheriff, or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of section six of this article.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of section eight of this article.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of ten hundredths of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall release the child: Provided, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, the child shall only be released to a parent or custodian,
or to some other responsible adult.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person’s blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood, breath or urine, is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following presumptions or have the following effect:

(a) Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his or her blood, shall be prima facie evidence that the person was not under the influence of alcohol;

(b) Evidence that there was, at that time, more than five hundredths of one percent and less than ten hundredths of one percent, by weight, of alcohol in the person’s blood shall be relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(c) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of (1) the number of grams of alcohol per one hundred cubic centimeters of blood, (2) the number of grams of alcohol per two hundred ten liters of breath, or (3) the number of grams of alcohol per sixty-seven milliliters of urine.

A chemical analysis of a person’s blood, breath or urine, in order to give rise to the presumptions or to
have the effect provided for in subdivisions (a), (b) and (c) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the division of public safety.

The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

§17C-5A-2. Hearing; revocation; review.

§17C-5A-3. Safety and treatment program; reissuance of license.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

(a) Any person who is licensed to operate a motor vehicle in this state and who drives a motor vehicle in this state shall be deemed to have given his or her consent by the operation thereof, subject to the provisions of this article, to the procedure set forth in this article for the determination of whether his or her license to operate a motor vehicle in this state should be revoked because he or she did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his or
her blood of ten hundredths of one percent or more, by weight, or did refuse to submit to any designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight.

(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five shall report to the commissioner of the division of motor vehicles by written statement within forty-eight hours the name and address of the person so arrested. The report shall include the specific offense with which the person is charged, and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The signing of the statement required to be signed by this subsection shall constitute an oath or affirmation by the person signing the statement that the statements contained therein are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(c) If, upon examination of the written statement of the officer and the tests results described in subsection (b) of this section, the commissioner shall determine that a person was arrested for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, and that the results of any secondary test or tests indicate that at the time the test or tests were administered the person had, in his or her blood, an alcohol concentration of ten hundredths of one percent or more, by weight, or at the time the person was arrested he or she was under the influence of alcohol, controlled substances or drugs, the commissioner shall
make and enter an order revoking the person's license
to operate a motor vehicle in this state. If the results of
the tests indicate that at the time the test or tests were
administered the person was under the age of twenty-
one years and had an alcohol concentration in his or her
blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by
weight, the commissioner shall make and enter an order
suspending the person's license to operate a motor
vehicle in this state. A copy of the order shall be
forwarded to the person by registered or certified mail,
return receipt requested, and shall contain the reasons
for the revocation or suspension and describe the
applicable revocation or suspension periods provided for
in section two of this article. No revocation or suspension
shall become effective until ten days after receipt of a
copy of the order.

(d) Any law-enforcement officer taking a child into
custody under the provisions of section six-a, article five
of this chapter who has reasonable cause to believe that
the child, at the time of driving the motor vehicle, had
an alcohol concentration in his or her blood of two
hundredths of one percent or more, by weight, or that
the act of the child in driving the motor vehicle was such
that it would provide grounds for arrest for an offense
defined under the provisions of section two, article five
of this chapter if the child were an adult, shall report
to the commissioner of the division of motor vehicles by
written statement within forty-eight hours the name and
address of the child.

(e) If applicable, the report shall include a description
of the specific offense with which the child could have
been charged if the child were an adult, and a copy of
the results of any secondary tests of blood, breath or
urine. The signing of the statement required to be
signed by this subsection shall constitute an oath or
affirmation by the person signing such statement that
the statements contained therein are true and that any
copy filed is a true copy. Such statement shall contain
upon its face a warning to the officer signing that to
willfully sign a statement containing false information
concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(f) Upon examination of the written statement of the officer and any test results described in subsection (d) of this section, if the commissioner determines that the results of the tests indicate that at the time the test or tests were administered the child had, in his or her blood, an alcohol concentration of two hundredths of one percent or more, by weight, but also determines that the act of the child in driving the motor vehicle was not such that it would provide grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order suspending the child's license to operate a motor vehicle in this state. If the commissioner determines that the act of the child in driving the motor vehicle was such that it would provide grounds for arrest for an offense defined under the provisions of subsection (a), (b), (c), (d), (e), (f) or (g), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order revoking the child's license to operate a motor vehicle in this state. A copy of such order shall be forwarded to the child by registered or certified mail, return receipt requested, and shall contain the reasons for the suspension or revocation and describe the applicable suspension or revocation periods provided for in section two of this article. No suspension or revocation shall become effective until ten days after receipt of a copy of such order.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

(a) If a person is convicted for an offense defined in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, because the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or the combined influence of alcohol or
controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his or her blood of ten hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and if the person does not act to appeal the conviction within the time periods described in subsection (b) of this section, the person's license to operate a motor vehicle in this state shall be revoked or suspended in accordance with the provisions of this section.

(b) The clerk of the court in which a person is convicted for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the transcript when the person convicted has not perfected an appeal within ten days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within thirty days after the judgment was entered.

(c) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, because the person did drive a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his or her blood of ten hundredths of one percent or more, by weight, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. If the commissioner determines that the person was convicted of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall make and enter an order suspending the person's license to operate a motor vehicle in this state. The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods provided for in section two of this article. Further, the order shall give the procedures for requesting a hearing which is to be held in accordance with the provisions of section two of this article. The person shall be advised in the order that because of the receipt of a transcript of the judgment of conviction by the commissioner a presumption exists that the person named in the transcript of the judgment of conviction is the person named in the commissioner's order and such constitutes sufficient evidence to support revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

(d) The provisions of this section shall not apply if an order reinstating the operator's license of the person has been entered by the commissioner prior to the receipt of the transcript of the judgment of conviction.

(e) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is
§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked or suspended under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard. The written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of revocation or suspension. The hearing shall be before the commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or the commissioner's authorized deputy or agent and the person agree that the hearing may be held in some other county.

(b) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner's own motion, or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code: Provided, That
the notice of hearing to the appropriate law-enforcement
officers by registered or certified mail, return receipt
requested, shall constitute a subpoena to appear at the
hearing without the necessity of payment of fees by the
division of motor vehicles. All subpoenas and subpoenas
duces tecum shall be issued and served within the time
and for the fees and shall be enforced, as specified in
section one, article five of said chapter twenty-nine-a,
and all of the said section one provisions dealing with
subpoenas and subpoenas duces tecum shall apply to
subpoenas and subpoenas duces tecum issued for the
purpose of a hearing hereunder.

(c) Law-enforcement officers shall be compensated for
the time expended in their travel and appearance before
the commissioner by the law-enforcement agency by
whom they are employed at their regular rate if they
are scheduled to be on duty during said time or at their
regular overtime rate if they are scheduled to be off
duty during said time.

(d) The principal question at the hearing shall be
whether the person did drive a motor vehicle while
under the influence of alcohol, controlled substances or
drugs, or did drive a motor vehicle while having an
alcohol concentration in the person’s blood of ten
hundredths of one percent or more, by weight, or did
refuse to submit to the designated secondary chemical
test, or did drive a motor vehicle while under the age
of twenty-one years with an alcohol concentration in his
blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by
weight.

The commissioner may propose a legislative rule in
compliance with the provisions of article three, chapter
twenty-nine-a of this code, which rule may provide that
if a person accused of driving a motor vehicle while
under the influence of alcohol, controlled substances or
drugs, or accused of driving a motor vehicle while
having an alcohol concentration in the person’s blood of
ten hundredths of one percent or more, by weight, or
accused of driving a motor vehicle while under the age
of twenty-one years with an alcohol concentration in his
blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, the person shall, within an appropriate period of time prior to the hearing, notify the commissioner in writing of such intention. The rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of such evidence. Any such rule shall provide that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to the person establishing a time and place for the hearing also informed the person of the consequences of the person's intention to timely notify the commissioner of the person's intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or
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123 her blood of two hundredths of one percent or more, by
124 weight, but less than ten hundredths of one percent, by
125 weight, (2) whether the person was lawfully placed
126 under arrest for an offense involving driving under the
127 influence of alcohol, controlled substances or drugs, or
128 was lawfully taken into custody for the purpose of
129 administering a secondary test, and (3) whether the
130 tests, if any, were administered in accordance with the
131 provisions of this article and article five of this chapter.

132 (f) If, in addition to a finding that the person did drive
133 a motor vehicle while under the influence of alcohol,
134 controlled substances or drugs, or did drive a motor
135 vehicle while having an alcoholic concentration in the
136 person's blood of ten hundredths of one percent or more,
137 by weight, or did drive a motor vehicle while under the
138 age of twenty-one years with an alcohol concentration in
139 his blood of two hundredths of one percent or more, by
140 weight, but less than ten hundredths of one percent, by
141 weight, the commissioner also finds by a preponderance
142 of the evidence that the person when so driving did an
143 act forbidden by law or failed to perform a duty imposed
144 by law, which act or failure proximately caused the
145 death of a person and was committed in reckless
146 disregard of the safety of others, and if the commis-
147 sioner further finds that the influence of alcohol,
148 controlled substances or drugs or the alcoholic concen-
149 tration in the blood was a contributing cause to the
150 death, the commissioner shall revoke the person's license
151 for a period of ten years: Provided, That if the commis-
152 sioner has previously suspended or revoked the person's
153 license under the provisions of this section or section one
154 of this article within the ten years immediately preced-
155 ing the date of arrest, the period of revocation shall be
156 for the life of the person.

157 (g) If, in addition to a finding that the person did
158 drive a motor vehicle while under the influence of
159 alcohol, controlled substances or drugs, or did drive a
160 motor vehicle while having an alcoholic concentration in
161 the person's blood of ten hundredths of one percent or
162 more, by weight, the commissioner also finds by a
163 preponderance of the evidence that the person when so
driving did an act forbidden by law or failed to perform
a duty imposed by law, which act or failure proximately
caused the death of a person, the commissioner shall
revoke the person's license for a period of five years:
Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of
the person.

(h) If, in addition to a finding that the person did
drive a motor vehicle while under the influence of
alcohol, controlled substances or drugs, or did drive a
motor vehicle while having an alcoholic concentration in
the person's blood of ten hundredths of one percent or
more, by weight, the commissioner also finds by a
preponderance of the evidence that the person when so
driving did an act forbidden by law or failed to perform
a duty imposed by law, which act or failure proximately
cau sed bodily injury to a person other than himself or
herself, the commissioner shall revoke the person's
license for a period of two years: Provided, That if the
commissioner has previously suspended or revoked the
person's license under the provisions of this section or
section one of this article within the ten years imme-
diately preceding the date of arrest, the period of
revocation shall be ten years: Provided, however, That if
the commissioner has previously suspended or revoked
the person's license more than once under the provisions
of this section or section one of this article within the
ten years immediately preceding the date of arrest, the
period of revocation shall be for the life of the person.

(i) If the commissioner finds by a preponderance of
the evidence that the person did drive a motor vehicle
while under the influence of alcohol, controlled substan-
ces or drugs, or did drive a motor vehicle while having
an alcoholic concentration in the person's blood of ten
hundredths of one percent or more, by weight, or finds
that the person, being an habitual user of narcotic drugs
or amphetamine or any derivative thereof, did drive a
motor vehicle, or finds that the person knowingly
permitted the person's vehicle to be driven by another
person who was under the influence of alcohol, con-
trolled substances or drugs, or knowingly permitted the
person's vehicle to be driven by another person who had
an alcoholic concentration in his or her blood of ten
hundredths of one percent or more, by weight, the
commissioner shall revoke the person's license for a
period of six months: Provided, That if the commissioner
has previously suspended or revoked the person's license
under the provisions of this section or section one of this
article within the ten years immediately preceding the
date of arrest, the period of revocation shall be ten years:
Provided, however, That if the commissioner has
previously suspended or revoked the person's license
more than once under the provisions of this section or
section one of this article within the ten years imme-
diately preceding the date of arrest, the period of
revocation shall be for the life of the person.

(j) If, in addition to a finding that the person did drive
a motor vehicle while under the age of twenty-one years
with an alcohol concentration in his blood of two
hundredths of one percent or more, by weight, but less
than ten hundredths of one percent, by weight, the
commissioner also finds by a preponderance of the
evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed
by law, which act or failure proximately caused the
death of a person, and if the commissioner further finds
that the alcoholic concentration in the blood was a
contributing cause to the death, the commissioner shall
revoke the person's license for a period of five years:
Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of
the person.

(k) If, in addition to a finding that the person did
drive a motor vehicle while under the age of twenty-one
years with an alcohol concentration in his blood of two
hundredths of one percent or more, by weight, but less
than ten hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the commissioner further finds that the alcoholic concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days.

(m) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

(1) Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest.

(2) Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state
or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(3) Any revocation under the provisions of section seven, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(n) In the case of a hearing wherein a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to (1) whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) whether the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (3) whether the person refused to submit to the secondary chemical test finally designated in the manner provided in section four, article five of this chapter, and (4) whether the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least one year and up to life if the person refused to submit to the test finally designated in the manner provided in section four, article five of this chapter.

(o) If the commissioner finds by a preponderance of the evidence that (1) the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (3) the person refused to submit to the secondary chemical test finally designated, and (4) the person had been given a written statement advising the person that the person's license to operate a motor
vehicle in this state would be revoked for a period of at
least one year and up to life if the person refused to
submit to the test finally designated, the commissioner
shall revoke the person's license to operate a motor
vehicle in this state for the periods specified in section
seven, article five of this chapter.

(p) If the commissioner finds to the contrary with
respect to the above issues, the commissioner shall
rescind his or her earlier order of revocation or shall
reduce the order of revocation to the appropriate period
of revocation under this section, or section seven, article
five of this chapter.

A copy of the commissioner's order made and entered
following the hearing shall be served upon the person
by registered or certified mail, return receipt requested.
During the pendency of any such hearing, the revocation
of the person's license to operate a motor vehicle in this
state shall be stayed.

If the commissioner shall after hearing make and
enter an order affirming the commissioner's earlier
order of revocation, the person shall be entitled to
judicial review as set forth in chapter twenty-nine-a of
this code, except that the commissioner shall not stay
enforcement of the order; and, pending the appeal, the
court may grant a stay or supersedeas of the order only
upon motion and hearing, and a finding by the court
upon the evidence presented, that there is a substantial
probability that the appellant shall prevail upon the
merits, and the appellant will suffer irreparable harm
if the order is not stayed: Provided, That in no event
shall the stay or supersedeas of the order exceed thirty
days.

(q) In any revocation or suspension pursuant to this
section, if the driver whose license is revoked or
suspended had not reached the driver's eighteenth
birthday at the time of the conduct for which the license
is revoked or suspended, the driver's license shall be
revoked or suspended until the driver's eighteenth
birthday, or the applicable statutory period of revoca-
tion or suspension prescribed by this section, whichever
(r) Funds for this section's hearing and appeal process may be provided from the drunk driving prevention fund, as created by section sixteen, article fifteen, chapter eleven of this code, upon application for such funds to the commission on drunk driving prevention.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The division of motor vehicles, in cooperation with the department of health and human resources, the division of alcoholism and drug abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the commissioner may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train and rehabilitate the offender.

(b) (1) The division of motor vehicles, in cooperation with the department of health and human resources, the division of alcoholism and drug abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter, or subsection (6), section five,
article three, chapter seventeen-b of this code, which shall contain the following: (A) A listing and evaluation of the offender’s prior traffic record; (B) characteristics and history of alcohol or drug use, if any; (C) his or her amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles in cooperation with the department of health and human resources, division of alcohol and drug abuse. These fees shall be deposited in a special account administering the program, to be designated the “driver’s rehabilitation fund.”

(2) The commissioner, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall include successful completion of the educational, treatment or rehabilitation program, subject to the following:

(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until (i) at least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully completed the program, (iii) all costs of the program and administration have been paid, and (iv) all costs assessed as a result of a revocation hearing have been paid.

(B) When the period of revocation is for a period of years, the license to operate a motor vehicle in this state shall not be reissued until (i) at least one half of such time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect, (ii) the offender has successfully
completed the program, (iii) all costs of the program and
administration have been paid, and (iv) all costs assessed
as a result of a revocation hearing have been paid.

(C) When the period of revocation is for life, the
license to operate a motor vehicle in this state shall not
be reissued until (i) at least ten years have elapsed from
the date of the initial revocation, during which time the
revocation was actually in effect, (ii) the offender has
successfully completed the program, (iii) all costs of the
program and administration have been paid, and (iv) all
costs assessed as a result of a revocation hearing have
been paid.

(D) Notwithstanding any provision of this code or any
rule, any mental health facilities or other public
agencies or private entities conducting the safety and
treatment program when certifying that a person has
successfully completed a safety and treatment program,
shall only have to certify that such person has success-
fully completed the program.

(c) (1) The division of motor vehicles, in cooperation
with the department of health and human resources,
division of alcoholism and drug abuse, shall provide for
the preparation of an educational program for each
person whose license has been suspended for sixty days
pursuant to the provisions of subsection (I), section two,
article five-a of this chapter. The educational program
shall consist of not less than twelve nor more than
eighteen hours of actual classroom time.

(2) When a sixty-day period of suspension has been
ordered, the license to operate a motor vehicle shall not
be reinstated until (A) at least sixty days have elapsed
from the date of the initial suspension, during which
time the suspension was actually in effect, (B) the
offender has successfully completed the educational
program, (C) all costs of the program and administra-
tion have been paid, and (D) all costs assessed as a result
of a suspension hearing have been paid.

(d) A required component of the rehabilitation
program provided for in subsection (b) and the educa-
tion program provided for in subsection (c) shall be
participation by the violator with a victim impact panel program providing a forum for victims of alcohol and drug related offenses and offenders to share first-hand experiences on the impact of alcohol and drug related offenses in their lives. The commissioner shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to implement victim impact panels where appropriate numbers of victims are available and willing to participate, and shall establish guidelines for other innovative programs which may be substituted where such victims are not available, so as to assist persons whose licenses have been suspended or revoked for alcohol and drug related offenses to gain a full understanding of the severity of their offenses in terms of the impact of such offenses on victims and offenders. The legislative rules proposed for promulgation by the commissioner shall require, at a minimum, discussion and consideration of the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or offenders;

(C) Psychological injuries suffered by victims or offenders;

(D) Changes in the personal welfare or familial relationships of victims or offenders; and

(E) Other information relating to the impact of alcohol and drug related offenses upon victims or offenders.

Any rules promulgated pursuant to this subsection shall contain provisions which ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.
(a) The division of motor vehicles shall control and regulate a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term “program” in this section refers to the motor vehicle alcohol test and lock program. The commissioner of the division of motor vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a “motor vehicle alcohol test and lock system” means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol.

(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That no person whose license has been revoked pursuant to the provisions of subsection (f) or (g), section two of this article shall be eligible for participation in the program: Provided, however, That any person whose
43 license is revoked pursuant to this article or pursuant
44 to article five of this chapter for an act which occurred
45 either while participating in or after successfully
46 completing the program shall not again be eligible to
47 participate in such program.

48 (2) Any person whose license has been suspended
49 pursuant to the provisions of subsection (l), section two
50 of this article for driving a motor vehicle while under
51 the age of twenty-one years with an alcohol concentra-
52 tion in his or her blood of two hundredths of one percent
53 or more, by weight, but less than ten hundredths of one
54 percent, by weight, is eligible to participate in the
55 program after thirty days have elapsed from the date
56 of the initial suspension, during which time the suspen-
57 sion was actually in effect: Provided, That in the case
58 of a person under the age of eighteen, the person shall
59 be eligible to participate in the program after thirty
60 days have elapsed from the date of the initial suspension,
61 during which time the suspension was actually in effect,
62 or after the person's eighteenth birthday, whichever is
63 later. Before the commissioner approves a person to
64 operate a motor vehicle equipped with a motor vehicle
65 alcohol test and lock system, the person must agree to
66 thereafter comply with the following conditions:

67 (A) If not already enrolled, the person will enroll in
68 and complete the educational program provided for in
69 subsection (c), section three of this article at the earliest
70 time that placement in the educational program is
71 available, unless good cause is demonstrated to the
72 commissioner as to why placement should be postponed;

73 (B) The person will pay all costs of the educational
74 program, any administrative costs and all costs assessed
75 for any suspension hearing.

76 (3) Notwithstanding the provisions of this section to
77 the contrary, no person eligible to participate in the
78 program shall operate a motor vehicle unless approved
79 to do so by the commissioner.

80 (c) For purposes of this section, "minimum revocation
81 period" means the portion which has actually expired of
82 the period of revocation imposed by the commissioner
pursuant to this article or the provisions of article five
of this chapter upon a person eligible for participation
in the program as follows:

(1) For a person whose license has been revoked for
six months pursuant to subsection (i), section two of this
article, the minimum period of revocation is thirty days;

(2) For a person whose license has been revoked for
one year pursuant to section seven, article five of this
chapter, the minimum period of revocation is ninety
days;

(3) For a person whose license has been revoked for
any other period of time pursuant to section two of this
article or pursuant to section seven, article five of this
chapter, the minimum period of revocation is one year.

(e) Upon permitting an eligible person to participate
in the program, the commissioner shall issue to such
person, and such person shall be required to exhibit on
demand, a driver's license which shall reflect that such
person is restricted to the operation of a motor vehicle
which is equipped with an approved motor vehicle
alcohol test and lock system.

(f) Any person who has completed the safety and
treatment program and who has not violated the terms
required by the commissioner of such person's partici-
pation in the motor vehicle alcohol test and lock
program shall be entitled to the restoration of such
person's driver's license upon the expiration of:

(1) One hundred eighty days of the full revocation
period imposed by the commissioner for a person
described in subdivision (1), subsection (c) of this section;

(2) The full revocation period imposed by the commis-
sioner for a person described in subdivision (2), subsec-
tion (c) of this section;

(3) One year from the date a person described in
subdivision (3), subsection (c) of this section is permitted
to operate a motor vehicle by the commissioner.

(g) A person whose license has been suspended
pursuant to the provisions of subsection (l), section two
of this article, who has completed the educational
program, and who has not violated the terms required
by the commissioner of such person's participation in the
motor vehicle alcohol test and lock program shall be
entitled to the reinstatement of his or her driver's license
six months from the date the person is permitted to
operate a motor vehicle by the commissioner. When a
license has been reinstated pursuant to this subsection,
the records ordering the suspension, records of any
administrative hearing, records of any blood alcohol test
results and all other records pertaining to the suspen­sion
shall be expunged by operation of law: Provided,
That a person shall be entitled to expungement under
the provisions of this subsection only once. The expun­gement shall be accomplished by physically marking the
records to show that such records have been expunged,
and by securely sealing and filing the records. Expun­gement shall have the legal effect as if the suspension
never occurred. The records shall not be disclosed or
made available for inspection, and in response to a
request for record information, the commissioner shall
reply that no information is available. Information from
the file may be used by the commissioner for research
and statistical purposes so long as the use of such
information does not divulge the identity of the person.

(h) In addition to any other penalty imposed by this
code, any person who operates a motor vehicle not
equipped with an approved motor vehicle alcohol test
and lock system during such person's participation in
the motor vehicle alcohol test and lock program is guilty
of a misdemeanor, and, upon conviction thereof, shall be
confined in the county jail for a period not less than one
month nor more than six months and fined not less than
one hundred dollars nor more than five hundred dollars.
Any person who assists another person required by the
terms of such other person's participation in the motor
vehicle alcohol test and lock program to use a motor
vehicle alcohol test and lock system in any effort to
bypass the system, is guilty of a misdemeanor, and, upon
conviction thereof, shall be confined in the county jail
not more than six months and fined not less than one
hundred dollars nor more than one thousand dollars.
§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is being operated upon the roads or highways of this state, shall have his or her driver’s license suspended by the commissioner of the division of motor vehicles for a period of thirty days and shall have his or her motor vehicle registration revoked until such time as he or she shall present to the division of motor vehicles the proof of security required by this article: Provided, That if a motor vehicle is registered in more than one name, the driver’s license of only one of the owners shall be suspended by the commissioner.

(b) Any person who knowingly operates a motor vehicle upon the roads or highways of this state, which does not have the security required by the provisions of this article, shall have his or her driver’s license suspended by the commissioner for a period of thirty days.

(c) A person’s driver’s license shall be suspended for a period of thirty days if the person is operating a motor vehicle designated for off highway use upon the roads and highways of this state without the required security in effect, if the motor vehicle is not properly registered and licensed, or if the required security was canceled.

(d) The commissioner may withdraw a suspension of a driver’s license provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) No person shall have his or her driver’s license or
motor vehicle registration suspended or revoked under any provisions of this section unless he or she shall first be given written notice of such suspension or revocation sent by certified mail, at least twenty days prior to the effective date of such suspension or revocation, and upon such person's written request, sent by certified mail, he or she shall be afforded an opportunity for a hearing thereupon as well as a stay of the commissioner's order of suspension or revocation and an opportunity for judicial review of such hearing. Upon affirmation of the commissioner's order, the period of suspension or revocation shall commence to run.

(f) Such suspended driver's license shall be reinstated following the period of suspension upon compliance with the conditions set forth in this article and such revoked motor vehicle registration shall be reissued only upon lawful compliance with the provisions of this article.

(g) If the commissioner has previously suspended the person's driver's license under the provisions of this section or section five of this article, the period of suspension shall be for a period of ninety days.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-15. Implied consent requirements for commercial motor vehicle drivers.

(a) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to provisions of section four, article five, chapter seventeen-c of this code, to take a test or tests of that person's blood, breath or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law-enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has reasonable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.
(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section fifteen of this article.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths or more, that law-enforcement officer must submit a sworn report to the division of motor vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of four hundredths or more.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the commissioner must disqualify the driver from driving a commercial motor vehicle under section thirteen of this article.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING; LITTER.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

(a) No person shall operate a motorboat or other vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight.

(c) It shall be the duty of the operator of a vessel involved in a collision, accident or other casualty, so far
as he can do so without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(d) The operator of a vessel involved in a collision, accident or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of five hundred dollars damage to a vessel or other property. The report shall be made on such forms and contain such information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and peace officers to enforce chapter; police powers of inspectors.

It shall be the duty of the department of public safety and the sheriffs of the counties in West Virginia to make arrests and the duty of the prosecuting attorneys of the several counties to prosecute all violations of this chapter, and the commission employees designated by it as inspectors shall have all the lawful powers of peace officers to enforce this chapter in any county or city of this state. If, in the course of enforcing the provisions of this chapter, a commission employee designated by it as an inspector shall have reasonable cause to believe that a driver has been operating a vehicle regulated by this chapter in violation of section two, article five, chapter seventeen-c of this code or section fourteen,
article one, chapter seventeen-e of this code, the inspector may detain the driver until a member of the division of public safety, a sheriff or deputy sheriff, or a member of a municipal law-enforcement agency is summoned to investigate the suspected violation and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered.

CHAPTER 33. INSURANCE

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the following specified reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his operator’s license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for chemical test for intoxication: Provided, That when a license is suspended for sixty days by the commissioner of motor vehicles because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by weight, pursuant to subsection (l), section two, article five-a, chapter seventeen-c of this code, such suspension shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle.

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his blood of ten hundredths of one percent (.10) or more, by weight;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator’s license;

(7) A third violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitious of the same offense or were different offenses. Notwithstanding any of the provisions of this section to the contrary, no insurance company may cancel a policy of automobile liability insurance without first giving the insured thirty days’ notice of its intention to cancel: Provided, That cancellation of the insurance policy by the insurance carrier for failure of
consideration to be paid by the insured upon initial
issuance of the insurance policy is effective upon the
expiration of ten days' notice of cancellation to the
insured.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a child into custody; detention hearing; counsel.

(a) In proceedings instituted by the filing of a juvenile
petition the circuit court may enter an order directing
that a child be taken into custody only if one of the
following conditions exist: (1) The petition shows that
grounds exist for the arrest of an adult in identical
circumstances; (2) the health, safety and welfare of the
child demand such custody; (3) the child is a fugitive
from a lawful custody or commitment order of a juvenile
court; or (4) the child has a record of willful failure to
appear at juvenile proceedings, and custody is necessary
to assure his or her presence before the court. A
detention hearing shall be held without delay by the
judge, juvenile referee or magistrate authorized to
conduct such hearing, and in no event shall the delay
exceed the next succeeding judicial day, excluding
Saturday, and such child shall be released on recogniz-
ce to his or her parent, guardian or custodian unless
findings are made as specified in subsection (d) of this
section.

(b) Absent a warrant or court order, a child may be
taken into custody by a law-enforcement official only if
one of the following conditions exist: (1) Grounds exist
for the arrest of an adult in identical circumstances; (2)
emergency conditions exist which in the judgment of the
officer pose imminent danger to the health, safety and
welfare of the child; (3) the official has reasonable
grounds to believe that the child is a runaway without
just cause from the child's parents or legal custodian
and the health, safety and welfare of the child is
endangered; (4) the child is a fugitive from a lawful
custody or commitment order of a juvenile court; or (5)
the official has reasonable grounds to believe the child
to have been driving a motor vehicle with any amount
of alcohol in his or her blood. Except as is otherwise
provided in section six-a, article five, chapter seventeen-
c of this code, upon taking a child into custody, with or
without a warrant or court order, the official shall: (i)
Immediately notify the child's parent, custodian or, if
the parent or custodian cannot be located, a close
relative; (ii) release the child into the custody of his or
her parent or custodian unless the circumstances
warrant otherwise; (iii) refer the matter to the prosecut-
ing attorney, state division or probation officer for
proceedings under this article; and (iv) if a child is being
held in custody absent a warrant or court order, cause
a warrant, petition or order, as the case may be, to be
immediately issued authorizing the detention of such
child.

If a child is taken into custody pursuant to subdivision
(2) or (3) hereunder, the state division shall be imme-
diately notified. Any child taken into custody as a
runaway shall not be held in custody more than forty-
eight hours without a court order, or more than seven
days in any event. Such child shall not be confined in
any facility wherein persons are being detained for an
offense which would be a crime if committed by an
adult.

(c) In the event that a child is delivered into the
custody of a sheriff or director of a detention facility,
such sheriff or director shall immediately notify the
court or referee. Said sheriff or director shall imme-
diately provide to every child who is delivered into his
or her custody a written statement explaining the child's
right to a prompt detention hearing, his or her right to
counsel including appointed counsel if he cannot afford
counsel and his or her privilege against self-incrimina-
tion. In all cases when a child is delivered into custody,
the child shall be released to his or her parent, guardian
or custodian by the end of the next succeeding judicial
day, excluding Saturday, after being delivered into such
custody, unless the child has been placed in detention
pursuant to subsection (d) of this section.

(d) A child in custody must immediately be taken
before a referee or judge of the circuit court and in no
event shall a delay exceed the next succeeding judicial
day: Provided, That if there be no judge or referee then
available in the county, then such child shall be taken
immediately before any magistrate in the county for the
sole purpose of holding a detention hearing. The judge,
referee or magistrate shall inform the child of his or her
right to remain silent, that any statement may be used
against him or her and of his or her right to counsel,
and no interrogation shall be made without the presence
of a parent or counsel. If the child or his or her parent,
guardian or custodian has not retained counsel, counsel
shall be appointed as soon as practicable. The referee,
judge or magistrate shall hear testimony concerning the
circumstances for taking the child into custody and the
possible need for detention in accordance with section
two, article five-a of this chapter. The sole mandatory
issue at the detention hearing shall be whether the child
shall be detained pending further court proceedings.
The court shall, if advisable, and if the health, safety
and welfare of the child will not be endangered thereby,
release the child on recognizance to his or her parents,
custodians or an appropriate agency; however, if
warranted, the court may require bail, except that bail
may be denied in any case where bail could be denied
if the accused were an adult.

The judge of the circuit court or referee may, in
conjunction with the detention hearing, conduct a
preliminary hearing pursuant to section nine, article
five of this chapter: Provided, That all parties are
prepared to proceed and the child has counsel during
such hearing.

CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal
possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their
presence.

(a) A person shall not:
(1) Appear in a public place in an intoxicated condition;

(2) Drink alcoholic liquor in a public place;

(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;

(4) Tender a drink of alcoholic liquor to another person in a public place;

(5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commission, without having first obtained written authority from the said commission therefor; or

(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer, he may, after issuance of such a citation, transport the individual to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by section seventeen, article eleven, chapter twenty-seven of this code; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he is discharged.
from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer, the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him, he may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor
more than one hundred dollars and not more than sixty days in jail or completion of an alcohol education program of not more than six hours' duration at the nearest community mental health — mental retardation center. If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health — mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health — mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2) or (3), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five nor more than one hundred dollars, or confined in jail not more than sixty days, or both such fine and imprisonment. Any person who
123 violates subdivision (4) or (5), subsection (a) of this
124 section shall be guilty of a misdemeanor, and, upon
125 conviction, shall be fined not less than one hundred
126 dollars nor more than five hundred dollars, or confined
127 in jail not less than sixty days nor more than twelve
128 months, or both such fine and imprisonment, and, upon
129 conviction of second or subsequent offense, he shall be
130 guilty of a felony and shall be confined in the peniten-
131 tiary of this state for a period of not less than one year
132 nor more than three years.

CHAPTER 112
(Com. Sub. for H. B. 2572—By Delegates Tribett and Varner)
[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four-a, article three, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-b, all relating to prescribing criminal penalties for certain traffic violations committed in posted construction zones; and requiring posting of signs in construction zones.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS.

§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance.
§17C-3-4b. Traffic violations in construction zones posting requirement; criminal penalties.
§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance.

The driver of any vehicle shall obey the traffic-control instructions of any law-enforcement officer or persons authorized by the commissioner of highways or by proper local authorities to operate traffic-control devices, act as flagmen, or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. Any person failing to comply with the requirements of this section is guilty of a misdemeanor.

§17C-3-4b. Traffic violations in construction zones posting requirement; criminal penalties.

(a) At each and every location where street or highway construction work is to be conducted a sign shall be posted at least one thousand feet from the construction site, or as close to one thousand feet from the construction site as is practicable given the location of the site when workers are present, notifying all motorists as to the speed limit and displaying the words “construction work”.

(b) Any person who violates any posted speed restriction or traffic restriction at such construction site referred to in subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars or incarcerated in a county or regional jail not more than twenty days, or both.

(c) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.
AN ACT to amend and reenact section two, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting motor vehicles with a total outside width of one hundred two inches, exclusive of federally required safety equipment, to operate on highways with a minimum lane width of ten feet.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-2. Width of vehicles.

(a) The total outside width, exclusive of safety equipment authorized by the United States department of transportation, of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this article: Provided, That any vehicle with a total outside width of one hundred two inches, exclusive of safety equipment authorized by the United States department of transportation, may be operated on any highway within the state designated by the United States department of transportation or the commissioner of the department of highways or on any highway having a minimum lane width of ten feet.

(b) Motor buses and trackless trolley coaches with a total outside width of one hundred two inches, excluding safety equipment authorized by the United States department of transportation, may operate on any highway.
CHAPTER 114
(Com. Sub. for H. B. 4193—By Delegate Love)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two-a, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to security upon motor vehicles; certificates of insurance; and including a copy of a motor carrier’s registration issued by the public service commission as proof of insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.


(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code, certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the commissioner of the department of motor vehicles shall by rule require, all motor vehicles covered and all replacement vehicles of similar classification:

Provided, That on and after the first day of July, one thousand nine hundred eighty-four, insurance companies shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.
The certificate must specify for each vehicle listed therein, that there is a minimum liability insurance coverage not less than the requirements of section two, article four, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy, a certificate of self-insurance, or a copy of the current registration issued to a motor carrier by the public service commission (1) through the single state registration system established pursuant to section fourteen, article six-a, chapter twenty-four-a of this code; or (2) pursuant to the provisions of section four, article six, chapter twenty-four-a of this code.

CHAPTER 115

(H. B. 4333—By Delegates Campbell, Higgins and Love)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commercial driver's licenses; changing and adding certain definitions; and clarifying that felony convictions for drug-related crimes result in commercial driver's license disqualification for life.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.


§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the following definitions apply to this article:

2 "Alcohol" means:

3 (a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

4 (b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

5 (c) Distilled spirits or that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or

6 (d) Wine of not less than one half of one percent of alcohol by volume.

7 "Alcohol concentration" means:

8 (a) The number of grams of alcohol per one hundred milliliters of blood; or

9 (b) The number of grams of alcohol per two hundred ten liters of breath; or

10 (c) The number of grams of alcohol per sixty-seven milliliters of urine.

11 "Commercial driver license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.
“Commercial driver license information system” is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

“Commercial driver instruction permit” means a permit issued pursuant to subsection (e), section nine of this article.

“Commercial motor vehicle” means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.

“Commissioner” means the commissioner of motor vehicles of this state.

“Controlled substance” means any substance so classified under the provisions of chapter sixty-a of this code (uniform controlled substances act) and includes all substances listed on Schedules I through V, article two of said chapter sixty-a, as they may be revised from time to time.

“Conviction” means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, an implied admission of guilt or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.

“Department” means the department of motor vehicles.

“Disqualification” means a prohibition against driving a commercial motor vehicle.
“Drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of sections twelve, thirteen and fourteen of this article “drive” includes operation or physical control of a motor vehicle anywhere in this state.

“Driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.

“Driver license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

“Employee” means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is employed by himself or herself as a commercial motor vehicle driver must comply with both the requirements of this article pertaining to employees and employers.

“Employer” means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

“Farm vehicle” includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.

“Farmer” includes owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving
"Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.

"Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

"Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

"Hazardous materials" has the meaning as that found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

"Motor vehicle" means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

"Serious traffic violation" means:

(a) Operating a motor vehicle under the influence of alcohol or a controlled substance in violation of the provisions of section two, article five, chapter seventeen-c of this code;

(b) Failure to stop and render aid and provide required information after involvement in a motor vehicle accident resulting in death, injury or property damage, as provided in section five, article three, chapter seventeen-b and sections one through five,
in article four, chapter seventeen-c of this code;

(c) A felony in the commission of which a motor vehicle is used; as stated in subsection (2), section five, article three, chapter seventeen-b of this code;

(d) Excessive speeding defined as fifteen miles per hour in excess of all posted limits;

(e) Reckless driving as defined in section three, article five, chapter seventeen-c of this code including erratic lane changes and following the vehicle ahead too closely;

(f) A violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident. Vehicle weight and vehicle defects are excluded as serious traffic violations;

(g) Violation of an out-of-service order; or

(h) Any other serious violations as may be determined by the U. S. Secretary of Transportation.

"State" means a state of the United States and the District of Columbia.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in Part 171 of Title 49, C.F.R. Part 171. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

"At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.


(a) Disqualification offenses. — On or after the first day of April, one thousand nine hundred ninety-two, any
person is disqualified from driving a commercial motor
vehicle for a period of not less than one year if convicted
of a first violation of:

(1) Driving a commercial motor vehicle under the
influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the
alcohol concentration of the person's blood or breath is
four hundredths or more;

(3) Leaving the scene of an accident involving a
commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commis-
    sion of any felony as defined in this article: Provided,
    That the commission of any felony involving the
    manufacture, distribution, or dispensing of a controlled
    substance, or possession with intent to manufacture,
    distribute or dispense a controlled substance falls under
    the provisions of subsection (d) of this section.

(5) Refusal to submit to a test to determine the
driver's alcohol concentration while driving a commer-
cial motor vehicle.

In addition, the conviction of any of the following
offenses as an operator of any vehicle is a disqualifica-
tion offense:

(1) Manslaughter or negligent homicide resulting
from the operation of a motor vehicle as defined under
the provisions of section five, article three, chapter
seventeen-b, and section one, article five, chapter
seventeen-c of this code;

(2) Driving while license is suspended or revoked, as
defined under the provisions of section three, article
four, chapter seventeen-b of this code;

(3) Perjury or making a false affidavit or statement
under oath to the department of motor vehicles, as
defined under the provisions of subsection (4), section
five, article three, and section two, article four, chapter
seventeen-b of this code.

If any of the above violations occurred while trans
porting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may issue rules establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) After suspending, revoking or cancelling a commercial driver's license, the department shall update its records to reflect that action within ten days.

CHAPTER 116

(S. B. 515—By Senators Wooton, Minard, Yoder, Holliday, Dittmar, Claypole and Ross)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to creating an alternative prejudgment disposition procedure for traffic offenses in
municipal courts; conditions of alternative disposition; preemptive provisions; and offenses for which alternative disposition is not available.

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

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

**ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.**

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

1. (a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

2. (b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense the municipal court may, with the person's consent, withhold for a reasonable time not to exceed ninety days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

3. (c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.
28    (d) The procedure authorized by the provisions of this
29    section shall not be available to any person arrested for
30    driving under the influence of alcohol or drugs or any
31    other offense for which a mandatory period of confine-
32    ment in jail is required.

CHAPTER 117
(H. B. 4168—By Delegates Kessel, Brown, Smith,
Spencer, Sorah and Walters)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article thirteen-
a, relating to the authority of municipalities to create
business improvement districts to foster economic
growth and development and providing procedures
therefor; legislative findings and declaration of purpose;
definitions; providing authorization to municipalities to
create business improvement districts; types of services
that a municipality may provide to a business improve-
ment district; the petition that initiates procedures to be
used to organize, develop and designate a business
improvement district; the appointment of a planning
committee which issues a report; provision of notice and
hearing; the creation of a business improvement district;
certain uses of fees to be prohibited; the petition to
appeal an ordinance creating a business improvement
district; the establishment of a district board and its
duties; the levy of service fees; the classification of
properties within a business improvement district; the
creation of a special business improvement district fund
and its funding sources; the petition to include addi-
tional property in an existing business improvement
district; the procedure used to abolish and dissolve a
business improvement district.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. BUSINESS IMPROVEMENT DISTRICTS.

§8-13A-2. Legislative findings and declaration of purpose.
§8-13A-6. Petition to initiate the procedure for organization, development and designation.
§8-13A-10. Petition to repeal ordinance.
§8-13A-11. District board; duties.
§8-13A-12. Levy of service fees; classification of properties; factors to consider.
§8-13A-14. Modification of included area; notice; hearing.
§8-13A-15. Abolishment and dissolution of district; notice; hearing.


1 This article is known and may be cited as the “Business Improvement District Act.”

§8-13A-2. Legislative findings and declaration of purpose.

1 The Legislature finds that many business districts within the municipalities of this state are economically depressed. This adversely affects the economic and general well-being of the citizens of those municipalities. Establishment of business improvement districts within municipalities of the state, in accordance with the purpose and powers set forth in this article, will serve a public purpose, promote the health, safety, prosperity, security and general welfare of all citizens in the state. It will also promote the vitality of commercial business areas within municipalities, while serving as an effective means for restoring and promoting commercial and other business activity within the business improvement districts created herein. This will be of special benefit to the property within the boundaries of any business improvement district created under this article.
and will stimulate economic growth and job creation.


For purposes of this article, the term:

(a) “Commercial property” means the surface of any taxable real property which is classified for ad valorem real property tax purposes as Class IV. Excluded from the meaning of such term is all real property owned or used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent or charitable purposes, or real property owned or used by public port authorities or wayport authorities;

(b) “District board” means a district board created pursuant to section eleven of this article;

(c) “Property owner” or “owner” means the owner of commercial property as shown by the transfer records in the office of the county clerk of the county in which the property is located. If an owner owns more than one commercial property, that owner is counted as a separate owner for each such commercial property owned. If commercial property is owned by more than one owner, the majority in ownership is treated as the owner for the purpose of this article;

(d) “Services” means governmental functions, programs, activities, facility improvements and other services which a district board is authorized to perform or provide under section five of this article.


The governing body of any municipality may, in accordance with the procedures and subject to the limitations set forth in this article, establish one or more business improvement districts within the municipality. The municipality may provide for the administration and financing of additional and extended services to businesses within the districts and for the administration and financing of a continuing program of services within the districts.

Any municipality which has established a business improvement district under this article may provide or cause to be provided such services as will restore or promote the economic vitality of the district and the general welfare of the municipality, including, but not limited to, the following:

(a) Beautification of the district, by means such as landscaping and construction and erection of fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities;

(b) Provision of special or additional public services, such as sanitation, security for persons and property and the construction and maintenance of public facilities including sidewalks and other public areas;

(c) Making principal or interest payments on bonds issued by the municipality for public improvements located within and designated to improve the economic viability of the district;

(d) Providing financial support for public transportation and vehicle parking facilities open to the general public;

(e) Constructing, operating and maintaining parking facilities;

(f) Developing plans for the general architectural design of public areas and developing plans and programs for the future development of the district;

(g) Developing, promoting and supporting community events and activities open to the general public;

(h) Providing the administrative costs for a district management program; and

(i) Providing any other services which the municipality or district board is authorized to perform and which the municipality does not also perform to the same extent on a municipality-wide basis.

§8-13A-6. Petition to initiate the procedure for organization, development and designation.
(a) The organization, development and designation of a business improvement district shall be initiated by a petition filed in the office of the clerk of the governing body of the municipality. The petition shall be signed by not less than four owners who own commercial property in the proposed business improvement district having an assessed value as reflected on the county assessor's land books of not less than fifty-one percent of the value of all commercial property in the proposed business improvement district.

(b) The petition shall set forth:

1. The name of the proposed district, including a descriptive name thereof and the words "business improvement district";
2. A general description of the boundaries and service area of the proposed district;
3. A general description of the additional or extended services needed within the district; and
4. A request for the organization of a business improvement district.


(a) Upon receipt of a petition for the initiation of a business improvement district, the governing body of the municipality shall, within ninety days, appoint a district planning committee consisting of seven members. A majority of the members shall be owners of commercial property situated within the proposed district of the municipality. The committee shall study and develop preliminary plans for the establishment and operation of the proposed district and shall consult with the appropriate officials and agencies of the municipality prior to completing such preliminary plans. Upon completion of the study and development of preliminary plans and, in no event, later than two hundred seventy-five days after its establishment, the committee shall submit to the governing body a written report which:

1. Describes the boundaries of the proposed district
with sufficient specificity to enable the owner of any commercial property in the municipality to determine whether his or her property is located therein. The area proposed for any district must be contiguous with and situated fully within the boundaries of the municipality;

(2) A description of any additional or extended services needed within the district;

(3) A description of the proposed method of financing any planned improvements, including the maximum rate of annual fees that may be imposed upon properties within the proposed district and the manner in which the rate will be imposed. The amount of annual fees may be based upon gross leasable square footage, street front-footage, total gross building or land square footage, or any combination thereof, or on such basis as can reasonably be determined based upon the value of the improvements to the commercial property situated in the district and upon whatever benefits exist relative to the various owners of property situated therein. For the purpose of levying fees, the committee shall make a reasonable classification of all properties within the proposed district;

(4) A recommendation concerning the feasibility and desirability of the proposed business improvement district and any alternative proposal, in the event the committee's recommendation is not in accordance with the original petition: Provided, That, in the event the boundaries of the proposed business improvement district recommended by the committee differs from the boundaries contained in the original petition, the report must also contain an additional petition signed by at least four persons who own commercial property in the proposed business improvement district recommended by the committee. Such commercial property must have an assessed value as reflected on the county assessor's landbooks of not less than fifty-one percent of the value of all commercial property in the proposed business improvement district;

(5) Such other information as may be requested by the governing body. The municipality may provide staff and
technical assistance to the committee.


Upon receipt of the planning committee's report, the governing body of the municipality shall set a time and place for a public hearing regarding the creation of any business improvement district. The notice of the public hearing shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the scheduled hearing. A copy of the notice shall be sent by certified mail, return receipt requested, not less than twenty days before the hearing, to all owners of commercial property within the proposed district. If any property is shown to be in the name of more than one owner at the same mailing address, a single notice may be mailed, addressed to all owners at that address. In addition to the time and place of the hearing, the notice must also state:

(a) The purpose of the hearing;
(b) The name of the proposed district;
(c) The purpose of the proposed district;
(d) The property proposed to be included in the district; and
(e) The proposed method of financing any costs involved, including the maximum rate of annual fees that may be imposed upon any properties situated within the proposed district.

The hearing shall be held not later than sixty days after receipt of the planning committee's report.

At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owner of real property situated in the proposed district and any residents of the municipality.

(a) If the governing body of the municipality, following the public hearing, determines it advisable and in the public interest to establish an improvement district, it shall create the district by ordinance as provided for in article eleven of this chapter: Provided, That the governing body may not amend, alter or change in any manner the boundaries of the improvement district as recommended by the planning committee. In addition to all other requirements, the ordinance shall contain the following:

1. The name of the district and a description of its boundaries;
2. A summary of any proposed services to be provided within the district and a reasonable estimate of any attendant cost;
3. The maximum rate of any annual fees that may be imposed upon the commercial properties and the manner in which the rate will be imposed; and
4. The district boardmembers' terms, their method of appointment and a full description of their powers and duties.

(b) The ordinance shall also state the general intention of the municipality to increase services within the business improvement district and that no fees collected under the authority of the ordinance may be used to reduce, replace or supplant existing funds or services.

§8-13A-10. Petition to repeal ordinance.

Within thirty days following passage of an ordinance creating a business improvement district, the owners of any real property situated in the district may file a petition with the governing body of the municipality in opposition to the continuation of the district. Upon a finding that the petition was signed by owners of commercial property situated in the proposed business improvement district having an assessed value as reflected on the county assessor's land books of not less than fifty-one percent of the value of all commercial
property in the business improvement district, the governing body shall repeal the ordinance which established the district, thereby rescinding its creation and development.

§8-13A-11. District board; duties.

(a) The governing body of any municipality that intends to establish a business improvement district, in accordance with this article, shall provide by ordinance for the appointment of a district board to oversee the operations of the improvement district. The board shall be made up of at least seven members, the majority of which shall be owners of commercial property situated in the improvement district.

(b) The district board, in addition to the duties prescribed by the ordinance creating the improvement district, shall submit an annual report to the governing body containing:

(1) An itemized statement of its receipts and disbursements for the preceding fiscal year;

(2) A description of its activities for the preceding fiscal year;

(3) A recommended program of services to be performed or provided within the district for the coming fiscal year; and

(4) A proposed budget to accomplish its objectives.

(c) Nothing in this article prohibits any member of the district board from also serving on the board of directors of a nonprofit corporation with which the municipality may contract to provide specified services within the district.

(d) No member of the district board may receive, either directly or indirectly, compensation for service on the board.

§8-13A-12. Levy of service fees; classification of properties; factors to consider.
(a) Upon receipt of a recommended program of services and a proposed budget from the district board, the governing body of the municipality may annually, by ordinance, levy business improvement service fees which may only be applicable to properties located within the improvement district and only to the extent necessary to fund the budget proposed by the district board. All revenue from the fees shall be placed in a special business improvement district fund and may only be used to fund the services provided under this article. Any surplus in the fund in a fiscal year shall be applied to reduce the amount of service fees required for the next fiscal year.

(b) The ordinance creating a business improvement district may provide for the division of property within the district into two or more zones or uses in the event significant differences exist relative to the property and the improvements. The ordinance may establish different rates of assessment for each zone or use, or may provide that the rate be a certain percentage of the assessment levied in the zone or on the use, subject to the highest rate of assessment.

(c) The amount of the business improvement service fee shall be in addition to any municipality-wide license fees or any other tax, fee or charge levied for the general benefit and use of the municipality.

(d) Each assessment is a lien on the commercial property that is assessed, second only to any state, federal or county taxes levied on that property.


Any municipality that has established a business improvement district shall establish a special business improvement district fund for each district created within such municipality. Revenue derived from any special assessment fees, gifts, grants, appropriations from the municipality or other sources shall be paid into the fund. Moneys in another municipal fund or funds may be advanced to the special fund only if reimbur-
§8-13A-14. Modification of included area; notice; hearing.

(a) The ordinance creating a business improvement district may be amended to include additional property if a petition is filed with the governing body requesting such inclusion. Such petition must be signed by the owners of the commercial property that is being proposed for inclusion in the improvement district. Such property must have an assessed value, as reflected on the assessor’s land books, of not less than fifty-one percent of the value of all the property proposed for inclusion.

(b) Upon receipt of the petition, the governing body shall refer the petition to the appropriate district board for which the amendment is sought. The board shall review the petition and, within sixty days, file a report with the governing body recommending either acceptance of the proposed inclusion or rejection of the petition. Additional property may not be included unless it is contiguous with the existing district and situated within the boundaries of the municipality.

(c) Upon receipt of the recommendation from the district board, the governing body shall designate a time and place for a public hearing upon the petition to include additional property. The notice shall meet the requirements set forth in section eight of this article.

(d) At the time and place set forth in the notice, the governing body shall afford the opportunity to be heard to any owners of real property either currently included in or proposed to be added to the existing improvement district and to any other residents of the municipality. The hearing shall be held within sixty days after the governing body’s receipt of the district board’s recommendation.

(e) All additional property included in a district shall
§8-13A-15. Abolishment and dissolution of district; notice; hearing.

(a) A district may be abolished by the governing body of the municipality following a public hearing upon the proposed abolishment. Notice of such hearing must be provided by first class mail to all property owners within the district and shall be published as a Class I-O legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing. Upon the abolishment of any improvement district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district, shall be transferred to the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the improvement district being abolished.

(b) Notwithstanding any other provision of this article, no business improvement district may exist for a period exceeding ten years unless reinstated pursuant to the provisions of this article. Reinstatement requires compliance with all requirements and procedures set forth herein for the initial development and establishment of a district. No district may issue notes or bonds for funding district projects or improvements that exceed a repayment schedule of ten years. Upon the dissolution of any business improvement district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness, or other financial benefits, liabilities or obligations existing after full payment has been made on all contracts, bonds, notes or other obligations of the district, shall be transferred to the municipality. Any funds or other assets so transferred shall be used for the benefit of the area included in the improvement district being dissolved.
CHAPTER 118
(S. B. 312—By Senators Schoonover and Holliday)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing municipalities to offer fire protection services to property within the county; and providing that when a municipality provides fire services to any property outside the corporate limits, it may provide the same fire services under contract to other property within the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


(a) Any municipality may contract to render services in the prevention and extinguishment of fires upon property located within the state. A municipality may contract beyond its immediate boundary limit for fire service protection if fire protection is provided in accordance with and under a rural fire protection district plan based upon the fire suppression rating schedule approved by the state insurance commissioner.

All rural fire protection district plans shall be approved by the state fire commission. No rural fire protection district plan providing for a municipality to contract beyond its boundary may infringe upon an existing fire department's response area without the written consent of the fire department providing fire services for that area.
No contract entered into under the authority of this section may operate to impose any greater obligation or liability upon the municipality than that with respect to property within its corporate limits. Nothing contained in this section may be construed as requiring any municipality to contract to render such services. A municipality providing fire services under contract to any property outside its corporate limits may offer fire service under contract to any property within the county if the property owner requests the protection.

Any contract entered into under the authority of this section, on or after the first day of July, one thousand nine hundred sixty-nine, shall require the property owner to pay as consideration for said services an annual payment, determined as provided in the remainder of this subsection. If the municipality does not impose a fire service fee on the users of such service within the municipality as authorized in section thirteen, article thirteen of this chapter, the annual payment shall be equivalent to eighty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. If the municipality does impose a fire service fee on the users of such service within the municipality, as authorized in said section, the annual payment shall be equivalent to the amount of fire service fee which would be imposed if the property under contract were located within the municipality plus at least fifty percent of the annual tax levied for current municipal purposes upon property within said municipality of like assessed valuation to the property under contract. No contract entered into under the authority of this section, and nothing herein contained, may be construed as requiring or permitting any municipality to install or maintain any special additional apparatus or equipment beyond that necessary for the protection of property within its corporate limits.

(b) The annual payments due under any such contract are payable on or before the first day of October of each calendar year in which such contract remains in effect, or upon such day as may be hereinafter provided as the due date of the first installment of ad valorem taxes. If
any annual payment is in default for a period of more
than thirty days, it shall bear interest at the same rate
as that provided for delinquent property taxes and shall
be a lien upon the property under contract if a notice
of such lien is recorded in the proper deed of trust book
in the office of the clerk of the county commission of the
county in which such property or the major portion
thereof is located. Such lien is void at the expiration of
two years after such defaulted annual payment became
due, unless within such two-year period a civil action
seeking equitable relief to enforce the lien was instituted
by the municipality. The municipality may by civil
action collect any annual payment and the interest
thereon at any time within five years after such
payment became due; and upon default in any annual
payment, the municipality may cancel the contract
involved.

(c) Any contract made under the authority of this
section shall inure to the benefit of and be binding upon
the successors in title of the person making the same
contract; and such person, upon conveying the property
subject to such contract, is no longer liable under such
contract, except as to annual payments which were due
prior to the conveyance and which remain unpaid.

(d) Any property owner may cancel any such contract
with respect to the property of such owner upon giving
a thirty-day written notice to the municipality, if the
owner is not in default with respect to any annual
payment due thereunder, except that if such notice is
given subsequent to the first day of July of any calendar
year, the next succeeding annual payment shall be made
by the property owner as soon as the amount thereof is
ascertainable. Upon cancellation as aforesaid, the
municipality shall deliver to the property owner a
recordable release discharging such owner and such
property from any further lien or obligation with
respect to the annual payments. The annual payments
due under any such contract shall be made to the
officials as the municipality, in the contract, designates
to receive them, who likewise may receive notice of
cancellation and execute upon behalf of the municipality
the release for which provision is hereinbefore made.
AN ACT to repeal section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article three, chapter twenty of said code; to amend and reenact section twenty-a, article thirteen-a, chapter eleven of said code; to amend and reenact section three, article one-a, chapter nineteen of said code; and to amend and reenact sections three and six, article one-b of said chapter, all relating to forest and wildlife protection and funding; repealing provisions relating to an annual fee to benefit the division of forestry assessed owners of woodlots, woodlands and timberland; creating a special revenue account to be appropriated by the Legislature; designating certain proceeds from the timber severance tax to benefit the division of forestry; continuing the division of forestry; jurisdiction of division; moneys from sale of timber; appointment of director; defining terms; notification of timbering operations; and exempting certain noncommercial timber harvesting from specified regulatory control.

Be it enacted by the Legislature of West Virginia:

That section six, article one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article three, chapter twenty of said code be repealed; that section twenty-a, article thirteen-a, chapter eleven of said code be amended and reenacted; that section three, article one-a, chapter nineteen of said code be amended and reenacted; and that sections three and six, article one-b of said chapter be amended and reenacted, all to read as follows:
ARTICLE 13A. SEVERANCE TAXES.

§11-13A-20a. Dedication of tax.

1. (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.

2. (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.

3. (c) The amount of taxes on the privilege of severing timber collected under section three-b of this article, 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 paid into a special revenue account in the state treasury to be appropriated by the Legislature for purposes of the division of forestry.

4. (d) 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
 CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of forestry; division director; duties, powers, dedication of certain moneys; creation of a special revenue account.

The division of forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all powers and duties previously exercised by the director of natural resources under subsection (13), section seven, article one and article three, chapter twenty of this code, and except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code, heretofore transferred to the division of forestry, are hereby continued in the division of forestry. The division of forestry has within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of sections one and two of this article. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and shall be credited to a special account within the division of forestry and used exclusively for the purposes of this article and article three, chapter twenty of this code.
The division of forestry has jurisdiction to regulate the digging, possession and sale of native, wild or cultivated ginseng as provided in section three-a, article one-a, chapter nineteen of this code.

The chief of the division is the director of the division of forestry who shall be appointed and qualified as provided in section five of this article.

The director of the division of forestry shall study means and methods of implementing the provisions of section fifty-three, article VI of the constitution of West Virginia, relating to forest lands, and shall prepare and recommend legislation thereon.

The division lines within the state forests between improved recreation areas under the management of the division of tourism and parks and the demonstration forests under the management of the division of forestry, heretofore established by agreement, are hereby continued.

In the event of disagreement over the placement of a division line or dual occupancy of a building, the disposition shall be decided by the Legislature's joint committee on government and finance at a regularly scheduled meeting.

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

§19-1B-3. Definitions.
§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

*§19-1B-3. Definitions.

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

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

* Clerk's Note: This section was also amended by H. B. 4065 (Chapter 61), which passed subsequent to this act.
(c) "Director" means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized designee.

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

(e) "Timbering operations" means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations shall not include the severing of evergreens grown for and severed for the traditional Christmas holiday season, nor the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations, nor the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities or any company subject to the jurisdiction of the federal energy regulatory commission unless the trees severed are being sold or provided as raw material for commercial wood product purposes, nor the severing of trees by an individual on the individual's own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees. Individuals severing or removing standing trees for sale occasionally, whether on their own property or the property of another, where the aggregate gross income realized for all sales within any calendar year of the logs, props, posts, firewood, rails or other products does not exceed fifteen thousand five hundred twenty-eight dollars, are to be considered engaged in the harvesting of timber and not engaged in severing timber for commercial purposes. Harvesting of timber is specifically excluded from the definition of timbering operations.

(f) "Sediment" means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.
§19-1B-6. Notification of duration of timbering operations or harvesting of timber for sale; requirements thereof.

(a) In addition to any other requirement of this article, no person may conduct timbering operations and no person may sever trees for sale unless the person notifies the director of the specific location on which the timbering operations or harvesting of timber are to be conducted. The notification shall be made in a manner designated by the director.

(1) The notification of harvesting of timber shall include:

(A) The name and address of the harvester of timber;

(B) The name and addresses of the owner or owners of the property upon which the timber is located;

(C) The business tax number or social security number of the harvester of timber; and

(D) An acknowledgment that the harvester of timber will conduct the harvest according to best management practices.

(2) The notification of timbering operations shall include, at a minimum, the following:

(A) The specific topographic location where the timbering operations are to be conducted;

(B) The approximate dates that the timbering operation will begin and end;

(C) The approximate acreage over which timbering operations are contemplated;

(D) The names and addresses of the owner or owners of the timber to be harvested and, if different, the names and addresses of the owner or owners of the property upon which the timber is located;

(E) A sketch map of the proposed logging operation, including haul roads, landings and stream crossings;

(F) A description of the sediment control practices to be used by the logger during the timber harvesting operation;
(G) An acknowledgement that the operator will conduct the operations in compliance with the provisions of this article and any applicable rules promulgated pursuant to this article;

(H) A certification satisfactory to the director that all permits required under state law have been obtained or applied for and that all pertinent requirements for obtaining any permit applied for, but not yet obtained, have been complied with; and

(I) The name or names of the person or persons who will be supervising the timbering operations at the site of the operations and his or her logger certification numbers.

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

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

CHAPTER 120

(S. B. 334—By Senators Dittmar, Chernenko and Anderson)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to natural resources; and including reptiles, mollusks and crustaceans in the definition of “wildlife”.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

1 As used in this chapter, unless the context clearly requires a different meaning:

2 "Agency" means any branch, department or unit of the state government, however designated or constituted.

3 "Alien" means any person not a citizen of the United States.

4 "Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

5 "Board" means the water resources board of the division of natural resources.

6 "Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

7 "Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

8 "Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

9 "Commission" means the natural resources commission.

10 "Commissioner" means a member of the advisory commission of the natural resources commission.

11 "Director" means the director of the division of natural resources.

12 "Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

13 "Fur-bearing animals" shall include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox;

*Clerk's Note: This section was also amended by H. B. 4065 (Chapter 61), which passed subsequent to this act.
(j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" shall include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases — red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" shall include: (a) The Anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the Rallidae, commonly known as rails, sora, coots, mudhens and gallinaceae; (c) the Limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); and (e) the Columbidae, commonly known as doves, and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" shall include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) Kokanee salmon; (f) largemouth bass; (g) smallmouth bass; (h) Kentucky or spotted bass; (i) striped bass; (j) pickerel; (k) muskellunge; (l) walleye pike or pike perch; (m) northern pike; (n) rock bass; (o) white bass; (p) white and black crappie; (q) all sunfish; (r) channel and flathead catfish; and (s) sauger.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act", for the protection of migratory birds and game mammals.
concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not been a domiciled resident of the state of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person" except as otherwise defined elsewhere in this chapter, means the plural "persons" and shall include individuals, partnerships, corporations or other legal entities.

"Preserve" means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has been a domiciled resident of the state of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his application for a license or permit: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his entry into such service, and any full-time student of any college or university of this state, even though he or she
is paying a nonresident tuition, shall be considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other than commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

"Unprotected birds" shall include: (a) The English sparrow; (b) the European starling; (c) the cowbird; and (d) the crow.

"Wild animals" means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice or rats.

"Wild birds" shall include all birds other than: (a) Domestic poultry — chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (a) Those occurring in a natural state in West Virginia; or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.
AN ACT to amend and reenact sections five and thirty-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the regulation of wildlife resources; removing prohibitions against possession of certain fishing equipment; obtaining certain training prior to the issuance of hunting license; prohibiting certain misrepresentations or uses of documents regarding the training requirement; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at any time for any person to:

2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

4 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt
to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director:
(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in subdivision (11) below or in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, and the
94 person so doing may carry only a twenty-two caliber
95 firearm for the purpose of humanely dispatching
96 trapped animals;
97 (12) Hunt with firearms or long bow while under the
98 influence of intoxicating liquor;
99 (13) Hunt, catch, take, kill, injure or pursue a wild
100 animal or bird with the use of a ferret;
101 (14) Buy raw furs, pelts or skins of fur-bearing
102 animals unless licensed to do so;
103 (15) Catch, take, kill or attempt to catch, take or kill
104 any fish at any time by any means other than by rod,
105 line and hooks with natural or artificial lures unless
106 otherwise authorized by law or regulation issued by the
107 director: Provided, That snaring of any species of
108 suckers, carp, fallfish and creek chubs shall at all times
109 be lawful;
110 (16) Employ or hire, or induce or persuade, by the use
111 of money or other things of value, or by any means, any
112 person to hunt, take, catch or kill any wild animal or
113 wild bird except those species on which there is no
114 closed season, or to fish for, catch, take or kill any fish,
115 amphibian or aquatic life which is protected by the
116 provisions of this chapter or regulations of the director, or
117 the sale of which is prohibited;
118 (17) Hunt, catch, take, kill, capture, pursue, transport,
119 possess or use any migratory game or nongame birds
120 included in the terms of conventions between the United
121 States and Great Britain and between the United States
122 and United Mexican States for the protection of
123 migratory birds and wild mammals concluded, respec-
124 tively, the sixteenth day of August, one thousand nine
125 hundred sixteen, and the seventh day of February, one
126 thousand nine hundred thirty-six, except during the
127 time and in the manner and numbers prescribed by the
128 Federal Migratory Bird Treaty Act and regulations
129 made thereunder;
130 (18) Kill, take, catch or have in his possession, living
131 or dead, any wild bird, other than a game bird; or
132 expose for sale, or transport within or without the state
any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(19) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(20) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(21) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(22) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(23) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(24) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(25) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next
Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided, however, That notwithstanding any of the above provisions, no person may train a dog in any county, or portion thereof, in which a legal bear hunting season has been established prior to the first day of July, one thousand nine hundred eighty-eight, except that residents may train dogs in such counties after the twenty-fourth day of August through the end of the legal small game hunting season: Provided further, That nonresidents shall not train dogs in this state at any time except during the legal small game hunting season: And provided further, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(26) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(27) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision (6), section seven, article one of this chapter.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.
(a) Notwithstanding any other provisions of this article, no hunting license may be issued to any person who was born on or after the first day of January, one thousand nine hundred seventy-five, unless the person submits to the person authorized to issue hunting licenses a certificate of training as provided for in this section or proof of completion of any course which promotes as a major objective safety in the handling of firearms and of bow and arrows and which course is approved by the hunter education association or the director.

(b) The director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the hunter education association. This course shall be given at least once per year in each county in this state and shall be taught by instructors certified by the director. In establishing and conducting this course, the director may cooperate with any reputable association or organization which promotes as a major objective safety in the handling of firearms and of bows and arrows: Provided, That any person holding a Class A-L or AB-L lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a certificate of training as provided for in this section before hunting or trapping pursuant to said license. This course of instruction shall be offered without charge, except for materials or ammunition consumed. Upon satisfactory completion of the course, each person instructed in the course shall be issued a certificate of training for the purposes of complying with the requirements of subsection (a) of this section. The certificate shall be in the form prescribed by the director and shall be valid for hunting license application purposes.

(c) (1) Upon satisfactory completion of this course, any person whose hunting license has been revoked for a violation of the provisions of this chapter may petition the director for a reduction of his revocation time. However, under no circumstances may the time be reduced to less than one year.

(2) Successful completion of this course shall be
required to consider the reinstatement of a hunting license of any person whose license has been revoked due to a conviction for negligent shooting of a human being or of livestock under the provisions of section fifty-seven of this article or of section eleven, article seven, chapter sixty-one of this code, and who petitions the director for an early reinstatement of his hunting privileges. Such a petitioner shall also comply with the other requirements for consideration of reinstatement contained in section thirty-eight of this article.

(d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of training. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or confined in jail for a period not to exceed one year, or both fined and imprisoned.

(e) Nothing herein contained shall mandate that any county school district in the state be responsible for implementing hunter safety education programs.

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CHAPTER 122

(Com. Sub. for H. B. 4053—By Mr. Speaker, Mr. Chambers, and Delegates Martin, Michael and Mezzatesta)

[Passed March 2, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section five-c, all relating to protection of bald and golden eagles; establishing replacement values for bald and golden eagles and other game or protected species; making it unlawful at any time for any person to take, possess, transport, import, export, or process, sell or offer for sale, buy, barter or trade or offer to buy, barter or trade any bald eagle or any golden eagle, alive or dead, or any part, nest or egg
thereof, or to attempt to do any of these acts; criminal penalties; forfeitures; and license revocation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

§20-2-5c. Protection of bald eagles and golden eagles; unlawful acts; criminal penalties; forfeitures; license revocation.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

1 Any person who is convicted of violating any criminal law of this state and the violation causes or results in the injury, death or destruction of game, as defined in section two, article one of this chapter, or a protected species of animal, in addition to any other penalty to which he is subject, shall forfeit the cost of replacing such game or protected species of animal to the state. For such purpose, replacement values for game and protected species of animals are as follows:

10 (1) For each game fish or each fish of a protected species taken illegally other than by pollution kill, five dollars for each pound and any fraction thereof;
13 (2) For each bear or elk, five hundred dollars;
14 (3) For each deer or raven, two hundred dollars;
15 (4) For each wild turkey, hawk or owl, one hundred dollars;
17 (5) For each beaver, otter or mink, twenty-five dollars;
18 (6) For each muskrat, raccoon, skunk or fox, fifteen dollars;
(7) For each rabbit, squirrel, opossum, duck, quail, woodcock, grouse or pheasant, ten dollars;

(8) For each wild boar, two hundred dollars;

(9) For each bald eagle, five thousand dollars;

(10) For each golden eagle, five thousand dollars; and

(11) For any other game or protected species of animal, one hundred dollars each.

The court upon convicting such person shall order him to forfeit to the state the proper amount based on the values set forth herein for the game or protected species of animal the injury, death or destruction of which he caused or which resulted from his criminal act. If two or more defendants are convicted for the same violation causing, or resulting in, the injury, death or destruction of game or protected species of animal, the forfeiture shall be declared against them jointly and equally. The forfeiture shall be paid by the person so convicted and ordered to pay the forfeiture within the time prescribed by the court, but not exceeding sixty days. In each instance, the court shall pay such forfeiture to the state treasury where it shall be credited to the division of natural resources to be used only for the replacement, habitat management or enforcement programs for injured, killed or destroyed game or protected species of animal.

§20-2-5c. Protection of bald eagles and golden eagles; unlawful acts; criminal penalties; forfeitures; license revocation.

(a) It is unlawful at any time for any person to take, possess, transport, import, export or process, sell or offer for sale, buy, barter or trade or offer to buy, barter or trade at any time or in any manner, any bald eagle, also commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest or egg thereof of the foregoing eagles, or to attempt to do any of these acts.

(b) Anyone who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned in the county jail not less than sixty days nor more than one year, or both fined and imprisoned. One half of any fine imposed shall be paid to any person or persons providing information that leads to the arrest and conviction of anyone violating the provisions of this section.

(c) For a second or subsequent conviction for a violation of this section, a person is guilty of a felony and shall be fined not less than five thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary for not less than one year nor more than two years. An amount equal to one half of the fine imposed, not exceeding two thousand five hundred dollars, shall be paid to the person or persons providing information that leads to the arrest and conviction of anyone for a second or subsequent violation of the provisions of this section.

(d) “Take” is defined as including any means to pursue, hunt, wound, kill, capture, collect, poison, or molest any bald eagle or golden eagle, or any part, nest or egg thereof, or to knowingly and willfully destroy the nest or eggs of any such eagles.

(e) Nothing in this section may be construed to prohibit the taking, possession or transportation of bald or golden eagles legally under the current federal Eagle Protection Act, 16 USC § 668a, and the current federal regulations, 50 CFR 22.1 et seq.

(f) All wildlife, merchandise, guns, traps, nets and other equipment, vessels, vehicles, aircraft and other means of transportation used in taking, possessing, transporting, importing, exporting, selling or offering for sale, purchasing or bartering or offering to purchase or barter any bald or golden eagle or part, nest, or egg thereof, or in attempting to do any of these acts in violation of this section shall be forfeited, at the time of conviction, to the state.

(g) Upon conviction of taking, possessing, transporting, importing, exporting or processing, selling or offering for sale, buying, bartering or trading or
offering to buy, barter or trade any bald or golden eagle, alive or dead, or any part, nest or egg thereof of the foregoing eagles, or of attempting to do any of these acts, the hunting licenses of such person or persons may be revoked and such person or persons shall not be issued any new hunting licenses for a period of ten years from the date of conviction.

CHAPTER 123
(S. B. 337—By Senator Dittmar)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sale of wildlife; and transportation of same.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate private game preserves for the purpose of propagating game for commercial purposes, and those legally licensed to propagate or sell fish, amphibians and other forms of aquatic life, shall purchase or offer to purchase, sell or offer to sell, expose for sale, or have in his possession for the purpose of sale any wildlife, or part thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife which the director may designate: Provided. That pelts of game or fur-bearing animals taken during the legal season may be sold and live red and gray foxes and raccoon taken by legal methods during legal and established trapping
seasons may be sold within the state: *Provided, however*,

That hide, head, antlers and feet of a legally killed deer
and the hide, head, skull, organs and feet of a legally
killed black bear may be sold.

No person, including a common carrier, shall trans-
port, carry or convey, or receive for such purposes any
wildlife, the sale of which is prohibited, if such person
knows or has reason to believe that such wildlife has
been or is to be sold in violation of this section.

The selling or exposing for sale, having in possession
for sale, transporting or carrying in violation of this
section shall each constitute a separate misdemeanor
offense. Notwithstanding the provisions of this or any
other section of this chapter, any game birds or game
bird meats sold by licensed retailers may be served at
any hotel, restaurant or other licensed eating place in
this state.

The director shall have authority to promulgate rules
and regulations in accordance with chapter twenty-nine-
a of this code, dealing with the sale of wildlife and the
skins thereof.

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CHAPTER 124

(H. B. 4153—By Delegate Love)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-nine, article two, chapter
twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to licensing
aliens.

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

ARTICLE 2. WILDLIFE RESOURCES.

§1. Repeal of section relating to licensing aliens.

*Section twenty-nine, article two, chapter twenty of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, is hereby repealed.*
AN ACT to amend and reenact section thirteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, permitting the commissioner of the division of tourism and parks to exempt designated state parks from twenty-four hour deposit requirements for certain bank deposits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

It shall be the duty of the section of parks and recreation to have within its jurisdiction and supervision:

(a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen of this code, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recrea-
tional facilities consistent with the provisions of this
article: Provided, That nothing herein shall be construed
to assign to the section of parks and recreation of the
division of tourism and parks the law-enforcement
duties set forth in article seven, chapter twenty of this
code, which duties shall remain the responsibility of the
division of natural resources;

(d) The Berkeley Springs sanitarium in Morgan
County shall be continued as a state recreational facility
under the jurisdiction and supervision of the division of
tourism and parks and shall be managed, directed and
controlled as prescribed in this article and in article one,
chapter twenty of this code.

The commissioner shall have and is hereby granted
all of the powers and authority and shall perform all of
the functions and duties with regard to Berkeley
Springs sanitarium that were previously vested in and
performed by the director of the division of natural
resources, who shall no longer have such power and
authority and whose power and authority with regard
to Berkeley Springs sanitarium is hereby abolished;

(e) The Washington Carver camp in Fayette County
is hereby transferred from the division of natural
resources to the commissioner who shall have the
jurisdiction and supervision of the camp subject to the
jurisdiction and authority of the division of culture and
history as provided under section thirteen, article one,
chapter twenty-nine of this code. The commissioner shall
manage the Washington Carver camp as a state
recreational facility and a component of the state park
system;

(f) The improved recreational area of Camp Creek
state forest in Mercer County, as delineated according
to section three, article one-a, chapter nineteen of this
code, is hereby renamed as the Camp Creek state park
and under that name shall be managed as a state
recreational facility;

(g) The improved recreational area of Moncove lake
public hunting and fishing area, consisting of all
improved recreational facilities, including all land
between the lake and private property beginning at the main entrance on secondary route eight to the first stream on the southwest side of the improved recreational area, approximately two hundred feet southwest of the private property corner where it meets the Roxalia Springs trail, thence northwest to a stream and along this stream northward to and across the Diamond Hollow trail to the area boundary, thence continuing around area boundary to the lake shore, thence following the lake shore around the shoreline to meet the line drawn from the main entrance where the boundary begins. This area is hereby renamed as the Moncove lake state park and under that name shall be managed as a state recreational facility: Provided, That the boundary, as herein described, shall be plainly marked within ninety days of the effective date of this article;

(h) The commissioner of the division of tourism and parks shall be primarily responsible for the execution and administration of the provisions herein as an integral part of the parks and recreation program of the state and shall organize and staff his section for the orderly, efficient and economical accomplishment of these ends; and

(i) Notwithstanding any provision of this code to the contrary, the commissioner may exempt designated state parks for amounts less than two hundred fifty dollars from the requirement that all payments must be deposited in a bank within twenty-four hours.

CHAPTER 126

(Com. Sub. for S. B. 29—By Senators Burdette, Mr. President, and Boley)

[By Request of the Executive]

[Passed March 12, 1944; in effect ninety days from passage. Approved by the Governor.]
to the “West Virginia parole board”; increasing the number of board members from three to five; changing certain experience requirements for members; and providing for staggered appointments of the two new members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.


1 There shall be a state board of parole, known as the “West Virginia parole board”. The board shall consist of five members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than three of the board members may at any one time belong to the same political party. The board shall be appointed by the governor, by and with the advice and consent of the Senate. Appointments following the effective date of this section shall be made in such a manner so that no more than one member of the board resides in any one congressional district. Each member of the board shall have a degree in criminal justice or like experience and academic training and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Any member qualified under this section is eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. Any single member of the board is empowered to hold any hearing provided for in this article, where a transcript of the hearing, including exhibits and documentary evidence, and the recommendation of the member holding the hearing is submitted to the board for decision.
AN ACT to amend and reenact section thirteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unauthorized practice of medicine and surgery, podiatry or physicians assistants; criminal penalties; providing for use of computers or other electronic devices to order and obtain laboratory tests, medications and other patient orders; providing for use of electronic signature or unique electronic identification to effectively sign computer or electronically transmitted materials which require signature as part of authorized medical practice; and relating to limitations on practice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-13. Unauthorized practice of medicine and surgery or podiatry; criminal penalties; limitations.

(a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself or herself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine and surgery or podiatry in this state unless he or she is actually licensed under the provisions of this article. No person may practice as a physician’s assistant, hold himself or herself out as qualified to practice as a physician’s assistant, or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice as a physician’s assistant in this state unless he or she is actually licensed under the provisions of this article.
Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

(b) The provisions of this section do not apply to:

(1) Persons who are duly licensed health care providers under other pertinent provisions of this code and are acting within the scope of their license;

(2) Physicians or podiatrists licensed in other states or foreign countries who are acting in a consulting capacity with physicians or podiatrists duly licensed in this state, for a period of not more than three months;

(3) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States public health service, the veterans' administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

(4) Any person providing first-aid care in emergency situations;

(5) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

(6) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods of not more than six months: Provided, That the individuals do not otherwise engage in the practice of medicine or podiatry outside of the auspices of their sponsoring institutions;

(7) Persons enrolled in a school of medicine approved by the liaison committee on medical education or by the board, or persons enrolled in a school of podiatric medicine approved by the council of podiatry education or by the board, or persons enrolled in an undergraduate
or graduate physician assistant program approved by
the committee on allied health education and accredita-
tion or its successor on behalf of the American Medical
Association or by the board, or persons engaged in
graduate medical training in a program approved by
the liaison committee on graduate medical education or
the board, or engaged in graduate podiatric training in
a program approved by the council on podiatric medical
education or by the board, who are performing functions
in the course of training including with respect to
functions performed by medical residents or medical
students under the supervision of a licensed physician,
ordering and obtaining laboratory tests, medications
and other patient orders by computer or other electronic
means and no other provision of this code to the contrary
may be construed to prohibit or limit medical residents'
or medical students' use of computers or other electronic
devices in this manner;

(8) The fitting, recommending or sale of corrective
shoes, arch supports or similar mechanical appliances in
commercial establishments; and

(9) The fitting or sale of a prosthetic or orthotic device
not involving any surgical procedure, in accord with a
prescription of a physician, osteopathic physician, or
where chiropractors or podiatrists are authorized by law
to prescribe such a prosthetic or orthotic device, in
accord with a prescription of a chiropractor or podia-
trist, by a practitioner or registered technician certified
by the American Board for Certification of Orthotics
and Prosthetics in either prosthetics or orthotics: 
Provided, That the sale of any prosthetic or orthotic
device by a partnership, proprietorship or corporation
which employs such a practitioner or registered techni-
cian who fitted the prosthetic or orthotic device shall not
constitute the unauthorized practice of medicine:
Provided, however, That the practitioner or registered
technician may, without a prescription, make recom-
mendation solely to a physician or osteopathic physician
or to a chiropractor or podiatrist otherwise authorized
by law to prescribe a particular prosthetic or orthotic
device, regarding any prosthetic or orthotic device to
be used for a patient upon a request for such recommendation.

(c) This section shall not be construed as being in any way a limitation upon the services of a physician's assistant performed in accordance with the provisions of this article.

(d) Persons covered under this article may be permitted to utilize electronic signature or unique electronic identification to effectively sign materials, transmitted by computer or other electronic means, upon which signature is required for the purpose of authorized medical practice. Such signatures are deemed legal and valid for purposes related to the provision of medical services. This subsection does not confer any new practice privilege or right on any persons covered under this article.

CHAPTER 128

(H. B. 4469—By Delegates P. White, Gallagher, Martin, Leach, Brown, Huntwork and Petersen)

[Passed March 9, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting nurses who are licensed in other states to provide nursing care to patients who are briefly visiting West Virginia or who are in transit through West Virginia.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-2. License required to practice.

1 In order to safeguard life and health, any person practicing or offering to practice registered professional
nursing in this state for compensation shall hereafter be
required to submit evidence that he or she is qualified
so to practice, and shall be licensed as hereinafter
provided. After the thirtieth day of June, one thousand
nine hundred sixty-five, it shall be unlawful for any
person not licensed under the provisions of this article
to practice or to offer to practice registered professional
nursing in this state, or to use any title, sign, card or
device to indicate that such person is a registered
professional nurse: Provided, That any professional
nurse holding an active, unencumbered license to
practice in another state, who accompanies a patient to
whom he or she administers nursing care while such
patient is in transit or being transported into, out of, or
through this state, may practice without a license issued
under this article with the following limitations: (a)
Such nurse may only administer nursing care to the
patient whom they are accompanying in this state; and
(b) under no circumstances is any such nurse authorized
to practice nursing in this state for longer than forty-
eight hours within any three-month period; and (c)
under no circumstances shall any such nurse hold him
or herself out as a registered professional nurse licensed
in this state. Such forty-eight hour period shall com-
cence and run from the time such nurse first enters the
borders of this state in the company of his or her patient
and therefrom run continuously, whether or not such
nurse dispenses nursing care, until such forty-eight hour
period has elapsed.

CHAPTER 129
(Com. Sub. for H. B. 4590—By Delegates P. White, Phillips, Compton,
Mezzatesta, Martin, S. Williams and Ashcraft)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]
veterinary medicine; complaints and disciplinary action; and hearings.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article ten, 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 10. VETERINARIANS.

§30-10-11. Complaints; disciplinary action.
§30-10-12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.

§30-10-11. Complaints; disciplinary action.

The board may at any time upon its own motion, and shall upon the written complaint of any person, conduct an investigation to determine whether there are any grounds for the board to suspend or revoke the license of a veterinarian issued under the provisions of this article or otherwise discipline a licensed veterinarian.

By a concurrence of four members, the board may suspend for a certain time or revoke the license of or otherwise discipline, for any of the following reasons:

(a) The employment of fraud, misrepresentation or deception in obtaining his or her license;

(b) An adjudication of insanity;

(c) Chronic inebriety or the habitual use of drugs;

(d) The use of advertising or solicitation which is false, misleading or is otherwise deemed unprofessional under reasonable rules promulgated by the board;

(e) Conviction of a felony or other crime involving moral turpitude;

(f) Incompetence, gross negligence or other malpractice in the practice of veterinary medicine;

(g) Having professional association with or employing any person practicing veterinary medicine unlawfully;
(h) Fraud or dishonesty in the application or reporting of any test for disease in any animal or animals;

(i) Failure to keep veterinary premises and equipment in a clean and sanitary condition;

(j) Failure to report, as required by law, or making false report of, any contagious or infectious disease;

(k) Dishonesty or gross negligence in the inspection of foodstuffs or the issuance of health or inspection certificates;

(l) Cruelty to animals;

(m) Revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of any registration or license fee or fees; or

(n) Unprofessional conduct as defined in reasonable rules promulgated by the board.

§30-10-12. Hearings; administrative procedures act made applicable; grounds for suspension or revocation of license or disciplinary action.

Whenever the board denies an application for any license or renewal of any license, or suspends or revokes any license, or otherwise disciplines any licensed veterinarian, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensed veterinarian, as the case may be, at his or her last known address, by certified mail, return receipt requested. The order shall state the grounds for action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of the copy of the order.

Any person adversely affected by any such order is entitled to a hearing thereon as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code if, within twenty days after receipt of a copy thereof, he or she files with the board a written demand for such a
hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order placing a licensed veterinarian on probation, suspending or revoking a license or denying an application for a renewal license. The board may require the person demanding the hearing to give reasonable security for the costs thereof and if the person does not substantially prevail at the hearing, such security shall be forfeited or the cost shall be assessed against him or her and may be collected by an action at law or other proper remedy.

Upon receipt of a written demand for a hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing and the administrative procedures in connection with and following the hearing.

Any hearing shall be conducted by a quorum of the board. For the purpose of conducting the hearing, any member of the board may issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in said section and all of the section one provisions dealing with subpoenas and subpoenas duces tecum apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

The board may postpone or continue any hearing on its own motion or for good cause shown upon the application of the applicant or licensee, as the case may be. At the hearing the applicant or licensee, as the case may be, has the right to be heard in person and by any attorney at law admitted to practice before any circuit court of this state.

After any hearing and consideration of all the testimony, evidence and record in the case, the board shall render its decision in writing.
The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the decision and accompanying findings and conclusions shall be served upon the applicant or licensee, as the case may be, and his or her attorney of record, if any.

The decision of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.

CHAPTER 130

(H.B. 4195—By Delegates Martin and Michael)

[Passed February 23, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of architects; authorizing the board to establish a schedule of fees by legislative rule.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§30-12-3. Fees.

1 (a) Notwithstanding any other provision of the law to the contrary, the board is authorized and empowered to establish by legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code a schedule of fees to be charged to applicants. The board shall charge for: Examination, reexamination, renewal of certificates, restoration of expired certificates, reciprocal registration and for any other matters deemed appropriate by the board.

(b) Until such time as the board establishes otherwise, the fees previously set by legislative rule remain in effect.
AN ACT to amend and reenact article eighteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licensing private detectives or investigators, private detective or investigative firms, security guards and security guard firms; defining certain terms; establishing the eligibility requirements for license to conduct private investigation business; prescribing application requirements for license to conduct private investigation business; establishing requirements for employees of private detective firm or investigative firm; establishing the eligibility requirements for license to conduct security guard business; prescribing application requirements for license to conduct security guard business; establishing requirements for employees of security guard firm; prohibiting certain acts; providing for renewal of license; authorizing secretary of state to issue license; providing for revocation or suspension of license; defining a misdemeanor offense for violation of the article, and prescribing penalties therefor; creating a private cause of action for violation of the article; and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

That article eighteen, 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 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-1. Definitions.
§30-18-2. Eligibility requirements for license to conduct the private investigation business.
§30-18-3. Application requirements for a license to conduct the private investigation business.
§30-18-4. Requirements for employees conducting the private investigation business under a firm license.
§30-18-1. Definitions.

For the purposes of this article, except where the context clearly requires otherwise, the following terms shall have the meanings ascribed to them:

(1) "Applicant" means a person who files a completed application as required by sections three and six of this article to be licensed to conduct a private investigation business or a security guard business. When a person other than a natural person is applying for a license, the applicant shall be the person whose qualifications are presented to meet the experience or education requirements of sections two or five of this article.

(2) "Private investigation business" means the business of doing an investigation or investigations, for hire, reward or any other type of remuneration, to obtain information about:

(A) A crime which is alleged to have occurred or is threatened to occur;

(B) The habits, activities, conduct, movements, location, associations, transactions, reputation or character of any person;

(C) The credibility of witnesses or other persons;

(D) The location or recovery of lost or stolen property;

(E) The causes or origins of any fire, accident or injury to any property, real or personal, or to identify or locate any person or persons responsible for any such fire, accident or injury;
(F) The truth or falsity of any statement or representation, whether written or oral, or of any type of depiction;

(G) Any matters which constitute evidence or which may lead to the discovery of evidence to be used before any judicial or quasijudicial tribunal, including, but not limited to, civil or criminal courts, administrative agencies, investigating committees, or boards of award or arbitration;

(H) The whereabouts of any missing or kidnapped person;

(I) The affiliation, connection or relationship of any person with any corporation or other business entity, union, organization, society or association, or with any official, member or representative thereof;

(J) Any person or persons seeking employment in the place of any employee or employees who have quit work by reason of any strike; or

(K) The conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors and subcontractors.

(3) “Firm license” means the license held by a person whom the secretary of state has authorized to operate a private detective investigative firm or security guard firm after such person has filed and completed an application pursuant to the application requirements contained in sections three or six and has satisfied the eligibility requirements contained in sections two or five.

(4) “Person” means a natural person, a group of persons or individuals acting individually or as a group, a corporation, company, partnership, association, society, firm, or any business organization or entity organized or existing under the laws of this or any other state or country;

(5) (A) “Private detective” or “private investigator” means a person who is licensed pursuant to the provisions of this article to conduct a private investigation
business, as defined in subdivision (2) of this section, and
who conducts such business individually and independ-
ently from any private detective or investigative firm;

(B) “Private detective” or “private investigator” does
not include:

(i) Any individual while acting as an adjuster for an
insurance company or companies;

(ii) Individuals employed exclusively and regularly by
only one employer in connection with the affairs of such
employer only;

(iii) An officer or employee of the United States, or
any law-enforcement officer of this state or any political
subdivision thereof, while such officer or employee is
engaged in the performance of his official duties or
while working for a private employer in his off-duty
hours;

(iv) Attorneys or counselors-at-law or any employee or
representative of such attorney or counselor;

(v) Any corporation duly authorized by this state to
operate central burglar or fire alarm protection
business; or

(vi) Any investigator of crime appointed by a prose-
cuting attorney of a county pursuant to the provisions
of section two, article four, chapter seven of this code.

(6) “Private detective or investigative firm” means
any private detective agency or business or any inves-
tigative agency or business that is operated by a licensed
private detective or investigator and which employs one
or more other persons who actually conduct the private
investigation business as defined in subdivision (2) of
this section.

(7) (A) “Security guard” means a person who is
licensed pursuant to the provisions of this article to
conduct a security guard business, as defined in
subdivision (8) of this section, and who conducts such
business individually and independently from a security
guard firm.
(B) "Security guard" does not include a person who is employed exclusively and regularly by only one employer in connection with the affairs of such employer only, or a person who is otherwise hereinafter excluded from the requirements of this article;

(8) (A) "Security guard business" means the business of furnishing, for hire, reward or other remuneration, watchmen, guards, bodyguards, private patrolmen or other persons, to:

(i) Protect property, real or personal, or any person;

(ii) To prevent theft, unlawful taking, misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, notes or other valuable documents, papers and articles of value; or

(iii) To furnish for hire, guard dogs or armored motor vehicle security services, in connection with the protection of persons or property;

(B) "Security guard business" does not include any activities or duties for which it is necessary to be trained and certified as a law-enforcement officer in accordance with the provisions of article twenty-nine, chapter thirty of this code.

(9) "Security guard firm" means any security guard agency or business that is operated by a licensed security guard and which employs one or more other persons who actually conduct a security guard business as defined in subdivision (8) of this section.

§30-18-2. Eligibility requirements for license to conduct the private investigation business.

(a) In order to be eligible for any license to conduct the private investigation business, an applicant shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States or an alien who is legally residing within the United States;
3. Not have had any previous license to conduct a private investigation business or to conduct a security guard business revoked or any application for any such
licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

(4) Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless a court has subsequently determined that the applicant's competency has been restored;

(5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

(6) Be of good moral character;

(7) Have a minimum of two years of education or training in any one of the following areas, or some combination thereof:

(A) Coursework that is relevant to the private investigation business at an accredited college or university;

(B) Employment as a member of any United States government investigative agency, employment as a member of a state or local law-enforcement agency, or service as a sheriff;

(C) Employment by a licensed private investigative or detective agency for the purpose of conducting the private investigation business; or

(D) Any other substantially equivalent training or experience.

(8) Not have been convicted of a felony in this state or any other state or territory;

(9) Not have been convicted of any of the following:

(A) Illegally using, carrying or possessing a pistol or other dangerous weapon;

(B) Making or possessing burglar's instruments;

(C) Buying or receiving stolen property;

(D) Entering a building unlawfully;

(E) Aiding an inmate's escape from prison;
(F) Possessing or distributing illicit drugs;
(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and
(10) Not have violated any provision of section eight of this article.

The provisions of this section shall not prevent the issuance of a license to any person who, subsequent to his conviction, shall have received an executive pardon therefor, removing this disability.

(b) Any person who qualifies for a private investigator's license shall also be qualified to conduct security guard business upon notifying the secretary of state in writing that the person will be conducting such business.

§30-18-3. Application requirements for a license to conduct the private investigation business.

(a) To be licensed to be a private detective, a private investigator or to operate a private detective or investigative firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

(b) On the application each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this article.

(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president, and verified by the secretary or treasurer of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and otherwise
such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information must be provided in addition to that required to be provided by the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; and

(3) Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

To qualify for a firm license, the applicant shall provide such information for each person who will be authorized to conduct the private investigation business and for each officer, member or partner of the firm.

(e) As part of the application, each applicant shall give the secretary of state permission to review the records held by the division of public safety for any convictions that may be on record for the applicant.

(f) For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent full-face photograph and one complete set of the person's fingerprints.

(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct the
(2) A license fee of fifty dollars if the applicant is an individual, or one hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a non-resident of West Virginia or a foreign corporation or business entity.

(h) All applicants for private detective or private investigator licenses or for private investigation firm licenses shall file in the office of secretary of state a surety bond. Such bond shall:

(1) Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the insurance commissioner of West Virginia and approved by the attorney general of West Virginia with respect to its form;

(3) Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

(i) Any person claiming against the bond required by subsection (h) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under section twelve of this article and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

§30-18-4. Requirements for employees conducting the private investigation business under a firm license.

(a) Any person who has a private detective firm or investigative firm license shall be responsible for supervising any employee or other individual who conducts the private investigation business under the
authority of such person's firm license, regardless of whether such employee or other individual receives compensation for conducting such business. Such supervision shall include providing any education or training that is reasonably necessary to ensure compliance with the requirements of this article.

(b) Any employee or individual who conducts the private investigation business under the authority of a private detective or investigative firm license shall:

(1) Satisfy the requirements of section two of this article, except that such person need not satisfy the education and training requirements contained in subdivision (7) of section two; and

(2) Authorize the secretary of state to review the records held by the division of public safety for any convictions that may be on record for such employee or individual.

(c) A holder of a private detective or investigative firm license is prohibited from authorizing any individual or employee to conduct a private investigation business if such individual does not comply with the requirements of this section.

(d) For every employee or individual who conducts the business of private investigation under the authority of a private detective or investigative firm license, the holder of such license must maintain a recent full-face photograph and one complete set of fingerprints on file at such firm's central business location in this state. Upon request, the holder of the firm license must release the photographs and fingerprints to the secretary of state.

§30-18-5. Eligibility requirements to be licensed to conduct security guard business.

(a) In order to be eligible for any license to conduct security guard business, an applicant shall:

(1) Be at least eighteen years of age;

(2) Be a citizen of the United States or an alien who is legally residing within the United States;
(3) Not have had any previous license to conduct security guard business or to conduct the private investigation business revoked or any application for any such licenses or registrations denied by the appropriate governmental authority in this or any other state or territory;

(4) Not have been declared incompetent by reason of mental defect or disease by any court of competent jurisdiction unless said court has subsequently determined that the applicant's competency has been restored;

(5) Not suffer from habitual drunkenness or from narcotics addiction or dependence;

(6) Be of good moral character;

(7) Have had at least one year verified, full time employment conducting security guard business or conducting the private investigation business working for a licensed firm or have one year of substantially equivalent training or experience;

(8) Not have been convicted of a felony in this state or any other state or territory;

(9) Not have been convicted of any of the following:

(A) Illegally using, carrying or possessing a pistol or other dangerous weapon;

(B) Making or possessing burglar's instruments;

(C) Buying or receiving stolen property;

(D) Entering a building unlawfully;

(E) Aiding an inmate's escape from prison;

(F) Possessing or distributing illicit drugs;

(G) Any misdemeanor involving moral turpitude or for which dishonesty of character is a necessary element; and

(10) Not having violated any provision of section eight of this article.

The provisions of this section shall not prevent the
issuance of a license to any person who, subsequent to
his conviction, shall have received an executive pardon
therefor, removing this disability.

§30-18-6. Application requirements for a license to conduct security guard business.

(a) To be licensed as a security guard or to operate a security guard firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

(b) On the application, each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this article.

(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president, and verified by the secretary or treasurer of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and otherwise such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information shall be provided in addition to that required to be provided the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; and
(3) Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

To qualify for a firm license, the applicant shall provide such information for each person who would be authorized to conduct security guard business under the applicant’s firm license and for each officer, member or partner in the firm.

(e) As part of the application, each applicant shall give the secretary of state permission to review the records held by the department of public safety for any convictions that may be on record for the applicant.

(f) For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent full-face photograph and one complete set of the person’s fingerprints.

(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct security guard business; and

(2) A license fee of fifty dollars if the applicant is an individual, or one hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a non-resident of West Virginia or a foreign corporation.

(h) All applicants for security guard licenses or security guard firm licenses shall file in the office of secretary of state a surety bond. Such bond shall:

(1) Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the insurance commissioner of West Virginia and
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approved by the attorney general of West Virginia with respect to its form;

(3) Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

(i) Any person claiming against the bond required by subsection (h) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under section twelve of this article and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

§30-18-7. Requirements for employees conducting security guard business under a firm license.

(a) Any person who has a security guard firm license shall be responsible for supervising any employee or other individual who conducts security guard business under the authority of such person's firm license, regardless of whether such employee or other individual receives compensation for conducting such business. Such supervision shall include providing any education or training that is reasonably necessary to ensure compliance with the requirements of this article.

(b) Any employee or individual who conducts security guard business under the authority of a firm license shall:

(1) Satisfy the requirements of section five of this article, except that such person need not satisfy the prior employment requirements contained in subdivision (7) of section five; and

(2) Authorize the secretary of state to review the records held by the department of public safety for any convictions that may be on record for such employee or individual.
(c) A holder of a security guard firm license is prohibited from authorizing any individual or employee to conduct security guard business if such individual does not comply with the requirements of this section.

(d) For every employee or individual who conducts security guard business under the authority of a security guard firm license, the holder of such license must maintain a recent full-face photograph and one complete set of fingerprints on file at such firm’s central business location in this state. Upon request, the holder of the firm license must release the photographs and fingerprints to the secretary of state.


(a) No person shall engage in the private investigation business or security guard business without having first obtained from the secretary of state a license to conduct such business.

(b) All licensed persons, including private detectives, private investigators, security guards, private detective or investigative firms and security guard firms, are prohibited from transferring their licenses to an unlicensed person, firm or agency. This prohibition includes contracting or subcontracting with an unlicensed person, firm or agency to conduct the private investigation business or security guard business.

(c) It is unlawful for any person subject to the provisions of this article to knowingly commit any of the following:

(1) Employ any individual to perform the duties of an employee who has not first complied with all provisions of this article and the adopted regulations;

(2) Falsely represent that a person is the holder of a valid license;

(3) Make a false report with respect to any matter with which he or she is employed;

(4) Divulge any information acquired from or for a client to persons other than the client or his or her authorized agent without express authorization to do so.
or unless required by law;

Accept employment which includes obtaining information intended for illegal purposes;

(6) Authorize or permit another person to violate any provision of this article or any rule of the secretary of state adopted for this article.


A license granted under the provisions of this article shall be in effect for one year from the date the certificate of license is issued and may be renewed for a period of one year by the secretary of state upon application, in such form as the secretary may prescribe, and upon payment of the fee and the filing of the surety bond. At the time of applying for renewal of a license, the secretary of state may require any person to provide additional information to reflect any changes in the original application or any previous renewal.

§30-18-10. Authority of secretary of state.

(a) When the secretary of state shall be satisfied as to the good character, competency and integrity of an applicant, of all employees or individuals conducting the private investigation business or security guard services under a firm license and, if the applicant is a firm, of each member, officer or partner, he shall issue and deliver to such applicant a certificate of license. Each license issued shall be for a period of one year and shall be revocable at all times for cause shown pursuant to subsection (b) of this section or any rules promulgated pursuant thereto.

(b) The secretary of state shall have the authority to propose for promulgation in accordance with the provisions of chapter twenty-nine-a of this code such legislative rules as may be necessary for the administration and enforcement of this article and for the issuance, suspension and revocation of licenses issued under the provisions of this article. The secretary of state shall afford any applicant an opportunity to be heard in person or by counsel when a determination is made to deny, revoke or suspend any such applicant's
license or application for license, including a renewal of
a license. Such applicant shall have fifteen days from
the date of receiving written notice of the secretary of
state's adverse determination to request a hearing on the
matter of denial, suspension or revocation. The action of
the secretary of state in granting, renewing, or in
refusing to grant or to renew, a license, shall be subject
to review by the circuit court of Kanawha County or
other court of competent jurisdiction.

(c) At any hearing before the secretary of state to
challenge an adverse determination by the secretary of
state on the matter of a denial, suspension or revocation
of a license, if the adverse determination is based upon
a conviction for a crime which would bar licensure
under the provisions of this article, the hearing shall be
an identity hearing only, and the sole issue which may
be contested is whether the person whose application is
denied or whose license is suspended or revoked is the
same person convicted of the crime.


(a) Any person, licensed or unlicensed, who shall
violate any of the provisions of this article is guilty of
a misdemeanor, and, upon conviction, shall be fined not
less than one hundred dollars nor more than five
thousand dollars or be confined in jail for not more than
one year, or both.

(b) In the case of a violation of subsection (a) of section
eight, a fine shall be assessed for each day that an
individual conducted the private investigation business
or security guard business. In the case of a firm license,
the fine shall be based on each day that such services
were provided multiplied by the number of unautho-
ized persons providing such services.


Any individual who is injured by a violation of this
article may bring an action for recovery of damages,
including punitive damages plus reasonable attorney's
fees and court costs.

1 All fees collected hereunder by the secretary of state shall be paid to the treasurer of the state and deposited in the general revenue fund.

CHAPTER 132

(Com. Sub. for H. B. 4205—By Delegates Smith, Campbell, Browning, Lindsey, Ashley, Prezioso and Wallace)

[Passed March 12, 1994: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article ten-d of said chapter by adding thereto a new section, designated section five, relating to retirement systems administered by the consolidated public retirement board; limiting eligibility for disability retirement by former members of the public employees retirement system to those who were employed by participating public employers within the last twelve months unless other specifications are met; and prohibiting payment of disability retirement benefits to a member of any state-administered retirement system due to disability resulting from a pre-existing condition.

Be it enacted by the Legislature of West Virginia:

That section twenty-five, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article ten-d of said chapter be amended by adding thereto a new section, designated section five, all to read as follows:

Article

10. West Virginia Public Employees Retirement Act.
10D. Consolidated Public Retirement Board.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-25. Disability retirement.
1 (a) Upon the application of a member or former member of the retirement system, or his or her present or past employing authority, any member or former member who is in the employ of a participating public employer or was in the employ of a participating public employer on a date which is twelve months or less from the date upon which the former member became incapacitated, who has ten or more years of credited service of which three years is contributing service, and who becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board if after a medical examination of the said member or former member made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the said member or former member, the said medical committee reports, in writing, to the board that the said member or former member is physically or mentally totally incapacitated for employment, that such incapacity will probably be permanent, and that the said member or former member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine said member or former member and, based upon the third physician's report in writing, the board may retire said member or former member. A former member who has not been employed by a participating public employer may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the former member was employed by a participating public employer and the incapacity otherwise qualifies the former member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided for in subsection (a) above (including the requirement of three years contributing service) waived in the event (1) the board finds his or her total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his
or her actual performance of duty in the employ of a
participating public employer, and (2) he or she is
receiving or has received workers’ compensation bene-
fits on account of such physical or mental disability.

(c) For any member or former member retiring and
any member retired, as of March one, one thousand nine
hundred seventy, he or she shall receive a straight life
annuity computed according to section twenty-two
hereof and he or she shall have the right to elect an
option provided for in section twenty-four hereof:

Provided, That his or her straight life annuity payable
to his or her attainment of age sixty-five years may not
be less than fifty percent of his or her final average
salary; and his or her said straight life annuity payable
from and after his or her attainment of age sixty-five
years may not be less than twenty percent of his or her
final average salary: Provided, however, That his or her
said annuity shall be subject to section twenty-six
hereof.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-5. Award of disability retirement.

1 The board may not award disability retirement to a
2 member of any retirement plan that it administers if the
3 member is seeking to retire based on a disability that
4 existed at the time the member joined the public
5 retirement plan.

CHAPTER 133

(H. B. 4207—By Delegates Smith, Lindsey, Browning,
Campbell, Wallace, Prezioso and Ashley)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§1. Repeal of section relating to the public employees retirement expense fund.

Section thirty-seven, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 134
(Com. Sub. for S. B. 133—By Senators Burdette, Mr. President, Boley, Anderson, Bailey, Blatnik, Chafin, Chernenko, Claypole, Craig, Dalton, Dittmar, Helmick, Holliday, Humphreys, Jones, Lucht, Manchin, Millet, Minard, Plymale, Ross, Schoonover, Sharpe, Tomblin, Wagner, Whitlow, Wooton and Yoder)

[Passed March 12, 1994: to take effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of public safety; and increasing the annual salary of each division member by one thousand eight dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

The superintendent shall establish within the division of public safety a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior
trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

The superintendent shall, only in the initial implementation of this section, reclassify nonsupervisory members without benefit or requirement of a promotional or reclassification system as long as those reclassified meet the longevity requirements for advancement as follows: Trooper—less than three years; senior trooper—three years to eight years; trooper first class—nine years to fourteen years; corporal—more than fourteen years.

The superintendent is authorized to promulgate legislative rules in accordance with chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

Members shall receive annual salaries as follows:

<table>
<thead>
<tr>
<th>ANNUAL SALARY SCHEDULE (BASE PAY)</th>
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</thead>
<tbody>
<tr>
<td>SUPERVISORY AND NONSUPERVISORY RANKS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$1,684 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>$1,799 Mo.</td>
</tr>
<tr>
<td>Trooper Second Year</td>
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<tr>
<td>Trooper Third Year</td>
<td>$22,308</td>
</tr>
<tr>
<td>Trooper Fourth &amp; Fifth Year</td>
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</tr>
<tr>
<td>Senior Trooper</td>
<td>$24,360</td>
</tr>
<tr>
<td>Trooper First Class</td>
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</tr>
<tr>
<td>Corporal</td>
<td>$27,960</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$31,560</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$33,360</td>
</tr>
<tr>
<td>Rank</td>
<td>Salary</td>
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<td>----------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>35,160</td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>36,960</td>
</tr>
<tr>
<td>Captain</td>
<td>38,760</td>
</tr>
<tr>
<td>Major</td>
<td>40,560</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
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**ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPPORT SPECIALIST CLASSIFICATION**

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<thead>
<tr>
<th>Classification</th>
<th>Salary</th>
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<tbody>
<tr>
<td>I</td>
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<td>II</td>
<td>24,360</td>
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<td>III</td>
<td>26,160</td>
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<td>V</td>
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<td>VI</td>
<td>33,360</td>
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<td>VII</td>
<td>35,160</td>
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<tr>
<td>VIII</td>
<td>36,960</td>
</tr>
</tbody>
</table>

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
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<td>II</td>
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<td>V</td>
<td>31,560</td>
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<td>VI</td>
<td>33,360</td>
</tr>
<tr>
<td>VII</td>
<td>35,160</td>
</tr>
</tbody>
</table>

Each member of the division whose salary is fixed and specified herein shall receive and be entitled to an increase in salary over that hereinbefore set forth, for grade in rank, based on length of service, including that heretofore and hereafter served with the division as follows: At the end of five years of service with the division, such member shall receive a salary increase of three hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary increases are provided for length of service, members of the division in service at the time this
article becomes effective shall be given credit for prior
service and shall be paid such salaries as the same
length of service will entitle them to receive under the
provisions hereof.

The Legislature finds and declares that because of the
unique duties of members of the division, it is not
appropriate to apply the provisions of state wage and
hour laws to them. Accordingly, members of the division
of public safety are hereby excluded from the provisions
of state wage and hour law. The express exclusion
hereby enacted shall not be construed as any indication
that such members were or were not heretofore covered
by said wage and hour law.

In lieu of any overtime pay they might otherwise have
received under the wage and hour law, and in addition
to their salaries and increases for length of service,
members who have completed basic training and who
are exempt from federal Fair Labor Standards Act
guidelines may receive supplemental pay as hereinafter
provided.

The superintendent shall, within thirty days after the
effective date hereof, promulgate a rule to establish the
number of hours per month which shall constitute the
standard work month for the members of the division.
The rule shall further establish, on a graduated hourly
basis, the criteria for receipt of a portion or all of such
supplemental payment when hours are worked in excess
of said standard work month. The rule shall be promul-
gated pursuant to the provisions of chapter twenty-nine-
a of this code. The superintendent shall certify monthly
to the division’s payroll officer the names of those
members who have worked in excess of the standard
work month and the amount of their entitlement to
supplemental payment.

The supplemental payment may not exceed two
hundred thirty-six dollars monthly. The superintendent
and civilian employees of the division are not eligible for
any such supplemental payments.

Each member of the division, except the superintend-
ent and civilian employees, shall execute, before
entering upon the discharge of his or her duties, a bond
with security in the sum of five thousand dollars payable
to the state of West Virginia, conditioned upon the
faithful performance of his or her duties, and such bond
shall be approved as to form by the attorney general and
as to sufficiency by the governor.

Any member of the division who is called to perform
active duty for training or inactive duty training in the
national guard or any reserve component of the armed
forces of the United States annually shall be granted
upon request leave time not to exceed thirty calendar
days for the purpose of performing such active duty for
training or inactive duty training and the time so
granted may not be deducted from any leave accumu-
lated as a member of the division.

CHAPTER 135
(Com. Sub. for H. B. 4680—By Delegate Browning)
[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-six, twenty-
seven, twenty-seven-a, twenty-nine, thirty, thirty-one,
three-three, thirty-three-a, thirty-four and thirty-seven,
article two, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; and
to further amend said chapter by adding thereto a new
article, designated article two-a, all relating to retire-
ment systems for division of public safety members;
specifying contributions to retirement fund; providing
for retirement awards and benefits; allowing payment
of benefits upon disability retirement; providing for
retirement annual annuity adjustments; specifying
benefits to dependents of a member; providing for
refunds of contributions to members upon discharge or
resignation; setting requirements for deferred retire-
ments; creating a new West Virginia state police
retirement system; providing for administration of the
system; creating retirement fund; providing for pay-
ment of retirement benefits and annual adjustments
thereto; providing for payments upon disability or
death; providing for payments with interest upon
withdrawal from system.
Be it enacted by the Legislature of West Virginia:

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

Article
  2. Division of Public Safety.
      2A. West Virginia State Police Retirement System.

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

§15-2-27. Retirement; awards and benefits.


§15-2-30. Same — Due to other causes.

§15-2-31. Same — Physical examinations; recall to active duty; termination.

§15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

§15-2-33a. Awards and benefits to dependents of member — Termination.

§15-2-34. Same — When member dies from nonservice-connected causes.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

§15-2-26. Continuation of death, disability and retirement fund; designating the consolidated public retirement board as administrator of fund.

1 There shall be continued the death, disability and retirement fund heretofore created for the benefit of members of the division of public safety and any dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of each member of the division of public safety and paid into such fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each member and paid into the fund seven and one-half percent of the
amount of his or her salary: *Provided, however,* That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each member and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the division shall be paid by the state of West Virginia monthly into such fund out of the annual appropriation for the division: *Provided further,* That beginning on the first day of July, one thousand nine hundred ninety-five, the state shall pay thirteen percent of the monthly salary of each member into the fund: *And provided further,* That beginning on the first day of July, one thousand nine hundred ninety-six, the state shall pay fourteen percent of the monthly salary of each member into the fund: *And provided further,* That on and after the first day of July, one thousand nine hundred ninety-seven, the state shall pay fifteen percent of the monthly salary of each member into the retirement fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the division of public safety on account of payments to members for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the state treasury, and the treasurer and auditor shall keep a separate account thereof on their respective books.

The moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever; and shall be unassignable except as is provided in this article.

The death, disability and retirement fund shall be administered by the consolidated public retirement
board created pursuant to article ten-d, chapter five of this code.

All moneys paid into and accumulated in the death, disability and retirement fund, except such amounts as shall be designated or set aside by the retirement board for payments of death, disability and retirement benefits and awards, shall be invested by the state board of investments as provided by law.

§15-2-27. Retirement; awards and benefits.

(a) The retirement board shall retire any member of the division of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the division, including military service credit granted under the provisions of section twenty-eight of this article.

(b) The retirement board shall retire any member of the division of public safety who has lodged with the secretary of the consolidated public retirement board his or her voluntary petition in writing for retirement, and:

(1) Has or shall have completed twenty-five years of service as a member of the division (including military service credit granted under the provisions of section twenty-eight of this article);

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the division (excluding military service credit granted under section twenty-eight of this article).

(c) When the retirement board retires any member under any of the provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly
installments during the lifetime of the member while in
status of retirement one or the other of two amounts,
whichever is the greater:

(1) An amount equal to five and one-half percent of
the aggregate of salary paid to the member during the
whole period of service as a member of the division of
public safety; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years
or longer but less than twenty-five years as a member
of the division and shall be retired under any of the
provisions of this section before he or she shall have
attained the age of fifty years, payment of monthly
installments of the amount of retirement award to such
member shall commence on the date he or she attains
the age of fifty years.

Beginning on the fifteenth day of July, one thousand
ten nine hundred ninety-four, in no event may the provisions
of section thirteen, article sixteen, chapter five of this
code be applied in determining eligibility to retire with
either immediate or deferred commencement of benefit.


Every member of the division of public safety who is
fifty-five years of age or older and who is retired by the
retirement board under the provisions of section twenty-
seven of this article; every member of the division of
public safety who is retired by the retirement board
under the provisions of section twenty-nine or thirty of
this article; and every surviving spouse or other
beneficiary receiving a benefit pursuant to section
thirty-three or thirty-four of this article, is eligible to
receive an annual retirement annuity adjustment equal
to three and seventy-five hundredths percent of his or
her retirement award or surviving spouse award: 
Provided, That for any person retiring on and after the
fifteenth day of September, one thousand nine hundred
ninety-four, the annual retirement annuity adjustment
shall be equal to two percent of his or her retirement
award or award paid to a surviving spouse or other
beneficiary. Such adjustments may not be retroactive.
Yearly adjustments shall begin upon the first day of
July of each year. The annuity adjustments shall be
awarded and paid to the members from the death,
disability and retirement fund in equal monthly
installments while the member is in status of retire-
ment. The annuity adjustments shall supplement the
retirement awards and benefits as provided in this
article.

Any member or beneficiary who receives a benefit
pursuant to the provisions of section twenty-nine, thirty,
three-three or thirty-four of this article shall begin to
receive the annual annuity adjustment one year after the
commencement of the benefit on the next July first:
Provided, That if the member has been retired for less
than one year when the first annuity adjustment is given
on that July first, that first annuity adjustment will be
a pro rata share of the full year's annuity adjust-
ment.

§15-2-29. Awards and benefits for disability — Incurred
in performance of duty.

Any member of the division who has been or shall
become physically or mentally permanently disabled by
injury, illness or disease resulting from any occupational
risk or hazard inherent in or peculiar to the services
required of members of the division and incurred
pursuant to or while such member was or shall be
engaged in the performance of his or her duties as a
member of the division shall, if, in the opinion of the
retirement board, he or she is by reason of such cause
unable to perform adequately the duties required of him
or her as a member of the division, but is able to engage
in any other gainful employment, be retired from active
service by the retirement board. The member thereafter
shall be entitled to receive annually and there shall be
paid to such member from the death, disability and
retirement fund in equal monthly installments during
the lifetime of such member; or until the member
attains the age of fifty; or until such disability shall
sooner terminate, one or the other of two amounts,
whichever is greater:
An amount equal to two thirds of the salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be deemed to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

If any member shall become permanently physically or mentally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division, to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the lifetime of such member or until such disability shall sooner terminate, an amount equal to the amount of the salary received by the member in the preceding twelve-month employment period: Provided, That in no event may such amount be less than fifteen thousand dollars per annum: Provided, however, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

The superintendent is authorized to expend moneys
from funds appropriated for the division in payment of
medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs
and expenses incurred in the purchase of artificial limbs
and other approved appliances which may be reasonably
necessary for any member of the division who has or
shall become temporarily, permanently or totally
disabled by injury, illness or disease resulting from any
occupational risk or hazard inherent in or peculiar to
the service required of members of the division and
incurred pursuant to or while such member was or shall
be engaged in the performance of duties as a member
of the division. Whenever the superintendent shall
determine that any disabled member is ineligible to
receive any of the aforesaid benefits at public expense,
the superintendent shall, at the request of such disabled
member, refer such matter to the consolidated public
retirement board for hearing and final decision.

For the purposes of this section, the term "salary"
does not include any compensation paid for overtime
service.

§15-2-30. Same—Due to other causes.

If any member while in active service of the division
has or shall, in the opinion of the retirement board,
become permanently disabled to the extent that such
member cannot adequately perform the duties required
of a member of the division from any cause other than
those set forth in the preceding section and not due to
vicious habits, intemperance or willful misconduct on
his or her part, such member shall be retired by the
retirement board. Such member shall be entitled to
receive annually and there shall be paid to such member
while in status of retirement, from the death, disability
and retirement fund in equal monthly installments
during the lifetime of such member or until such
disability shall sooner terminate, a sum equal to one-half
the salary received in the preceding twelve-month
period: Provided, That if the member had not been
employed with the division for twelve months prior to
the disability, the amount of monthly salary shall be
annualized for the purpose of determining the benefit.
If such member, at the time of such retirement under the terms of this section, shall have served twenty years or longer as a member of the division, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments, commencing on the date such member shall be retired and continuing during the lifetime of such member, until the member attains the age of fifty, while in status of retirement an amount equal to one half the salary received by the member in the preceding twelve-month period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

Upon attaining age fifty, the member shall receive the benefit provided for in subsection (c), section twenty-seven of this article as it would apply to his or her aggregate career earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty shall be deemed to be a retirement under the provisions of section twenty-seven of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

§15-2-31. Same—Physical examinations; recall to active duty; termination.

The consolidated public retirement board may require any member who has been or who shall be retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the board and cause all costs incident to such examination including hospital, laboratory, X-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expense of the division, and a report of the findings of such physician or physicians shall be submitted in
writing to the consolidated public retirement board for
its consideration. If from such report or from such
report and hearing thereon the retirement board shall
be of opinion and find that such disabled member shall
have recovered from such disability to the extent that
he or she is able to perform adequately the duties of a
member of the division, the board shall order such
member to reassume active duty as a member of the
division and thereupon all payments from the death,
disability and retirement fund shall be terminated. If
from the report or the report and hearing thereon the
board shall be of the opinion and find that the disabled
member shall have recovered from the disability to the
extent that he or she is able to engage in any gainful
employment but unable to adequately perform the
duties required as a member of the division, the board
shall order the payment, in monthly installments of an
amount equal to two thirds of the salary, in the case of
a member retired under the provisions of section
twenty-nine of this article, or equal to one half of the
salary, in the case of a member retired under the
provisions of section thirty of this article, excluding any
compensation paid for overtime service, for the twelve-
month employment period preceding the disability:
Provided, That if the member had not been employed
with the division for twelve months prior to the
disability, the amount of monthly salary shall be
annualized for the purpose of determining the benefit.

§15-2-33. Awards and benefits to dependents of member
— When member dies in performance of
duty, etc.; dependent child scholarship and
amount.

The surviving spouse or the dependent child or
children or dependent parent or parents of any member
who has lost or shall lose his or her life by reason of
injury, illness or disease resulting from an occupational
risk or hazard inherent in or peculiar to the service
required of members while such member was or shall
be engaged in the performance of his or her duties as
a member of the division, or if said member shall die
from any cause after having been retired pursuant to
the provisions of section twenty-nine of this article, the surviving spouse or other dependent shall be entitled to receive and shall be paid from the death, disability and retirement fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime one or the other of two amounts, which shall become immediately available and which shall be the greater of:

(1) An amount equal to seven tenths of the salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

In addition thereto such surviving spouse shall be entitled to receive and there shall be paid to such person one hundred dollars monthly for each dependent child or children. If such surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each such dependent child or children from the death, disability and retirement fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the death, disability and retirement fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualified as a surviving dependent child under this section shall, in addition to any other benefits due under this or other sections of this article, be entitled to receive a scholarship to be applied to the career development education of that person. This sum
up to but not exceeding seven thousand five hundred dollars shall be paid from the death, disability and retirement fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

Awards and benefits for a member's surviving spouse or dependents received under any section or any of the provisions of this retirement system shall be in lieu of receipt of any such benefits for such persons under the provisions of any other state retirement system. Receipt of benefits under any other state retirement system shall be in lieu of any right to receive any benefits under this retirement system, so that only a single receipt of retirement benefits shall occur.

For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-33a. Awards and benefits to dependents of member — Termination.

When any surviving spouse of a member shall die or remarry while receiving or being entitled to receive any benefits under any section except section thirty-three of this article, the surviving spouse may not from the date of his or her remarriage, nor may the deceased member's estate from the date of death of the surviving spouse, be entitled to receive any benefits hereunder whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of the
surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

§15-2-34. Same — When member dies from nonservice-connected causes.

In any case where a member while in active service of the division, before having completed twenty years of service as a member of the division, has died or shall die from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his or her part, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the surviving spouse of such member during his or her lifetime, or until such time as said surviving spouse remarries, a sum equal to one half of the salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit. Such benefit shall become immediately available upon the death of the member. If there is no surviving spouse, or the surviving spouse dies or remarries, there shall be paid monthly to each dependent child or children, from the death, disability and retirement fund, a sum equal to twenty-five percent of the surviving spouse's entitlement. If there are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, however, That when there is but one dependent parent surviving, that parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

For the purposes of this section, the term “salary” does not include compensation paid for overtime service.
§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who shall be discharged by order of the superintendent or shall otherwise terminate employment with the division shall, at the written request of the member to the retirement board, be entitled to receive from the retirement fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the death, disability and retirement fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member who has ten or more years of service with the division and who withdraws his or her contributions may thereafter be reenlisted as a member of the division, but may not receive any prior service credit on account of former service, unless following reenlistment the member shall redeposit in the fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made. He or she shall become a member of the retirement system established in article two-a of this chapter.

(c) Every member who completes ten years of service with the division of public safety is eligible, upon separation of employment with the division, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions will be eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section twenty-seven-a of this article. When the retirement board retires any member under any of the provisions of this section, the board shall, by order in writing, make an award directing that
the member is entitled to receive annually and that
there shall be paid to the member from the death,
disability and retirement fund in equal monthly
installments during the lifetime of the member while in
status of retirement one or the other of two amounts,
whichever is greater:

(1) An amount equal to five and one-half percent of
the aggregate of salary paid to the member during the
whole period of service as a member of the division of
public safety; or

(2) The sum of six thousand dollars.

The annuity shall be payable during the lifetime of
the member. The retiring member may choose, in lieu
of such a life annuity, an annuity in reduced amount
payable during the member's lifetime, with one half of
such reduced monthly amount paid to his or her
surviving spouse if any, for the spouse's remaining
lifetime after the death of the member. Reduction of this
monthly benefit amount shall be calculated to be of
equal actuarial value to the life annuity the member
could otherwise have chosen.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT
SYSTEM.

§15-2A-3. Creation and administration of West Virginia state police
retirement system.
§15-2A-4. Participation in system; creation of fund.
§15-2A-5. Members' contributions; employer contributions.
§15-2A-8. Refunds to certain members upon discharge or resignation;
defered retirement.
of duty.
§15-2A-10. Same — Due to other causes.
§15-2A-11. Same — Physical examinations; recall to active duty; termina-
tion.
§15-2A-12. Awards and benefits to dependents of member — When member
dies in performance of duty, etc.: dependent child scholarship
and amount.
§15-2A-14. Awards and benefits to dependents of member — When member
dies after retirement or after serving twenty years.

This article shall be known and may be cited as the "West Virginia State Police Retirement System Act".


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

(1) "Active military duty" means full-time active duty with the armed forces of the United States, namely, the United States air force, army, coast guard, marines or navy; and service with the national guard or reserve military forces of any of such armed forces when the member has been called to active full-time duty and has received no compensation during the period of such duty from any person other than the armed forces.

(2) "Base salary" means compensation paid to a member without regard to any overtime pay.

(3) "Board" means the consolidated public retirement board created pursuant to article ten-d, chapter five of this code.

(4) "Division" means the division of public safety.

(5) "Final average salary" means the average of the highest annual compensation received for employment with the division, including compensation paid for overtime service, received by the member during any five years within the member's last ten years of service.

(6) "Fund" means the West Virginia state police retirement fund created pursuant to section four of this article.

(7) "Member" or "employee" means a person regularly employed in the service of the division of public safety after the effective date of this article.
§15-2A-3. Creation and administration of West Virginia state police retirement system.

There is hereby created the West Virginia state police retirement system. Any West Virginia state trooper employed by the division of public safety on or after the effective date of this article shall be a member of this retirement system and may not qualify for membership in any other retirement system administered by the consolidated public retirement board, so long as he or she remains employed by the division.

The consolidated public retirement board created pursuant to article ten-d, chapter five of this code shall administer the West Virginia state police retirement system. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the West Virginia state police retirement system.

§15-2A-4. Participation in system; creation of fund.

There is hereby created the “West Virginia state police retirement fund” for the benefit of the members of the retirement system created pursuant to this article and the dependents of any deceased or retired member of the system.

All moneys paid into and accumulated in the fund, except such amounts as shall be designated or set aside by the board for payments of benefits as provided in this article, shall be invested by the state board of investments as provided by law.

§15-2A-5. Members’ contributions; employer contributions.

There shall be deducted from the monthly payroll of each member and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each member of the division shall be paid by the state of West Virginia
monthly into such fund out of the annual appropriation for the division.


A member may retire with full benefits upon attaining the age of fifty-five and completing twenty or more years of service, by lodging with the consolidated public retirement board his or her voluntary petition in writing for retirement. A member who is less than age fifty-five may retire upon completing twenty years or more of service: Provided, That he or she will receive a reduced benefit that is of equal actuarial value to the benefit the member would have received if the member deferred commencement of his or her accrued retirement benefit to the age of fifty-five.

When the retirement board retires a member with full benefits under the provisions of this section, the board, by order in writing, shall make a determination that the member is entitled to receive an annuity equal to two and three-fourths percent of his or her final average salary multiplied by the number of years, and fraction of a year, of his or her service in the division at the time of retirement.

In no event may the provisions of section thirteen, article sixteen, chapter five be applied in determining eligibility to retire with either a deferred or immediate commencement of benefit.


Every member of the division of public safety who is sixty-three years of age or older and who is retired by the retirement board under the provisions of section six of this article; every member who is retired under the provisions of section nine or ten of this article; and every surviving spouse receiving a benefit pursuant to section twelve, thirteen or fourteen of this article is eligible to receive an annual retirement annuity adjustment equal to one percent of his or her retirement award or surviving spouse award. Such adjustments may not be retroactive. Yearly adjustments shall begin upon the first day of July of each year. The annuity adjustments
shall be awarded and paid to a member from the fund in equal monthly installments while the member is in status of retirement. The annuity adjustments shall supplement the retirement awards and benefits provided in this article.

Any member or beneficiary who receives a benefit pursuant to the provisions of section nine, ten, twelve, thirteen or fourteen of this article shall begin to receive the annual annuity adjustment one year after the commencement of the benefit on the next July first: Provided, That if the member has been retired for less than one year when the first annuity adjustment is given on that July first, that first annuity adjustment will be a pro rata share of the full year’s annuity adjustment.

§15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who shall be discharged by order of the superintendent or shall otherwise terminate employment with the division shall, at the written request of the member to the retirement board, be entitled to receive from the retirement fund a sum equal to the aggregate of the principal amount of moneys deducted from the salary of the member and paid into the retirement fund plus four percent interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reenlisted as a member of the division shall not receive any prior service credit on account of the former service, unless following his or her reenlistment the member shall redeposit in the fund the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made.

(c) Every member who completes ten years of service with the division of public safety is eligible, upon separation of employment with the division, to either withdraw his or her contributions in accordance with
subsection (a) of this section, or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions will be eligible to receive a retirement annuity. The annuity shall be payable during the lifetime of the member, and shall be in the amount of his or her accrued retirement benefit as determined under section six of this article. The retiring member may choose, in lieu of such a life annuity, an annuity in reduced amount payable during the member’s lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse if any, for the spouse’s remaining lifetime after the death of the member. Reduction of such monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section seven of this article.


Any member of the division who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while the member was or shall be engaged in the performance of his or her duties as a member of the division shall, if, in the opinion of the retirement board, he or she is by reason of such cause unable to perform adequately the duties required of him or her as a member of the division, but is able to engage in other gainful employment be retired from active service by the board. The member shall thereafter be entitled to receive annually and there shall be paid to the member from the fund in equal monthly installments during the lifetime of the member, or until the member attains the age of fifty-five or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:
(1) An amount equal to six tenths of the base salary received in the preceding twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

(2) The sum of six thousand dollars.

Upon attaining age fifty-five, the member shall receive the benefit provided for in section six of this article as it would apply to his or her final average salary based on earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty-five shall be deemed to be a retirement under the provisions of section six of this article, for purposes of determining the amount of annual annuity adjustment and for all other purposes of this article.

If any member shall become permanently physically or mentally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of the division and incurred pursuant to or while such member was or shall be engaged in the performance of his or her duties as a member of the division to the extent that the member is or shall be incapacitated ever to engage in any gainful employment, the member shall be entitled to receive annually, and there shall be paid to such member from the fund in equal monthly installments during the lifetime of the member or until such disability shall sooner terminate, an amount equal to the amount of the base salary received by the member in the preceding twelve-month employment period.

The superintendent of the division is authorized to expend moneys from funds appropriated for the division in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in the purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of the
division who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of the division and incurred pursuant to or while the member was or shall be engaged in the performance of duties as a member of the division. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense, the superintendent shall, at the request of the disabled member, refer such matter to the board for hearing and final decision.

§15-2A-10. Same — Due to other causes.

If any member while in active service of the division has or shall, in the opinion of the board, become permanently disabled to the extent that he or she cannot adequately perform the duties required of a member of the division from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the member shall be retired by the board. There shall be paid to the member from the fund in equal monthly installments, commencing on the date the member shall be retired and continuing during the lifetime of the member; or until the member attains the age of fifty-five; while in status of retirement an amount equal to one half the base salary received by the member in the preceding twelve-month period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

Upon attaining age fifty-five, the member shall receive the benefit provided for in section six of this article as it would apply to his or her final average salary based on earnings from the division through the day immediately preceding his or her disability. The recalculation of benefit upon a member attaining age fifty-five shall be deemed to be a retirement under the provisions of section six of this article, for purposes of determining the amount of annual annuity adjustment.
and for all other purposes of this article.

§15-2A-11. Same — Physical examinations; recall to active duty; termination.

The board may require any member who has been or who shall be retired with compensation on account of disability to submit to a physical and/or mental examination by a physician or physicians selected or approved by the retirement board and cause all costs incident to such examination including hospital, laboratory, X-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expenses of the division, and a report of the findings of such physician or physicians shall be submitted in writing to the board for its consideration. If from the report or from the report and hearing thereon the board shall be of opinion and find that the disabled member shall have recovered from such disability to the extent that he or she is able to perform adequately the duties of a member of the division, the board shall order the member to reassume active duty as a member of the division and thereupon all payments from the fund shall be terminated. If from the report or the report and hearing thereon, the board shall be of the opinion and find that the disabled member has recovered from the disability to the extent that he or she is able to engage in any gainful employment but unable to adequately perform the duties required as a member of the division, the board shall order in the case of a member retired under the provisions of section nine of this article that the disabled member be paid from the fund an amount equal to six tenths of the base salary paid to the member in the last twelve-month employment period. The board shall order in the case of a member retired under the provisions of section ten of this article that the disabled member be paid from the fund an amount equal to one fourth of the base salary paid to the member in the last twelve-month employment period: Provided, That if the member had not been employed with the division for twelve months prior to the disability, the amount of monthly salary shall be annualized for the purpose of determining the benefit.
§15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

The surviving spouse, the dependent child or children or dependent parent or parents of any member who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members while the member was or shall be engaged in the performance of his or her duties as a member of the division, or the survivor of a member who dies from any cause after having been retired pursuant to the provisions of section nine of this article, shall be entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to two thirds of the base salary received in the preceding twelve-month period by the deceased member: Provided, That if the member had not been employed with the division for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

In addition thereto, the surviving spouse shall be entitled to receive and there shall be paid to such person one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to one fourth of the surviving spouse's entitlement. If there are no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualifying as a surviving dependent child
under this section shall, in addition to any other benefits
due under this or other sections of this article, be
entitled to receive a scholarship to be applied to the
career development education of that person. This sum,
up to but not exceeding seven thousand five hundred
dollars, shall be paid from the fund to any university
or college in this state or to any trade or vocational
school or other entity in this state approved by the
board, to offset the expenses of tuition, room and board,
books, fees or other costs incurred in a course of study
at any of these institutions so long as the recipient makes
application to the board on an approved form and under
such rules as the board may provide, and maintains
scholastic eligibility as defined by the institution or the
board. The board may by appropriate rules define age
requirements, physical and mental requirements,
scholastic eligibility, disbursement methods, institu-
tional qualifications and other requirements as neces-
sary and not inconsistent with this section.

Awards and benefits for a surviving spouse or
dependents of a member received under any section or
any of the provisions of this retirement system shall be
in lieu of receipt of any benefits for these persons under
the provisions of any other state retirement system.
Receipt of benefits under any other state retirement
system shall be in lieu of any right to receive any
benefits under this retirement system, so that only a
single receipt of state retirement benefits shall occur.

§15-2A-13. Same — When member dies from nonservice-
connected causes.

In any case where a member while in active service
of the division, before having completed twenty years of
service as a member of the division, has died or shall
die from any cause other than those specified in this
article and not due to vicious habits, intemperance or
willful misconduct on his or her part, there shall be paid
annually in equal monthly installments from the fund
to the surviving spouse of the member during his or her
lifetime, or until such time as the surviving spouse
remarries, a sum equal to one half of the base salary
received in the preceding twelve-month employment
period by the deceased member: Provided, That if the
member had not been employed with the division for
twelve months prior to the disability, the amount of
monthly salary shall be annualized for the purpose of
determining the benefit. If there is no surviving spouse
or the surviving spouse dies or remarries, there shall be
paid monthly to each dependent child or children from
the fund a sum equal to one fourth of the surviving
spouse’s entitlement. If there are no surviving spouse
and no dependent child or children, there shall be paid
annually in equal monthly installments from the fund
to the dependent parents of the deceased member
during their joint lifetimes a sum equal to the amount
that a surviving spouse would have been entitled to
receive: Provided, however, That when there is but one
dependent parent surviving, then that parent shall be
entitled to receive during his or her lifetime one half the
amount which both parents, if living, would have been
entitled to receive.

§15-2A-14. Awards and benefits to dependents of
member — When member dies after
retirement or after serving twenty years.

When any member of the division has completed
twenty years of service or longer as a member of the
division and has died or shall die from any cause or
causes other than those specified in this article before
having been retired by the board, and when a member
in retirement status has died or shall die after having
been retired by the board under the provisions of this
article, there shall be paid annually in equal monthly
installments from the fund to the surviving spouse of the
member, commencing on the date of the death of the
member and continuing during the lifetime or until
remarriage of the surviving spouse, an amount equal to
two thirds of the retirement benefit which the deceased
member was receiving while in status of retirement, or
would have been entitled to receive to the same effect
as if the member had been retired under the provisions
of this article immediately prior to the time of his or
her death. In no event shall the annual benefit payable
be less than five thousand dollars. In addition thereto,
the surviving spouse is entitled to receive and there shall be paid to the surviving spouse from the fund the sum of one hundred dollars monthly for each dependent child or children. If the surviving spouse dies or remarries, or if there is no surviving spouse, there shall be paid monthly from the fund to each dependent child or children of the deceased member a sum equal to one fourth of the surviving spouse’s entitlement. If there is no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there is but one dependent parent surviving, that parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

The member may choose a higher percentage of surviving spouse benefits by taking an actuarially determined reduced initial benefit so that the chosen spouse benefit and initial benefit would be actuarially equivalent to the normal spouse benefit and initial benefit. The retirement board shall design these benefit options and provide them as choices for the member to select. For the purposes of this subsection, “initial benefit” means the benefit received by the member upon retirement.


The moneys in the fund and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are hereby exempt from any state or municipal tax; shall not be subject to execution, garnishment, attachment or any other process whatsoever; and shall be unassignable except as is provided in this article.

§15-2A-16. Fraud; penalties.

Any person who knowingly makes any false statement
or who falsifies or permits to be falsified any record or records of the retirement system in any attempt to defraud that system is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not to exceed one thousand dollars, or confinement in the county jail not to exceed one year or both.

§15-2A-17. Awards and benefits to dependents of member — Termination.

When any surviving spouse of a member shall die or remarry while receiving or being entitled to receive any benefits under any section except section twelve of this article, the surviving spouse may not from the date of his or her remarriage, nor may the estate from the date of death of the deceased member's surviving spouse, be entitled to receive any benefits hereunder whatsoever: Provided, That in any case where under the terms of this article benefits are provided for a child or children surviving the death or remarriage of the surviving spouse, payment of benefits to that child or children shall be calculated for payment from the date the surviving spouse dies or remarries.

§15-2A-18. Authority to continue payments to certain dependents.

The board may continue payments of a surviving spouse's entitlement in full to any dependent child who continues to be dependent by reason of mental or physical incapacity as determined by the board, notwithstanding the age of the dependent child or other provisions of this article.

§15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

(a) Any member who has previously served on active military duty is entitled to receive additional credited service for the purpose of determining the amount of retirement award under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:
(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;

(3) That he or she is receiving no benefits from any other retirement system for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under this article, he or she has actually served with the division for twenty years exclusive of his or her active military duty.

(b) In addition, any person who while a member of the division was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the president, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the division of public safety, or its predecessor agency, for a period equal to the full time that he or she has or, pursuant to that commission, enlistment, induction or call, shall have served with the armed forces subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from the armed forces, he or she presented himself or
herself to the superintendent and offered to resume
service as an active member of the division; and
(3) That he or she has made no voluntary act, whether
by reenlistment, waiver of discharge, acceptance of
commission or otherwise, to extend or participate in
extension of the period of service with the armed forces
beyond the period of service for which he or she was
originally commissioned, enlisted, inducted or called.
(c) The total amount of military service credit
allowable under this section may not exceed five years
for any member of the division.

CHAPTER 136
(Com. Sub. for H. B. 4430—By Delegates McKinley, Trump, Staton and Kessel)
[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-four of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section seventeen, relating to the public service commis­sion promulgating rules to effect electric utilities;
providing a plan for identifying persons needing special
services during power outages; providing notification of
planned outages and developing procedures to restore
services to those persons on life support systems; and
defining the term life support system.

Be it enacted by the Legislature of West Virginia:
That article two, chapter twenty-four of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section seventeen, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE
COMMISSION.

§24-2-17. Registry of electric customers on life support
systems; notification prior to scheduled
outages; priority of service restoration;
limitation of liability; life support defined.
In addition to all other powers and duties conferred upon the commission by this chapter, the commission shall promulgate rules establishing requirements for electric utilities in this state for purposes of accomplishing the following:

1. Identifying and maintaining a registry of persons that are dependent upon life support systems which require electric service to function, and updating that registry at least twice annually; all new customers shall be notified of the registry and its functions;

2. Providing adequate notice of planned power outages to each residence in the registry; and

3. Organizing service restoration so that, as much as practicable given the scope and nature of a power outage, priority is given to residences listed in the registry.

An electric utility which acts in good faith to comply with the rules promulgated in accordance with this section shall not be liable for damages in a civil action for any injuries or deaths resulting from loss of power to a life support system as a result of a power outage.

Nothing in this section shall be construed as requiring an electric utility to provide back-up life support to any customers.

For purposes of this section, the term "life support system" means a kidney dialysis machine, mechanical ventilation device or other medical device, the use of which is prescribed by a licensed physician and upon the request of the patient or his or her patient representative, is certified by such physician in writing to the electric utility as necessary to sustain critical body functions and without which a person is in imminent risk of death.
CHAPTER 137

(H. B. 4653—By Delegates Kiss, S. Cook, Farris, Doyle and McKinley)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eleven-a and twenty-six; and to amend and reenact section six-a, article eight of said chapter eleven, all relating to the public utilities division; establishment of a special revenue account; authorizing expenditures to operate the public utilities division and authorizing the board of public works to adjust valuations prior to appeal in circuit court.

Be it enacted by the Legislature of West Virginia:

That article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections eleven-a and twenty-six; and to amend and reenact section six-a, article eight of said chapter eleven, all to read as follows:

Article
6. Assessment of Public Service Businesses.
8. Levies.

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-11a. Adjustment of valuation by board.
§11-6-26. Operating fund for public utilities division in auditor's office.

§11-6-11a. Adjustment of valuation by board.

1 Any time before an owner or operator appeals a valuation to circuit court, as provided for in section twelve of this article, the board of public works may, after consideration of all relevant facts and evidence, adjust the valuation made by the board pursuant to section eleven of this article.

§11-6-26. Operating fund for public utilities division in auditor's office.

1 The auditor shall establish a special operating fund in the state treasury for the public utilities division in
his or her office. The auditor shall pay into the fund three eighths of one percent of the gross receipts of all moneys collected as provided for in this article. From the fund, the auditor shall reimburse the department of tax and revenue for the actual operating expenses incurred in the performance of its duties required by this article. The reimbursements to the tax department from the fund shall not exceed fifty percent of the annual deposits to the fund. Any moneys remaining in the special operating fund after reimbursement to the tax department shall be used by the auditor for funding the operation of the public utilities division located in his office. On the thirty-first day of July in each fiscal year, if the balance in the operating fund exceeds fifty thousand dollars, the excess shall be withdrawn from the special fund and deposited in the general fund of the state.

ARTICLE 8. LEVIES.

§11-8-6a. Levies on each classification by board of public works.

The state board of public works shall levy as provided by section eight as follows:

On Class I property, twenty-five hundredths of one cent; on Class II property, five tenths of one cent; and on Classes III and IV property, one cent.

Whenever the state board of public works finds the revenues from all sources have been or will be insufficient to meet the requirements for interest and sinking funds on state road bonds, said state board of public works shall levy for said purposes as provided by section eight, whatever rates of levy are necessary to meet the requirements for interest and sinking funds on state road bonds issued prior to November eight, one thousand nine hundred thirty-two, which rates of levy shall be as follows:

On Class I property, one cent; on Class II property, two cents; and on Classes III and IV property, four cents, or multiples thereof or in like ratio on all property subject to taxation in the state.
AN ACT to amend and reenact section two, article eleven, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the time period for curing technical deficiencies in documents that effect real estate conveyances and transactions from ten to five years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. CURATIVE PROVISIONS RESPECTING DEEDS AND OTHER WRITINGS AND THE RECORDATION THEREOF.

§37-11-2. Validation of instruments, acknowledgments and records.

(a) No deed or other writing conveying or purporting to convey or release or assign real estate, or any interest therein, or to create any power of attorney relating to real estate or any interest therein, heretofore made or executed and delivered by any person or persons whomsoever, or by a husband and wife to a bona fide purchaser for good and valuable consideration, and acknowledged by him or them before an officer duly authorized by law to take such acknowledgments, if such deed, writing or power of attorney was made, executed, acknowledged and delivered prior to the seventh day of June, one thousand nine hundred fifty-five, shall be deemed, held or adjudged invalid, or defective, or insufficient in law or in equity, by reason of any informality or omission in setting forth the particulars of the acknowledgment made before such
officer aforesaid in the certification thereof, or in stating
the official character of such officer, or the place of
taking the acknowledgment, or by reason of the fact that
the wife executed such instrument prior to the execution
thereof by the husband, or by reason of the fact that the
parties making or executing the instrument or writing,
or any of them omitted to seal the same, or by reason
of the fact that the official taking the acknowledgment
omitted his official seal, or by reason of the failure to
set forth the date of the deed or other writing or the date
of the acknowledgment in the certification thereof, or by
reason of the failure to set forth correctly the date of
the deed or other writing or the date of the acknowledge-
ment in the certification thereof.

(b) If a period of five years has elapsed from the date
of recordation of any deed or other writing, and if said
deed or other writing has an acknowledgment consi-
dered defective for any reason, then every such deed or
other writing shall be as good, valid and effectual in law
as if the law with respect to acknowledgments and seals,
in force at the date of such acknowledgment had been
fully complied with; and the record of the same duly
made in the proper office for recording deeds in the
state of West Virginia, or in the state of Virginia before
formation of West Virginia, and exemplifications of the
same duly certified, shall be legal evidence in all cases
in which the original would be competent evidence:

Provided, That this section shall not apply to suits now
pending and undetermined insofar as it amends laws
existing at the time such pending suits were instituted,
nor to any suit that may be brought within one year
after the day this section takes effect, insofar as it
amends laws existing at the time this section takes
effect; nor shall this section apply to any deed or other
writing which has heretofore been declared or held
invalid by any court of competent jurisdiction.
CHAPTER 139
(S. B. 92—By Senators Anderson, Minard, Ross and Grubb)

[Passed March 12, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to recordation of corrections made to county indices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GENERAL INDEX AND PRESERVATION OF RECORDS.

§39-2-6. Records of county commissions, correction recordation.

1 Every clerk of a county commission shall establish a system which will permanently record any corrections made to any index under his or her care, custody and control. Such recordation of correction shall include the date such correction was made.

CHAPTER 140
(Com. Sub. for S. B. 56—By Senator Humphreys)

[Passed February 18, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter forty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, seven and eight, article three of said chapter, all relating to the regulation of the rental of consumer goods under rent-to-own agreements; general definitions; disclosure require-
ments; and prohibitions for rent-to-own transactions.

Be it enacted by the Legislature of West Virginia:

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

Article
1. General Provisions; Purpose and Intent; Definitions.
3. Default.

ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT; DEFINITIONS.

§46B-1-5. General definitions.

1 The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, unless the context in which such words or phrases are used elsewhere in this chapter clearly requires a different meaning:

(1) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" include agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(2) "Consumer" means a natural person who acquires, or seeks to acquire, the right to possession and use of consumer goods from a dealer.

(3) "Consumer goods" or "goods" means goods intended to be used primarily for personal, family or household purposes.

(4) "Damage waiver" means the voiding or disregard by the dealer of any obligation on the part of the
(5) "Dealer" or "rent-to-own dealer" means a person who, in the ordinary course of business, transfers or offers to transfer the right to possession and use of consumer goods to a consumer or acts as an agent to transfer or offer to transfer the right to possession and use of consumer goods to a consumer, pursuant to a rental agreement.

(6) "Debt collection" means any action, conduct or practice of soliciting claims for collection or the collection of a claim or claims owed or due or alleged to be owed or due to a dealer by a consumer under a rent-to-own agreement.

(7) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme and are intended or calculated to be used to collect claims.

(8) "Financial organization" means a corporation, partnership, cooperative or association which:

(A) Is organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the organization to make consumer loans; and

(B) Is subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(9) "Ownership" means the right to enjoy, possess and use consumer goods to the exclusion of other persons, including the right to transfer legal title to such consumer goods or to otherwise control, handle or
dispose of such consumer goods, whether or not indicia of such ownership is established by, or otherwise required to be evidenced by, a title-paper, letter, receipt or other document or instrument.

(10) "Period" or "rental period" means a week, a month or another specific length of time set forth in a rent-to-own agreement, during which such period the consumer has a right to continue possessing and using consumer goods, after having made the periodic rental payment for such period.

(11) "Periodic payment" means a payment required to be made by a consumer to have the right to possession and use of consumer goods during a specified time period. The periodic payment does not include any applicable sales, use, privilege, excise or documentary stamp taxes otherwise payable upon a transfer of consumer goods from a dealer to a consumer, except as provided for by the disclosure requirements or other applicable requirements set forth in this chapter.

(12) "Person" or "party" includes a natural person or an individual, an organization, partnership or corporation.

(13) "Person related to" with respect to an individual means: (A) The spouse of the individual; (B) a brother, brother-in-law, sister or sister-in-law of the individual; (C) an ancestor or lineal descendant of the individual or his spouse; and (D) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization, partnership or corporation means: (A) A person directly or indirectly controlling, controlled by or under common control with the organization, partnership or corporation; (B) an officer or director of the organization, partnership or corporation or a person performing similar functions with respect to the organization or to a person related to the organization, partnership or corporation; (C) the spouse of a person related to the organization, partnership or corporation; and (D) a relative by blood or marriage of a person related to the organization, partnership or corporation.
corporation shares the same home with him or her.

(14) "Premises" means a particular physical place of business opened to the public by a dealer.

(15) "Rental agreement" means the bargain, with respect to the rental of consumer goods under a rent-to-own agreement, of the dealer and the consumer as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter.

(16) "Rental contract" means the total legal obligation that results from the rental agreement as affected by this chapter and any other applicable rules of law.

(17) (A) "Rent-to-own agreement" means a rental agreement which:

(i) Transfers the right to possession and use of the rental property from the dealer to the consumer;

(ii) Obligates the consumer to pay successive periodic rental payments as each shall become due, in order to continue his or her right to possession and use of the rented consumer goods;

(iii) Is subject to termination by the consumer as permitted by this chapter, whereupon the consumer is not obligated to make payments for any period of time other than a period during which he or she chooses to maintain possession and use of the rented consumer goods; and

(iv) Provides that upon compliance with the terms of the agreement the consumer shall become or has the option to become the owner of the property.

(B) The term "rent-to-own agreement" does not include a rental agreement in which:

(i) A financial organization is a party, if the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto;

(ii) Any of the consumer goods which are the subject
matter of the rental agreement are vehicles as defined in section one, article one, chapter seventeen-a of this code;

(iii) All of the consumer goods which are the subject of the rental agreement are either two-way telecommunications equipment, medical equipment or musical instruments, and the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto; or

(iv) All of the goods which are the subject matter of the rental agreement are primarily intended to be used for agricultural purposes.

(18) "Retail value" or "fair market value" of particular consumer goods means the price at which goods of like type, quality and quantity would change hands between a willing seller and a willing buyer, at retail, for cash, in the particular market area at the time of the rent-to-own rental agreement, which price does not include any applicable sales, use, privilege, excise or documentary stamp taxes payable upon the transfer of such goods.

(19) "Rent-to-own charge", in connection with any rent-to-own agreement, means the sum of all charges in excess of the retail value which must be paid directly or indirectly by the consumer in order for the consumer to acquire ownership of the consumer goods without payment of further consideration.

(20) "Termination" means the cancellation of a rental agreement when the consumer determines that he or she no longer desires to pay periodic payments and retain the right to possession and use of the consumer goods or either party puts an end to the rental agreement for default by the other party in accordance with the provisions of this chapter.

(21) "Total of payments" means the total of all periodic payments specified in the written agreement which the consumer must pay in order to acquire ownership of the consumer goods without the payment of additional
consideration to the dealer.

(22) "Willing buyer" means a person who:

(A) Buys consumer goods at retail for his or her personal use or for the use of his or her family or household;

(B) Has a reasonable knowledge of the relevant facts to be considered in ascertaining the fair market price of consumer goods which are offered to be sold at retail; and

(C) Is under no compulsion to buy or to buy from a particular seller.

(23) "Willing seller" means a person other than a rent-to-own dealer who:

(A) In the ordinary course of business regularly sells or offers for sale consumer goods at retail;

(B) Has no direct or indirect ownership connection with any dealer;

(C) Has a reasonable knowledge of the relevant facts to be considered in fixing the fair market price of consumer goods which are offered to be sold at retail; and

(D) Is under no compulsion to sell or to sell to a particular buyer.

(24) "Written agreement" means a written document containing or evidencing the terms of a rent-to-own transaction, reduced to a tangible and legible form by printing, typewriting, computer print-out or any other intentional reduction.

ARTICLE 3. DEFAULT.

§46B-3-3. Termination of rent-to-own agreements.

(a) Upon the termination of a rent-to-own agreement by a consumer, all obligations that are still executory by both parties are discharged, but any right based on
a failure of the dealer to maintain the consumer goods in accordance with the provisions of section six of this article, or any other right based on prior default or performance of the dealer survives, and the consumer retains any remedy or defense for such default. Rights and remedies available to the consumer for material misrepresentation or fraud by a dealer are not affected by a termination of the rental agreement by a consumer. Termination of the rental agreement by a consumer shall not bar or be deemed inconsistent with a claim for damages or other right or remedy.

(b) A consumer may terminate a rent-to-own agreement at any time.

(c) When a consumer terminates a rent-to-own transaction, the dealer may not require any further action or payment by the consumer except:

(1) Payment of any unpaid periodic payments and charges accrued before the consumer notified the dealer of the termination of the transaction and made the consumer goods available to be received by the dealer; and

(2) Payment of any pickup charge provided for in the rental agreement.

(d) A dealer may terminate a rent-to-own agreement when the consumer fails to make a periodic payment as it becomes due: Provided, That seven days prior to terminating the rent-to-own agreement, the dealer shall provide a written notice to the consumer informing him or her:

(1) Of the amount of any periodic payment or payments that the consumer has failed to make;

(2) That the consumer may voluntarily surrender possession of the goods to the dealer at the location where the goods are located;

(3) Of any late payment which has been or may be assessed;

(4) Of the right to reinstate which shall include:
(A) The consumer's right to reinstate the agreement by payment of amounts due when the goods are in the possession of the consumer;

(B) The amount of time when the consumer has to reinstate the agreement;

(C) That reinstatement will result in continuation of the original agreement, including the provisions relating to ownership of the goods; and

(D) The amount of fees to be paid for reinstatement.

(e) The dealer may request that the goods be surrendered at any time after a consumer has failed to timely make a periodic payment required under the agreement.

(f) A rent-to-own agreement terminates when the consumer surrenders the goods. The dealer shall provide the consumer with a notice of reinstatement rights as stated in subdivision (4), subsection (d) of this section.

§46B-3-7. Disclosure requirements.

(a) The dealer shall make all disclosures required by this section.

(b) In all circumstances listed in subsection (c) of this section, the dealer shall disclose the following information with respect to the goods that are the subject of the rental agreement in a clear, conspicuous and easily understood manner:

(1) Retail value;
(2) Rent-to-own charge;
(3) Rental period;
(4) Number of periodic payments required for ownership;
(5) Amount of each periodic payment;
(6) Total of all payments; and
(7) Whether the goods are new or have been previously rented or are otherwise used.
(c) The dealer shall make the disclosures required in this section:

(1) On a label attached or posted on top of the goods displayed to any potential consumer;

(2) In any rent-to-own agreement as defined in section five, article one of this chapter;

(3) In any telephone communication with a potential consumer; and

(4) In any radio, television or printed advertisement for the goods when the amount of the periodic payment for the item is included in the advertisement.

(d) Any oral communications concerning the terms and conditions of the transaction shall be incorporated into a written agreement which shall govern the transaction.

(e) In any transaction involving more than one dealer, only one dealer may make the disclosures required by this article: Provided, That when the name of the dealer is required to be disclosed, all dealers shall be disclosed.

(f) A dealer may disclose information that is not required by this section only when the additional information is not stated, used or placed in a manner that may contradict, obscure or distract attention from the information required by this section.

§46B-3-8. Prohibitions for rent-to-own transactions.

No dealer may:

(1) Require any initial payment in any transaction except the payment for the first rental period, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

(2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

(3) Raise the amount of any payment or charge after
the execution of the written agreement without both parts voluntarily entering into a second written agreement;

(4) Take any action to collect a payment which is prohibited by this chapter;

(5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

(6) Take any security interest in any property owned by the consumer;

(7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or damage, unless the dealer requires such insurance for all goods of comparable type and value in every rent-to-own agreement;

(8) Require damage waiver from a particular insurer;

(9) Seek to collect any charge not authorized by this chapter and disclosed in a written agreement; or

(10) Have an initial period which is more than one week longer than any other rental period.

CHAPTER 141

(S. B. 129—By Senators Anderson, Wagner, Chernenko, Chafin, Dalton, Bailey, Sharpe, Ross, Schoonover, Withers and Wooton)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to retirement credit for former constables and justices of the peace who are currently public employees; and providing that anyone seeking this credit must do so by the thirtieth day of July, one thousand nine hundred ninety-five.

Be it enacted by the Legislature of West Virginia:
That section fourteen, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: *Provided,* That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him or her in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of thirty years immediately preceding the date the political subdivision became a participating public employer be credited with prior service: *Provided, however,* That said member is not required to have been employed by a participating public employer of this state within a period of fifteen years subsequent to the date that participating public employer elected to become a participating employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member’s contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to said member’s retirement. Repayment of withdrawals shall be as directed by the board of trustees.
(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for such time as served in such capacity.

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for eight or more years, may receive service credit for the time as served in that capacity.

(e) Former justices of the peace and constables who continue to actively serve as employees or elected officials of state or local governments that are participating public employers shall be entitled to credit for retirement purposes for those years of service as a justice of the peace or constable: Provided, That they have a minimum of five years contributing service and they compensate the retirement fund in an amount equal to the amount which they would have contributed for a like period of time, according to a formula determined by the retirement board, plus an amount equal to the determined employer's contribution for the same period. For purposes of calculating the contributions, the salary for constables shall be deemed to be five thousand dollars per year and the salary for justices of the peace shall be deemed to be seven thousand five hundred dollars per year. In addition, they shall deposit the compounded yearly interest on the aggregate of the employee and employer contributions at a rate or rates to be determined by the retirement board: Provided, however, That those former justices of the peace and constables who elect to seek credit under this subsection shall be allowed until the thirtieth day of June, one thousand nine hundred ninety-five, to compensate the retirement fund as provided herein.
CHAPTER 142

(Com. Sub. for S. B. 237—By Senators Burdette, Mr. President, Boley, Anderson, Chafin, Chernenko, Claypole, Craigo, Dittmar, Humphreys, Jones, Luchi, Manchin, Miller, Minard, Ross, Schoonover, Sharpe, Tomblin, Walker, Wehrle, Whitlow, Wiedebusch, Withers and Wooton)

[By Request of the Executive]

[Passed March 12, 1994; to take effect July 1, 1994. Approved by the Governor.]
one thousand nine hundred ninety-two, which supplement shall become effective on the first day of July, one thousand nine hundred ninety-four. The calculation of such supplement for each annuitant shall be based upon the number of full increments as set forth in subsections (b) through (k) of this section that the annuitant has maintained his or her retired status since the original date of the commencement of his or her retirement, and shall equal the sum of the applicable percentages credited for such increments as set forth in the applicable subsections of this section. Any such supplement shall be paid in pro rata monthly installments.

(b) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of April, one thousand nine hundred eighty-eight, and ending on the thirty-first day of December, one thousand nine hundred ninety-two, shall be three percent of their retirement benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four: Provided, That annuitants who retired during the period set forth in this subsection shall be required to elect between receiving the supplemental benefit provided in this section or any incentives provided in section twenty-two-c of this article or any other supplements provided in this article: Provided, however, That the consolidated public retirement board shall provide written notification to members eligible for the benefit provided in this subsection of the availability and terms of the benefit provided in this subsection and members electing to select this benefit in lieu of any other incentive the member has or is receiving shall submit an application for the benefit on the form prescribed by the board.

(c) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of July, one thousand nine hundred eighty-five, and ending on the thirty-first day of March, one thousand nine hundred eighty-eight, shall be five percent of their retirement benefit including any supplemental benefits provided on or before the first
day of July, one thousand nine hundred seventy-four, 
plus the amount of the percentage supplement provided 
in subsection (b) of this section.

(d) The total amount of the supplement due to 
qualified annuitants who retired during the period 
commencing on the first day of July, one thousand nine 
hundred eighty-two, and ending on the thirtieth day of 
June, one thousand nine hundred eighty-five, shall be 
five percent of their retirement benefit including any 
supplemental benefits provided on or before the first 
day of July, one thousand nine hundred seventy-four, 
plus the amount of the percentage supplements provided 
in subsections (b) and (c) of this section.

(e) The total amount of the supplement due to 
qualified annuitants who retired during the period 
commencing on the first day of July, one thousand nine 
hundred seventy-nine, and ending on the thirtieth day 
of June, one thousand nine hundred eighty-two, shall be 
sixteen percent of their retirement benefit including any 
supplemental benefits provided on or before the first 
day of July, one thousand nine hundred seventy-four, 
plus the amount of the percentage supplements provided 
in subsections (b), (c) and (d) of this section.

(f) The total amount of the supplement due to 
qualified annuitants who retired during the period 
commencing on the first day of July, one thousand nine 
hundred seventy-six, and ending on the thirtieth day of 
June, one thousand nine hundred seventy-nine, shall be 
sixteen percent of their retirement benefit including any 
supplemental benefits provided on or before the first 
day of July, one thousand nine hundred seventy-four, 
plus the amount of the percentage supplements provided 
in subsections (b), (c), (d) and (e) of this section.

(g) The total amount of the supplement due to 
qualified annuitants who retired during the period 
commencing on the first day of July, one thousand nine 
hundred seventy-three, and ending on the thirtieth day 
of June, one thousand nine hundred seventy-six, shall be 
sixteen percent of their retirement benefit including any 
supplemental benefits provided on or before the first
day of July, one thousand nine hundred seventy-four, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e) and (f) of this section.

(h) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of July, one thousand nine hundred seventy, and ending on the thirtieth day of June, one thousand nine hundred seventy-three, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f) and (g) of this section.

(i) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of July, one thousand nine hundred sixty-seven, and ending on the thirtieth day of June, one thousand nine hundred seventy, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g) and (h) of this section.

(j) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of July, one thousand nine hundred sixty-four, and ending on the thirtieth day of June, one thousand nine hundred sixty-seven, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h) and (i) of this section.

(k) The total amount of the supplement due to qualified annuitants who retired during the period commencing on the first day of July, one thousand nine hundred sixty-one, and ending on the thirtieth day of
June, one thousand nine hundred sixty-four, shall be twenty-four percent of their retirement benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four, plus the amount of the percentage supplements provided in subsections (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this section.

(l) For each annuitant, a preliminary supplement shall be computed on the basis of the original annual benefit including any supplemental benefits provided on or before the first day of July, one thousand nine hundred seventy-four, received by the original retiree as provided by subsections (b) through (k) of this section, inclusive. This preliminary supplement shall be calculated only on amounts up to, but not exceeding, the first five thousand four hundred dollars of the original annual retirement benefit paid including any supplement provided on or before the first day of July, one thousand nine hundred seventy-four.

(m) Each annuitant shall receive as that annuitant's supplement under this section an amount equal to the preliminary supplement or a supplement as calculated in subsections (n) and (o) of this section as appropriate.

(n) Each survivor beneficiary shall receive as that survivor beneficiary's supplement under this section an amount equal to that pro rata share of that survivor beneficiary's preliminary supplement, as defined above, as such survivor beneficiary's benefit, without regard to any supplements, constitutes as a pro rata share of the original benefit of the original retiree: Provided, That for any person who becomes a survivor beneficiary, after the first day of July, one thousand nine hundred ninety-four, the benefit provided under this section shall be recomputed under the provisions of this subsection.

(o) Each disabled retiree shall receive as that disabled retiree's supplement under this section that pro rata share of that disabled retiree's preliminary supplement, as defined above, as such disabled retiree's current benefit, without regard to any supplements, constitutes as a pro rata share of that disabled retiree's original
benefit: Provided, That any disabled retiree scheduled under the terms of the retirement system to have a benefit recomputed at some time subsequent to the effective date of this section will, at the time of that recomputation, also have the supplemental benefit recomputed under the terms of the preceding sentence.

(p) Any supplemental benefit computed under this section shall only be paid in lieu of, and not in addition to, the payment of any prior supplemental benefit amounts or incentives provided by law after the first day of July, one thousand nine hundred seventy-four, which are currently being paid: Provided, That any annuitant receiving a supplemental benefit greater than that provided in this section shall continue to receive the current supplemental benefits.

(q) The supplement provided in this section shall be recalculated on a pro rata basis of the preliminary supplement whenever the original annuity amount is adjusted due to the death or disability of an annuitant or any other event.

§5-10-31. Employers accumulation fund; employers contributions.

(a) The employers accumulation fund is hereby continued. It shall be the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers’ contributions to the retirement system, as determined by the consolidated public retirement board by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code, shall be a percent of the members’ total annual compensation related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total
normal cost of the benefits expected to become payable
to all members and to amortize any unfunded liability
found by application of such actuarial funding method
as shall be chosen for such purpose by the consolidated
public retirement board, over such a period of years as
shall be deemed actuarially appropriate. When propos-
ing a rule for promulgation which relates to the amount
of employer contribution, the board may promulgate
rules by emergency pursuant to the provisions of article
three, chapter twenty-nine-a, if the inability of the board
to increase employer contributions will detrimentally
affect the actuarial soundness of the retirement system.
A signed statement from the state actuary will accom-
pany the statement of facts and circumstances constitut-
ing an emergency which must be filed in the state
register. For purposes of this section, subdivision (2),
subsection (b), section fifteen-a, article three, chapter
twenty-nine-a of this code shall not be applicable to the
secretary of state’s determination of whether an emer-
gency rule should be approved.

In no year may the total of the contributions provided
for in this section, to be paid by any participating public
employer, exceed ten and five-tenths percent of the total
payroll for the members in the employ of such partic-
IPATING public employer for the preceding fiscal year.

CHAPTER 143

(H. B. 4584—By Delegates Paxton, Linch, Houvouras,
Fantasia, Prezioso, Love and Talbott)

[Passed March 9, 1994; in effect ninety days from passage. Approved by the Governor.]
ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.
§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby created a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten, chapter five of this code; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code;

(b) The consolidated public retirement board shall begin administration of the systems listed in subsection (a) of this section on the first day of July, one thousand nine hundred ninety-one: Provided, That the board shall begin administration of the teachers' defined contribution retirement system established in article seven-b, chapter eighteen of this code on the first day of January, one thousand nine hundred ninety-one. Prior to that date the existing entities which administer the system shall cooperate with the board in the orderly transition of all duties, responsibilities, records and other materials in their possession;

(c) The membership of the consolidated public retirement board consists of:

(1) The governor or his or her designee;

(2) The state treasurer or his or her designee;

(3) The state auditor or his or her designee;

(4) The secretary of the department of administration or his or her designee;

(5) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the governor, with the advice and consent of the Senate;
(6) A member, annuitant or retirant of the public employees retirement system who is or was a state employee; a member, annuitant or retirant of the public employees retirement system who is not or was not a state employee; a member, annuitant or retirant of the teachers retirement system; a member, annuitant or retirant of the department of public safety death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(d) The appointed members of the board shall serve five-year terms. Of the members initially appointed, three shall be appointed for two-year terms; three shall be appointed for three-year terms; and three shall be appointed for five-year terms. Thereafter, all members shall serve full five-year terms. A member appointed pursuant to subdivision (5), subsection (c) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees shall be of the same political party.

(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten, chapter five of this code; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created pursuant to article two, chapter fifteen of this code, and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may promulgate all rules necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.
AN ACT to amend and reenact section sixteen, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pension and relief funds for policemen and firemen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREFIGHTERS' PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART III.

POLICEMEN'S PENSION AND RELIEF FUND;

FIREFIGHTERS' PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

1 In every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund, and for a firemen's pension and relief fund, for the purposes hereinafter enumerated, and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article.
For the purposes of this section and sections seventeen through twenty-eight of this article, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term shall not be taken to mean any such department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

Unless and until other provision is made by subsequent legislative action, any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former article six of this chapter or this article twenty-two shall be or remain mandatory and shall be governed by the provisions of sections sixteen through twenty-eight of this article twenty-two (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city), and shall not be affected by the transition from one class of municipal corporation to a lower class as specified in section three, article one of this chapter: Provided, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city shall not be required to establish such pension and relief fund if said town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

After the thirtieth day of June, one thousand nine hundred eighty-one, for the purposes of sections sixteen through twenty-eight of this article the word "member" means any paid police officer or firefighter who at time of appointment to such paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001 — Firefighters Professional Qualifications '74 as updated from year to year: Provided, That any police officer or firefighter who was a member of such fund prior to the first day of July, one thousand
nine hundred eighty-one, shall be considered a member after June thirtieth, one thousand nine hundred eighty-one.

For purposes of sections sixteen through twenty-eight of this article the words "salary or compensation" means remuneration actually received by a member, plus such member's deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: Provided, That the remuneration received by such member during any twelve-consecutive-month period utilized in determining benefits which is in excess of an amount which is twenty percent greater than the "average adjusted salary" received by such member in the two consecutive twelve-consecutive-month periods immediately preceding such twelve-consecutive-month period utilized in determining benefits shall be disregarded: Provided, however, That the "average adjusted salary" means the arithmetic average of each year's adjusted salary such adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming "year-one" means the second twelve-consecutive-month period preceding such twelve-consecutive-month period utilized in determining benefits, "year-two" means the twelve-consecutive-month period immediately preceding such twelve-consecutive-month period utilized in determining benefits, and "year-three" means the twelve-consecutive-month period utilized in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal "year-one adjusted salary"; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal "year-two adjusted salary"; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary.
AN ACT to amend and reenact section nineteen, article two-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, exchange or lease of real property by the commissioner of highways; permitting adjoining landowners right of first refusal in certain instances; determination of sale price.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


1. The division of highways, subject to the conditions herein, may sell, exchange, or lease real property, or any interest or right therein, held by the division of highways,

2. When the real property, or any interest or right therein, is being held for future road purposes, it may be leased. When the real property, or any part thereof, or any interest or right therein, is deemed by the commissioner not necessary, or desirable for present or presently foreseeable future highways purposes, it may be exchanged for other real property, or any interest or right therein, deemed by the commissioner to be necessary or desirable for present or presently foreseeable future highways purposes, or it may be sold. In addition the division may exchange real property, or any part thereof, or any interest or right therein, even though it may be necessary or desirable for present or presently foreseeable future highways purposes, if the exchange is made for other real property, or any interest or right therein, in close proximity thereto which the
commissioner deems of equal or superior useful value for present or presently foreseeable future highways purposes. In making exchanges the division may make allowances for differences in the value of the properties being exchanged and may move or pay the cost of moving buildings, structures, or appurtenances in connection with the exchange.

Every such sale of real property, or any interest or right therein or structure thereon, shall be at public auction in the county in which the real property, or the greater part thereof in value, is located, and the division shall advertise, by publication or otherwise, the time, place, and terms of the sale at least twenty days prior thereto. The property shall be sold in the manner which will bring the highest and best price therefor. The division may reject any or all bids received at the sale. The commissioner shall keep a record, open to public inspection, indicating the manner in which such real property, or any interest or right therein or structure thereon, was publicly advertised for sale, the highest bid received therefor and from whom, the person to whom sold, and payment received therefor. The record shall be kept for a period of five years and may thereafter be destroyed.

The commissioner may transfer, sell, or otherwise dispose of any right-of-way properties or any interest or right therein, owned by or to be acquired by the division of highways which the commissioner in his or her sole discretion shall determine are not necessary or desirable for present or presently foreseeable future highways purposes by first offering the same to the principal abutting landowners without following the procedure for public auction hereinbefore set forth in this section.

The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the making of any leases or sales pursuant to the provisions of this section, which rules may provide for the giving of preferential treatment in making leases to the persons from whom the properties or rights or interests therein were acquired, or their heirs or assigns.
and shall also provide for granting a right of first refusal to abutting landowners at fair market value in the sale of any real estate or any interest or right therein owned by the division of highways.

Notwithstanding any other provision of this section to the contrary, with respect to real property acquired subsequent to the year one thousand nine hundred seventy-three for highways purposes through voluntary real estate acquisition or exercise of the right of eminent domain, which real estate the commissioner has determined should be sold as not necessary for highways purposes, the commissioner shall give preferential treatment to an abutting landowner if it appears that:

(1) A principal abutting landowner is an individual from whom the real estate was acquired or his or her surviving spouse or descendant. In order to qualify for preferential treatment, the surviving spouse or descendant need not be a beneficiary of the individual. The terms used in this subdivision are as defined in section one, article one, chapter forty-two of this code; and

(2) The primary use of the abutting property has not substantially changed since the time of the acquisition.

When the foregoing conditions are met, the commissioner shall offer the property for sale to the principal abutting landowner at a cost equal to the amount paid by the division of highways in acquiring the real estate: Provided, That if improvements on the property have been removed since the time of the acquisition, the cost shall be reduced by an amount attributable to the value of the improvements removed: Provided, however, That the cost may be adjusted to reflect interest at a rate equal to the increase in the consumer price index for all urban consumers as reported by the United States department of labor since the time of disbursement of the funds.

The commissioner may insert in any deed or conveyance, whether it involves an exchange, lease, or sale, the conditions as are in the public interest and have been approved in advance by the governor.
101 All moneys received from the exchange, sale, or lease
102 of real property, or any right or interest therein, shall
103 be paid into the state treasury and credited to the state
104 road fund.
105 Notwithstanding the provisions of this section,
106 property shall not be transferred, sold or otherwise
107 disposed of unless the commissioner finds that the right-
108 of-way or other property has no significant value to the
109 state as a hiking trail and does not serve as a link
110 between two or more state owned properties, except that
111 any such property that lies within six hundred feet of
112 any dwelling house may be transferred, sold or other-
113 wise disposed of without such a finding pursuant to the
114 provisions of this section.

AN ACT to repeal article ten-f, chapter eighteen of the code
1 of West Virginia, one thousand nine hundred thirty-one,
2 as amended, relating to repeal of provisions establishing
3 the structural barriers compliance board.

Be it enacted by the Legislature of West Virginia:

That article ten-f, chapter eighteen of the code of West
1 Virginia, one thousand nine hundred thirty-one, as amended,
2 be repealed.

§1. Repeal of article creating structural barriers com-
1 pliance board.
2
3 Article ten-f, chapter eighteen of the code of West
3 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.
CHAPTER 147
(S. B. 83—By Senators Holliday and Boley)

[Passed February 14, 1994; in effect July 1, 1994. 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 continuation of 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:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§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 section 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
AN ACT to amend and reenact sections four and six, 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; reimbursement and compensation for the members; requiring advice by a newly designated advisory board; compensation for advisory board members.

Be it enacted by the Legislature of West Virginia:

That sections four and six, 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.

§5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.

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

1 (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 (includ-
ing 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. All new
appointments made subsequent to the first day of July,
one thousand nine hundred ninety-four, shall be selected
to represent the different geographical areas within the
state and all members shall be residents of West
Virginia. No member may be removed from office by
the governor except for official misconduct, incompe-
tence, 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. The board shall pay each member
the same compensation and expense reimbursement 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.
(d) Pursuant to the provisions of article ten, chapter four of this code, the finance board shall terminate on the first day of July, one thousand nine hundred ninety-five, 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 promulgated pursuant to this subsection.

§5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.

(a) The public employees insurance agency advisory board is hereby created and established to provide advice and make recommendations to the director concerning group hospital and surgical insurance, group major medical insurance and group life and accidental death insurance for all employees in the manner as hereinafter provided. All business of the advisory board shall be transacted in the name of West Virginia public employees insurance agency advisory board. The advisory board members shall receive notice of all finance board meetings and be given the opportunity to offer advice and recommendations to the finance board.

(b) The advisory board shall consist of fifteen members who are citizens of the United States and residents of this state as follows: Three members representing licensed health care professionals, health care facilities or other types of health care providers,
one of whom shall be a physician, appointed by the

governor, with the advice and consent of the Senate; five

members either covered by the public employees

insurance plans or from organizations representing such

employees, one of whom shall represent either retired

public employees or retired educators and one of whom

shall represent county or municipal public employees, 
appointed by the governor, with the advice and consent

of the Senate, and selected so as to represent as broadly

as possible all elements of the employees covered by the

plan: Provided, That such members shall not be: (1)

Employees of or contractors to any health care facility;

(2) licensed health care professionals; (3) members of the

immediate family of licensed health care professionals;

or (4) an employee of or contractor to any such licensed

health care professionals; the insurance commissioner or

his or her designee; one representative of the West

Virginia health care cost review authority, appointed by

the governor, with the advice and consent of the Senate;

five members from the public at large appointed by the

governor, with the advice and consent of the Senate.

Members of the board shall be selected to represent, as

broadly as possible, the different geographical areas

within the state. No more than ten of the fifteen

members of the board shall be of the same political

party.

Of the members first appointed by the governor to the

advisory board, one health care provider member shall

be appointed for a term of two years; one health care

provider member shall be appointed for a term of four

years and one health care provider member shall be

appointed for a term of five years; the member who is

the representative of the West Virginia health care cost

review authority shall be appointed for a term of three

years; the five members who are participants in the

public employees insurance plan shall be appointed to

terms of one, two, three, four and five years respectively;

and the five members who are the public at large shall

be appointed to terms of one, two, three, four and five

years respectively. Subsequent appointed members shall
be appointed to five-year terms except for members
appointed to fill vacancies who shall serve for the
remainder of the vacant term. Members of the advisory
board are eligible for reappointment upon the expiration of their terms but may not serve more than two full
five-year terms consecutively. Members' terms shall
commence on the first day of September of the year of
appointment and end on the thirty-first day of August
in the year in which the term expires.

The advisory board shall hold a meeting at least twice
each year and shall designate the time and place of such
meeting. Nine advisory board members shall constitute
a quorum at any meeting of the advisory board. Each
advisory board member shall be entitled to one vote on
each question before the advisory board. A majority of
the quorum present shall be required for a decision by
the advisory board at its meetings. The advisory board
shall keep a record of its proceedings.

The board shall elect one of its members as chairperson and shall meet at such time and place as shall be
specified by the call of the chairperson. All meetings
shall be open to the public. Notice of each meeting shall
be given in writing to each member by the director at
least three days in advance of the meeting period.

The advisory board shall be responsible for advising
and making recommendations to the director regarding
the administration and management of the public
employees insurance agency as provided for in this
article. Under no circumstances, however, will the
decisions, advice or recommendations of the advisory
board be controlling or binding on the director.

The board shall pay each member the same compen-
sation and expense reimbursement 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.
CHAPTER 149
(S. B. 76—By Senators Holliday and Boley)

[Passed February 18, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of tourism and parks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-18. Sunset provision.

1 Unless sooner terminated by law, the division of tourism and parks shall terminate on the first day of July, one thousand nine hundred ninety-five, in accordance with the provisions of article ten, chapter four of this code.

CHAPTER 150
(S. B. 86—By Senators Holliday and Boley)

[Passed March 12, 1994; in effect July 1, 1994. 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 the continuation of the West Virginia ethics commission; and changing compensation and expense reimbursement 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 commis-
mission, 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 the same compensation and expense reimbursement 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.

(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 article ten, chapter four of this code, the West Virginia ethics commission shall continue to exist until the first day of July, two thousand.
CHAPTER 151
(Com. Sub. for H. B. 4090—By Delegates Martin, Michael, Border and Evans)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the veterans’ council; changing compensation and expense reimbursement for members of the veterans’ council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF VETERANS’ AFFAIRS.

§9A-1-2. Veterans’ council; continuation of council; administration of division.

§9A-1-5. Compensation of director, veterans’ affairs officers, assistants and employees; payment to veterans’ council members; traveling expenses; meetings of veterans’ council.

§9A-1-2. Veterans’ council; continuation of council; administration of division.

There shall be a “veterans’ council” which shall consist of seven members who shall be citizens and residents of this state, who have served in and been honorably discharged or separated under honorable conditions from the armed forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2—73rd Congress or Public Law No. 346—78th Congress, and any and all amendments thereto. At least one member of the council shall be a veteran of World War II, at least one member of the council shall be a veteran of the Korean Conflict and at least two members of the council shall be veterans of the Vietnam era. The members of the veterans’ council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article.
After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the veterans' council should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the veterans' council shall continue to exist until the first day of July, two thousand.

The West Virginia division of veterans' affairs shall be administered by a director, and such veterans' affairs officers, assistants and employees as may be deemed advisable.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

The director shall receive a salary of thirty-two thousand dollars per annum and necessary traveling expenses incident to the performance of his or her duties. The salaries of the veterans' affairs officers, assistants and employees shall be fixed by the veterans' council. The members of the veterans' council shall receive no salary, but each member shall receive the same compensation and expense reimbursement 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. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the auditor and permanently preserved as a public record. The veterans' council shall hold its initial meeting on the call of the governor, and thereafter shall meet on the call of its chairman, except as otherwise provided. With the exception of the first three meetings of the veterans' council, none of which shall be of a duration longer than two weeks each, for organizational purposes, the veterans' council shall meet not more than once every two months at such times as may be determined by and
upon the call of the chairman for a period of not more
than two days, unless there should be an emergency
requiring a special meeting or for a longer period and
so declared and called by the governor or by the
chairman with the approval of the governor. A majority
of the members of the veterans’ council shall constitute
a quorum for the conduct of official business.

CHAPTER 152
(H. B. 4089—By Delegates Martin, Michael, Border and Evans)

[Passed February 16, 1994; in effect July 1, 1994. Approved by the Governor.]

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 continuation of 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:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-1. Duties of state road commissioner transferred
to division of highways; department to act
through commissioner of highways; termina-
tion of division; 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 responsi-
bilities heretofore imposed upon the state road com-
missioner 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
Pursuant to the provisions of 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-five, to allow for the completion of a full performance audit by the joint committee on government operations.

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 153
(H. B. 4087—By Delegates Martin, Michael, Border and Evans)
[Passed February 17, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of West Virginia's membership in the southern regional education compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, two thousand.
CHAPTER 154
(H. B. 4094—By Delegates Martin, Michael, Love, Border and Evans)

[Passed February 16, 1994; in July 1, 1994. Approved by the Governor.]

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 continuance of the division of natural resources.

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.

1 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.

7 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-five, to allow for the completion of an audit by the joint committee on government operations.

CHAPTER 155
(H. B. 4082—By Delegates Martin, Michael and Border)

[Passed February 16, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article one, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuance of the division of labor.
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Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF LABOR.

§21-1-5. Reestablishment of division; findings.

1 After having conducted a performance audit through
2 its joint committee on government operations, pursuant
3 to article ten, chapter four of this code, the Legislature
4 hereby finds and declares that the division of labor
5 should be continued and reestablished. Accordingly,
6 notwithstanding the provisions of article ten, chapter
7 four of this code, the division of labor shall continue to
8 exist until the first day of July, one thousand nine
9 hundred ninety-five.

CHAPTER 156
(H. B. 4525—By Delegates Love, Fragale, Heck,
Higgins, Stewart, Walters and Willison)

[Passed March 3. 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to continuing the authority of the commissioner of the bureau of employment programs to administer unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

§21A-2-9. Continuation of authority of commissioner to administer unemployment compensation.
Pursuant to the provisions of article ten, chapter four of this code, the commissioner shall continue to administer this chapter until the first day of July, one thousand nine hundred ninety-six, to allow for the completion of a preliminary performance review by the joint committee on government operations.

CHAPTER 157
(Com. Sub. for H. B. 4091—By Delegates Martin, Michael, Border and Evans)

[Passed February 16, 1994: in effect July 1, 1994. 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; changing expense reimbursement for board 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.

1 (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

* Clerk’s Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as 22C-7-3 and passed subsequent to this act.
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 and expense reimbursement 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.

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 review through its joint committee on govern-
ment operations, pursuant to 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 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, two thousand.

CHAPTER 158
(H. B. 4635—By Delegates Martin, Michael and Love)

[Passed March 12, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section five, article three,
chapter twenty-two-b of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to continuing the environmental quality board.

Be it enacted by the Legislature of West Virginia:

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

§22B-3-5. Environmental quality board continued.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, and following a preliminary performance
3 review by the joint committee on government opera-
4 tions, the environmental quality board shall continue to
5 exist until the first day of July, two thousand.
CHAPTER 159
(H. B. 4524—By Delegates Love, Fragale, Heck, Higgins, Stewart, Walters and Willison)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of authority of commissioner of bureau of employment programs to administer workers' compensation program.

Be it enacted by the Legislature of West Virginia:

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

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.

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 compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code. In the administration of this chapter, the commissioner 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.

Pursuant to the provisions of chapter four, article ten of this code, the commissioner of the bureau of employment programs shall continue to administer this chapter until the first day of July, one thousand nine hundred ninety-six, to allow the joint committee on government operations to monitor compliance with recommendations set forth in the full performance audit of the office of the workers' compensation commissioner completed in the year one thousand nine hundred ninety.

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.

CHAPTER 160

(H. B. 4526—By Delegates Love, Fragaie, Heck, Higgins, Stewart, Walters and Willison)

[Passed March 3, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section one-g, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating
to continuation of the office of judges of workers' compensation.

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

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

§23-5-1g. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) There is hereby continued within the workers' compensation appeal board the workers' compensation office of administrative law judges which shall be referred to as the office of judges. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the appeal board created in section two of this article. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six of chapter twenty-nine of this code. The chief administrative law judge may only be removed by the appeal board and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then only after he or she has been presented in writing with the reasons for his or her removal and then only in the manner prescribed in article six-a of chapter twenty-nine of this code. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee shall be applicable to the chief administrative law judge.

(c) By and with the consent of the commissioner, the chief administrative law judge shall employ such
additional administrative law judges and other personnel as are necessary for the proper conduct of a system of administrative review of orders issued by the commissioner which orders have been objected to by a party, and all such employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of the statutes, rules and regulations of the classified service pursuant to article six, chapter twenty-nine of this code. All such additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the office of judges.

(d) The administrative expense of the office of judges shall be included by the appeal board in its annual budget when it submits that budget to the commissioner pursuant to section two of this article.

(e) With the advice and consent of the commissioner, on or before the first day of May, one thousand nine hundred ninety-one, the appeal board shall promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the commissioner pursuant to section one of this article and for the settlement of claims pursuant to section one-f of this article. Such rules of practice and procedure shall be promulgated in accordance with the provisions of article three of chapter twenty-nine-a of this code. The appeal board shall not have the power to promulgate legislative rules as that phrase is defined in article three of chapter twenty-nine-a of this code.

(f) On and after the first day of July, one thousand nine hundred ninety-one, the chief administrative law judge shall have the power, which shall be delegated by the appeal board, to hear and determine all disputed claims in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims,
take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep such records and make such reports as are necessary for disputed claims, review and approve agreements to compromise and settle claims involving permanent partial disability awards permitted by the provisions of section one-f, article five of this chapter, and exercise such additional powers, including the delegation of such powers to administrative law judges or hearing examiners as may be necessary for the proper conduct of a system of administrative review of disputed claims.

(g) Pursuant to the provisions of chapter four, article ten of this code, the office of judges shall continue to exist until the first day of July, one thousand nine hundred ninety-six, to allow for the completion of a preliminary performance review by the joint committee on government operations.

CHAPTER 161

(S. B. 85—By Senators Holliday and Boley)

[Passed February 14, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the division of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

Pursuant to the provisions of article ten, chapter four of this code, the division of corrections shall continue to exist until the first day of July, one thousand nine hundred ninety-five, to allow for the completion of an audit by the joint committee on government operations.
AN ACT to amend and reenact sections two and six, article one-d, 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 Ohio River valley water sanitation commission compact and changing ex officio membership to the director of the division of environmental protection.

Be it enacted by the Legislature of West Virginia:

That sections two and six, article one-d, 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 1D. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§29-ID-2. Appointment of members of commission; director of the division of environmental protection member ex officio.

§29-ID-6. When article effective; findings; continuation.

*§29-ID-2. Appointment of members of commission; director of the division of environmental protection member ex officio.

In pursuance of article four of said compact, there shall be three members of the "Ohio River valley water sanitation commission" from the state of West Virginia. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of six years each.

* Clerk's Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as §22C-12-2 and passed subsequent to this act.
Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner from any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state shall be the director of the division of environmental protection ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold the office of director of the division of environmental protection, and his successor as a commissioner shall be his successor as the director of the division of environmental protection. With the exception of the issuance of any order under the provisions of article nine of the compact, the ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The terms of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners, provided the said compact shall then have gone into effect in accordance with article eleven of the compact; otherwise shall begin upon the date which said compact shall become effective in accordance with said article eleven.

Any commissioner may be removed from office by the governor.

*§29-1D-6. When article effective; findings; continuation.*

This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification and adoption, and entering into thereof by the states of New York, Pennsylvania, Ohio and Virginia.

After having conducted a preliminary performance review through its joint committee on government

*Clerk’s Note: This section was recodified by H. B. 4065 (Chapter 61). The provisions as contained in such act now appear as §22C-12-6 and passed subsequent to this act.*
operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, two thousand.

CHAPTER 163

(Com. Sub. for H. B. 4683—By Delegates Martin, Michael and Border)

[Passed March 21, 1994; in effect July 1, 1994. 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 continuation of the board of architects; changing expense reimbursement for board 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 and expense reimbursement 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.

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 procedures act for contested cases pursuant to the provisions of article five of said chapter.

Pursuant to the provisions of 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-five.

CHAPTER 164
(S. B. 84—By Senators Holliday and Boley)

[Passed February 15, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the real estate commission; and changing expense reimbursement of commission members.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.

There shall be a commission known as the "West Virginia Real Estate Commission", which commission shall be a corporation and as such may sue and be sued, may contract and be contracted with and shall have a common seal. The commission shall consist of three persons to be appointed by the governor by and with the advice and consent of the Senate. Two of such appointees each shall have been a resident and a citizen of this state for at least six years prior to his or her appointment and whose vocation for at least ten years shall have been that of a real estate broker or real estate salesperson and the third shall be a representative of the public generally. Members in office on the date this section becomes effective shall continue in office until their respective terms expire. The term of the members of said commission shall be for four years and until their successors are appointed and qualify. No more than two members of such commission shall belong to the same political party. No member shall be a candidate for or hold any other public office or be a member of any political committee while acting as such commissioner. In case any commissioner be a candidate for or hold any other public office or be a member of any political committee, his or her office as such commissioner shall ipso facto be vacated. Members to fill vacancies shall be appointed by the governor for the unexpired term. No member may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross
immorality or other good cause shown and then only in
the manner prescribed by law for the removal by the
governor of state elective officers. The governor shall
designate one member of the commission as the chair-
man thereof and the members shall choose one of the
members thereof as secretary. Two members of the
commission shall constitute a quorum for the conduct of
official business.

(a) The commission shall do all things necessary and
convenient for carrying into effect the provisions of this
article and may from time to time promulgate reasona-
ble, fair and impartial rules and regulations in accor-
dance with the provisions of article three, chapter
twenty-nine-a of this code. The board shall pay each
member the same compensation and expense reimburs-
ment 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.

(b) The commission shall employ an executive director
and such clerks, investigators and assistants as it shall
deem necessary to discharge the duties imposed by the
provisions of this article and to effect its purposes, and
the commission shall determine the duties and fix the
compensation of such executive director, clerks, inves-
tigators and assistants, subject to the general laws of the
state.

(c) The commission shall adopt a seal by which it shall
authenticate its proceedings. Copies of all records and
papers in the office of the commission, duly certified and
authenticated by the seal of said commission, shall be
received in evidence in all courts equally and with like
effect as the original. All records kept in the office of
the commission under authority of this article shall be
open to public inspection under reasonable rules and
regulations as shall be prescribed by the commission.

(d) After having conducted a preliminary perfor-
mane review through its joint committee on govern-
ment operations, pursuant to article ten, chapter four of
this code, the Legislature hereby finds and declares that the West Virginia real estate commission should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the West Virginia real estate commission shall continue to exist until the first day of July, one thousand nine hundred ninety-five, to allow the joint committee on government operations to monitor compliance with recommendations set forth in the preliminary performance review.

CHAPTER 165

(H. B. 4088—By Delegates Martin, Michael, Border and Evans)

[Passed February 16 1994; in effect July 1, 1994. 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 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 said article, the family protection services board shall continue to exist until the first day of July, two thousand.
CHAPTER 166
(H. B. 4092—By Delegates Martin, Michael, Border and Evans)

[Passed February 24, 1994; in effect July 1, 1994. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

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

(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 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 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-seven.

CHAPTER 167
(S. B. 80—By Senators Holliday, Boley and Chernenko)

[Passed February 14, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, 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 twenty-four, 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-4-24. Continuation of family law masters system.
1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to article ten, chapter four of this
4 code, the Legislature hereby finds and declares the
5 family law masters system should be continued and
6 reestablished. Accordingly, notwithstanding the provi-
7 sions of said article, the family law masters system shall
8 continue to exist until the first day of July, one thousand
9 nine hundred ninety-five, so that the joint committee on
10 government operations may monitor compliance by the
11 family law masters system with the recommendations of
12 the performance audit.

CHAPTER 168
(Com. Sub. for S. B. 373—By Senator Bailey)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article nine,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the criminal investigation and special audits division
of the state tax division; number of investigators and
examiners; exemption of investigators from classified
service; including examiners in the classified service;
increasing amount of moneys which may be placed in
the appropriated special revenue account; disposition of
fees; qualifications and powers of investigators; investiga-
tors to execute performance bonds; assistance of
division of public safety or other law-enforcement
officers; issuance of license plates to investigators; and
requiring a report by the tax commissioner.
Be it enacted by the Legislature of West Virginia:

That section two-a, article nine, 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 9. CRIMES AND PENALTIES.

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

(a) Criminal investigation division. — A criminal investigation division consisting of no more than twelve investigators, of which one investigator shall serve as division director, plus necessary support staff, all of whom are exempt from the classified service, is hereby established in the state tax division for the purpose of assuring compliance with laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes, imposed on individuals by article twenty of this chapter.

(b) Special audits division. — A special audits division consisting of no more than eight tax examiners, plus necessary support staff, all of whom are covered by the classified service, is hereby established in the auditing section of the state tax division for purposes of assuring compliance with laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes imposed on individuals by article twenty-one of this chapter.

(c) The Legislature hereby finds that the enforcement of the laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, as such are applicable to persons whose residence or principal place of business is outside of the state of West Virginia, requires greater efforts and investigation than required for resident persons subject thereto, and does further find that there is a greater rate of noncom-
pliance with said laws and rules by such nonresident persons. Therefore, the criminal investigation division and the special audits division created in subsections (a) and (b) of this section are hereby directed to expend a significant amount of their efforts to ensure compliance with the laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter in accordance with the authority provided in this section, by persons whose residence or principal place of business is located outside the state of West Virginia.

(d) Deposits of certain fees. — Charitable bingo fees imposed by article twenty, chapter forty-seven of this code; charitable raffle fees imposed by article twenty-one of said chapter; and charitable raffle boards and games fees imposed by article twenty-three of said chapter in an amount not to exceed five hundred thousand dollars in any fiscal year shall be deposited in a special revenue account established in the office of the treasurer to be appropriated by the Legislature. The special revenue account shall be used to support compliance expenditures relating to the establishment, operation, maintenance and support of the criminal investigation division established in subsection (a) of this section and the special audits division established in subsection (b) of this section. Such expenditures may include, but shall not be limited to, employee compensation, equipment, office supplies and travel expenses. On the last day of each fiscal year, unencumbered funds in the special revenue account in excess of seventy-five thousand dollars shall be transferred to the general revenue fund.

(e) Investigators. — Investigators employed in the criminal investigation division shall have a background in accounting or law enforcement or related fields pursuant to article twenty-nine, chapter thirty of this code, or its equivalent. Any investigator so designated by the tax commissioner shall have all the lawful powers delegated to members of the division of public safety except the power to carry firearms and shall have the authority to enforce the provisions of this article and the criminal provisions of any other article of this code to which this article applies, in any county or municipality
of this state. The tax commissioner shall establish such
additional standards as he or she considers applicable
or necessary. Any 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, condi-
tioned for the faithful performance of the employee's
duties and the bond shall be approved as to form by the
attorney general and shall be filed with the secretary
of state for preservation in that office. The division of
public safety, any county sheriff or deputy sheriff and
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 any criminal penalty provision of any article of this
code to which this article applies.

(f) Class A license plates. — Notwithstanding the
provisions of article three, chapter seventeen-a of this
code, upon application by the tax commissioner and
payment of fees, the commissioner of motor vehicles
shall issue a maximum of twenty Class A license plates
to be used on state owned or leased vehicles assigned to
investigators employed in the criminal investigation
division.

(g) Reports. — On the first day of July of each year,
begging in the year one thousand nine hundred ninety-
four, the tax commissioner shall present a written
report to the joint committee on government operations
on the division's compliance with the provisions of this
section, including, but not limited to, activities of the
divisions created by this section and disbursement of
funding.

CHAPTER 169
(Com. Sub. for H. B. 4023—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight-a, generally relating to tax credits; relating to the continuation of the suspension of certification of business investment and jobs expansion credit; providing for recapture of credits.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-8a. Recapture of credit; recapture tax imposed.

§11-13C-15. Continuing suspension of new credit entitlements, exceptions, effective date.

§11-13C-8a. Recapture of credit; recapture tax imposed.

(a) When recapture tax applies.—

(1) Any person who places business investment and jobs expansion tax credit property in service or use after the twelfth day of March, one thousand nine hundred ninety-four, and who fails to use such qualified investment property for at least the period of its useful life (determined as of the time the property was placed in service or use), or the period of time over which tax credits allowed under this article with respect to such property are applied under this article, which ever period is less, and who reduces the number of its employees filling new jobs in its business in this state, which were created and are directly attributable to the qualified investment property, after the third taxable year in which the qualified investment property was placed in service or use, or fails to continue to employ individuals in all the new jobs created as a direct result of the qualified investment property and used to qualify for the credit allowed by this article, prior to the end
of the tenth taxable year after the qualified investment property was placed in service or use, such person shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section shall not apply when section nine of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to such qualified investment property and the new jobs attributable thereto, shall be jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to such qualified investment property and new jobs.

(b) Recapture tax imposed. — The recapture tax imposed by this subsection shall be the amount determined as follows:

(1) Full recapture. — If taxpayer prematurely removes qualified investment property placed in service after the twelfth day of March, one thousand nine hundred ninety-four, (when considered as a class) from economic service in such taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by such person falls below fifty, taxpayer shall recapture the amount of credit claimed under section five of this article for the taxable year, and all preceding taxable years, on qualified investment property which has been prematurely removed from service. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (1).

(2) Partial recapture. — If taxpayer prematurely removes qualified investment property placed in service after the twelfth day of March, one thousand nine hundred ninety-four, (when considered as a class) from economic service in such taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by such person remains fifty or more, but falls below the number necessary to sustain continued application of credit
determined by use of the new job percentage upon which such taxpayer's one-tenth annual credit allowance was determined under section four, or seven-a of this article, taxpayer shall recapture an amount of credit equal to the difference between (A) the amount of credit claimed under section five of this article for the taxable year, and all preceding taxable years, and (B) the amount of credit that would have been claimed in such years if the amount of credit allowable under section four, or seven-a of this article had been determined based on the qualified investment property which remains in service using the average number of new jobs filled by employees in the taxable year for which recapture occurs. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (2).

(3) Additional recapture. — If after a partial recapture under subdivision (2) of this subsection, such taxpayer further reduces the number of employees filling new jobs below fifty, taxpayer shall recapture an additional amount determined as provided under subdivision (1) of this subsection. The amount of tax due under this subdivision of subsection (b) shall be an amount equal to the amount of credit that is recaptured under this subdivision (3).

(c) Recapture of credit allowed for projects. — The tax commissioner shall file in the West Virginia register by the first day of July, one thousand nine hundred ninety-four, an emergency legislative regulation explaining how the rules of this section shall be applied in the case of projects certified under section four-b of this article.

(d) Payment of recapture tax. — The amount of tax recaptured under this section shall be due and payable on the day such person's annual return is due for the taxable year in which this section applies, under article twenty-one, or twenty-four, of this chapter. When the employer is a partnership, or s corporation, for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in such partnership, or shareholders in such s corporation, in the taxable year in which recapture occurs under this section.
(e) *Regulations.* — The tax commissioner shall promulgate such legislative regulations as may be necessary to carry out the purpose of this section and to implement the intent of the Legislature. Such regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§11-13C-15. Continuing 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 after the tenth day of April, one thousand nine hundred ninety-three.

(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 tenth day of April, one thousand nine hundred ninety-three.

CHAPTER 170
(S. B. 508—By Senator Plymale)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-b, relating generally to compliance with section four thousand eight of the “Intermodal Surface Transportation and Efficiency Act of 1991”; transferring authority to register motor carriers and issue trip permits to the division of motor vehicles; authorizing tax commissioner to enter into cooperative reciprocal international fuel tax agreements with one or more other states for collection of West Virginia motor fuel use taxes from motor carriers based in other states; specifying scope and effect of such agreements; specify-
ing powers, duties and rights under such agreements; authorizing exchanges of information for purposes of single point registration of motor carriers and for administration and collection of motor fuel use taxes under such agreements; providing for disposition of motor fuel use taxes collected under such agreements; creating international fuel tax agreement clearing fund in the state treasury; providing for administration and collection of motor fuel use taxes under an international fuel tax agreement to be subject to the West Virginia tax procedure and administration act; and providing for West Virginia tax crimes and penalties act to apply to international fuel tax agreements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. INTERSTATE FUEL TAX AGREEMENT.

§11-14B-1. Purpose.


§11-14B-3. Registration of motor carriers.


§11-14B-5. Scope of agreement.

§11-14B-6. Effect of international fuel tax agreement.

§11-14B-7. Effective date of international fuel tax agreement or amendment.

§11-14B-8. Copy of agreement to be maintained by tax commissioner.


§11-14B-10. Audits.

§11-14B-11. Disposition of moneys; international fuel tax agreement clearing fund.

§11-14B-12. Regulations.


§11-14B-17. Severability.

§11-14B-1. Purpose.

1 This article is enacted to conform laws of this state

2 relating to registration of motor carriers and reporting

3 and payment of motor fuel use taxes with requirements
of the “Intermodal Surface Transportation and Efficiency Act of 1991”, Public Law 102-240. More specifically:

(1) Section 4005 of that act requires establishment of a single state registration system for commercial motor carriers. Under this system, a motor carrier is required to register annually only with one state. Single state registration is deemed to satisfy the registration requirements of all other states.

(2) Section 4008 of that act mandates state participation in the international registration plan and adoption of the international fuel tax agreement by providing that after the thirtieth day of September, one thousand nine hundred ninety-six:

(A) No state (other than a state participating in the international registration plan) may establish, maintain or enforce any commercial motor vehicle registration law, regulation or agreement which limits the operation of any commercial motor vehicle within its borders which is not registered under the laws of the state if the vehicle is registered under the laws of any other state participating in the international registration plan;

(B) No state may establish, maintain or enforce any law or regulation which has fuel use tax reporting requirements (including tax reporting forms) which are not in conformity with the international fuel tax agreement; and

(C) No state may establish, maintain or enforce any law or regulation which provides for the payment of a fuel use tax unless such law or regulation is in conformity with the international fuel tax agreement with respect to collection of such tax by a single base state and proportional sharing of such taxes charged among the states in which a commercial motor vehicle is operated.


(a) “Commercial motor vehicle”: (1) As used with respect to the international registration plan, has the meaning the term “apportionable vehicle” has under
(b) "Fuel use tax" means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

c) "International fuel tax agreement" means the international agreement for the collection and distribution of fuel use taxes paid by motor carriers, developed under the auspices of the national governors' association.

d) "International registration plan" means the interstate agreement for the apportionment of vehicle registration fees paid by motor carriers developed by the American association of motor vehicle administrators.

(e) "Motor fuel use taxes imposed by this state" means the aggregate amount of taxes, expressed in cents per gallon, imposed by this state, under articles fourteen-a and fifteen-a of this chapter, on gasoline or special fuel consumed in this state by a motor carrier.

(f) "State" means any of the forty-eight contiguous states and the District of Columbia, and any other jurisdiction which imposes a motor fuel use tax and is a member of the international fuel tax agreement.

§11-14B-3. Registration of motor carriers.

(a) To facilitate adoption of the single point registration system in this state, the powers, duties and responsibilities of the tax commissioner under section seven, article fourteen-a of this chapter, are transferred to the commissioner of the division of motor vehicles effective with the registration year that begins the first day of July, one thousand nine hundred ninety-five: Provided, That no registration marker or trip permit shall be required under section seven, article fourteen-a of this chapter of a motor carrier based in another state which is a member of the international fuel tax agreement.

(b) Beginning with the registration year specified in subsection (a) of this section, the commissioner of motor vehicles shall furnish the tax commissioner with motor
carrier registration information and information pertaining to the trip permit registration program for use by the tax commissioner in collecting motor fuel taxes.

(c) Also beginning with the registration year specified in subsection (a) of this section, the tax commissioner shall furnish the commissioner of motor vehicles with the taxpayer identity information for any motor carrier which fails to file required returns or report for, or to pay, the motor fuel use taxes imposed by this state. This information may give the commissioner of motor vehicles sufficient cause to revoke or refuse to renew the identification marker previously issued under section seven, article fourteen-a of this chapter.

(d) Information exchanged pursuant to this section shall be used solely for tax administration and motor carrier registration purposes and shall be treated as confidential information for all other purposes as provided in article ten of this chapter.


(a) The tax commissioner may enter into cooperative reciprocal international fuel tax agreements on behalf of the state of West Virginia with the appropriate authorities of another state or group of states for administration of the motor fuel use taxes imposed by this state.

(b) The tax commissioner may enter into any ancillary or related agreements on behalf of this state with the appropriate officials of one or more other states, or the federal government which the tax commissioner considers appropriate and necessary to fully implement any international fuel tax agreement entered into under subsection (a) of this section.

§11-14B-5. Scope of agreement.

An international fuel tax agreement may provide for:

(a) Determining the base state of motor carriers;

(b) Making and retaining of records by motor carriers;
(c) Auditing the books and records of motor carriers and auditing procedures;
(d) Exchanging information for purposes of motor fuel use tax administration and collection;
(e) Determining persons eligible for a motor carrier tax license or registration;
(f) Defining qualified motor vehicles;
(g) Determining if or when bonding is required;
(h) Specify reporting requirements and periods;
(i) Specifying uniform penalty and interest rates for late reporting and payment of motor fuel use taxes;
(j) Determining methods for collecting and forwarding of motor fuel use taxes and penalties to another jurisdiction; and
(k) Any other provision which the parties to the agreement believe will facilitate administration of the agreement and collection of motor fuel use taxes from interstate motor carriers.

§11-14B-6. Effect of international fuel tax agreement.
(a) The reporting requirements provided in the international fuel tax agreement shall take precedence over the reporting requirements provided in article fourteen-a of this chapter.
(b) Where the international fuel tax agreement and the provisions of article fourteen-a of this chapter and any amendments thereto subsequently made address the same matters, the provisions of the international fuel tax agreement shall take precedence.
(c) The amount of international fuel tax agreement taxes reported as due and owing by a motor carrier based in this state shall for purposes of articles nine and ten of this chapter be treated as taxes due and owing to the state of West Virginia.
(d) Interstate motor fuel users based in another state which is not a member of the international fuel tax agreement shall continue to be subject to the provisions
§11-14B-7. Effective date of international fuel tax agreement or amendment.

The terms of an international fuel tax agreement, or an amendment thereto, shall not be effective until they are stated in writing and a properly executed copy is filed with the tax commissioner.

§11-14B-8. Copy of agreement to be maintained by tax commissioner.

A current copy of the international fuel tax agreement shall be maintained by the tax commissioner. A current copy of the international fuel tax agreement and any amendment thereto shall be published in the state register.


(a) The tax commissioner may, as required by the terms of any agreement executed under section four of this article, forward to the proper officers of any party to such agreement any information in the tax commissioner’s possession relative to the manufacture, receipt, sale, use, transportation or shipment of motor fuels by any person.

(b) The tax commissioner may disclose to the proper officers of any party to an agreement executed under section four of this article the location of offices, motor vehicles and other real and personal property of users of motor fuels.

(c) Information which the tax commissioner is authorized to disclose under this article, which is confidential information under article ten of this chapter when in the possession of the tax commissioner, shall be treated as confidential information by the recipient thereof and that information may be used only for tax administration purposes.

(d) In the event of any inconsistency between the disclosure of information rules specified in this article and the confidentiality rules provided in article ten of this chapter when in the possession of the tax commissioner, shall be treated as confidential information by the recipient thereof and that information may be used only for tax administration purposes.
this chapter, the language of this article shall control.

§11-14B-10. Audits.

(a) The international fuel tax agreement may provide for each state to audit the records of motor carriers based in that state to determine if the motor fuel taxes due each state are properly reported and paid. When a base state performs a motor fuel use tax audit on an interstate motor carrier based in that state, it shall forward the findings of such audit to each state in which the interstate motor carrier has taxable use of motor fuels.

(b) No international fuel tax agreement entered into under this article may preclude the tax commissioner from auditing the records of any person covered by the provisions of this article.

§11-14B-11. Disposition of moneys; international fuel tax agreement clearing fund.

(a) International fuel tax agreement clearing fund. — All amounts collected under the international fuel tax agreement shall be deposited daily by the tax commissioner into the international fuel tax agreement clearing fund which is hereby created in the state treasury.

(b) Distributions. — The tax commissioner shall distribute funds in the international fuel tax agreement clearing fund as follows:

(1) Payments due and owing to member jurisdictions under the international fuel tax agreement shall be distributed as provided in the agreement.

(2) Refunds for over payment of motor fuel taxes by a West Virginia based interstate motor carrier shall be made from the fund.

(3) The tax commissioner shall periodically reconcile the international fuel tax agreement clearing fund and, after reconciliation, transfer to the state road fund all deposits in the clearing fund of motor fuel use taxes imposed by articles fourteen-a and fifteen-a of this chapter.
(c) Investment of funds. — Funds in the international fuel tax agreement clearing fund shall be invested in the same manner as funds in the state road fund and all earnings from these investments shall be deposited in the state treasury and credited to the state road fund: Provided, That these investments shall not affect or interfere with distributions from the fund in accordance with the terms of the international fuel tax agreement.

§11-14B-12. Regulations.

The tax commissioner may adopt rules for the implementation, administration or enforcement of an international fuel tax agreement. These rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.


The legal remedies of any person served with an order or assessment under this article shall be those provided in this code to taxpayers in this state.


(a) All of the provisions of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, including amendments thereto, apply to motor fuel taxes collected under an international fuel tax agreement.

(b) In the event of any inconsistency between the provisions of article ten of this chapter and the terms of the international fuel tax agreement, the terms of the international fuel tax agreement shall control.


All of the provisions of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter, including amendments thereto, apply to the international fuel tax agreement taxes collectible under this article.


The division of motor vehicles shall reimburse the tax commissioner for costs incurred by the tax commissioner to implement agreements entered into under this
section and for any additional expenses as may be incurred by the tax commissioner to collect motor fuel use taxes under these agreements, when these expenses are not provided for in the tax division's annual budget appropriation. For the fiscal year of the state that begins on the first day of July, one thousand nine hundred ninety-four, the reimbursement amount shall be six hundred twenty thousand dollars. The amount of reimbursement shall be renegotiated each fiscal year thereafter.

§11-14B-17. 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, that judgment shall not affect, impair or invalidate the remainder of this article, but shall be confined in its operation to the provision of this article directly involved in the controversy in which such judgment was rendered and the material facts therein, and the applicability of the provision to other persons or circumstances shall not be affected by the judgment.

CHAPTER 171

(Com. Sub. for S. B. 328—By Senators Ross, Sharpe, Helmick, Dittmar, Anderson, Humphreys, Schoonover, Minard, Wooton, Manchin and Yoder)

[Passed March 12, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state consumers sales tax; and providing a definition of the phrase "production of natural resources".

Be it enacted by the Legislature of West Virginia:

That section two, article fifteen, 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 15. CONSUMERS SALES TAX.


1 For the purpose of this article:

(a) "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.

(b) "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.

(c) "Contracting":

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

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

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

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

(B) The term “alteration” means, and is limited to,
alterations which are capital improvements to a build-
ing or structure or to real property.

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

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

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

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

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

(d) (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.

(e) (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 or 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.

(f) “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.

(g) “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 of this chapter.
(h) "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.

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

(j) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming 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.

(k) "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.
(l) "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.

(m) "Personal service" includes those:

(1) Compensated by the payment of wages in the ordinary course of employment; and

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

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

(o) "Production of natural resources" means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith. For the natural resources oil and gas, "production of natural resources" means the performance, by either the owner of the natural resources, a contractor, or a subcontractor, of the act or process of exploring, developing, drilling, well stimulation activities such as logging, perforating or fracturing, well completion activities such as the installation of the casing, tubing and other machinery and equipment, and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced. All work
performed to install or maintain facilities up to the point of sale for severance tax purposes would be included in the "production of natural resources" and subject to the direct use concept. "Production of natural resources" does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subsection as "production of natural resources".

(p) "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.

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

(r) "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.

(s) "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.

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

(u) "Tax commissioner" means the state tax commis-
(v) "Taxpayer" means any person liable for the tax imposed by this article.

(w) "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.

(x) "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.

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

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

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CHAPTER 172

(H. B. 2473—By Delegate Pettit)

[Passed March 11, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-d, article fifteen-a of said chapter, all relating to consumers sales tax and use tax and providing for permanently assigned direct pay permits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.
§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules promulgated by him in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code, those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of such direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the tax commissioner by the permit holder.

2 (b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumer sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary: Provided, That if the amount of consumers sales and use taxes due averages less than one hundred dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly
returns and the amount of tax shown thereon to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than fifty dollars per calendar quarter, the tax commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown thereon to be due shall be remitted on or before the last day of January each year. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time, upon such terms as the tax commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on such tax shall be chargeable on every such extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit shall automatically be renewed when the taxpayers business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of
82 a direct payment permit, the provisions of this chapter, 83 without regard to this section, shall thereafter apply to 84 the person who previously held such permit, and such 85 person shall promptly so notify in writing vendors from 86 whom tangible personal property or services are pur- 87 chased or leased of such cancellation or surrender. Upon 88 receipt of such notice, the vendor shall be subject to the 89 provisions of this chapter, without regard to this section, 90 with respect to all sales, distributions, leases or storage 91 of tangible personal property, thereafter made to or for 92 such person.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, 2 the tax commissioner may, pursuant to rules promul- 3 gated by him in accordance with article three, chapter 4 twenty-nine-a of this code, authorize a person (as defined 5 in section two of article fifteen) that is a user, consumer, 6 distributor or lessee to which sales or leases of tangible 7 personal property are made or services provided to pay 8 any tax levied by this article or article fifteen of this 9 chapter directly to the tax commissioner and waive the 10 collection of the tax by that person’s vendor. No such 11 authority shall be granted or exercised except upon 12 application to the tax commissioner and after issuance 13 by the tax commissioner of a direct pay permit. Each 14 direct pay permit granted pursuant to this section shall 15 continue to be valid until surrendered by the holder or 16 canceled for cause by the commissioner. The commis- 17 sioner shall prescribe by rules promulgated in accor- 18 dance with article three, chapter twenty-nine-a of this 19 code, those activities which will cause cancellation of a 20 direct pay permit issued pursuant to this section. Upon 21 issuance of such direct pay permit, payment of the tax 22 imposed or assertion of the exemptions allowed by this 23 article or article fifteen of this chapter on sales and 24 leases of tangible personal property and sales of taxable 25 services from the vendors thereof shall be made directly 26 to the tax commissioner by the permit holder.

27 (b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax commis-
sioner a consumers sales and use tax direct pay permit
return for the preceding month in the form prescribed
by the tax commissioner showing the total value of the
tangible personal property so used, the amount of
taxable services purchased, the amount of tax due from
the permit holder, which amount shall be paid to the tax
commissioner with such return, and such other informa-
tion as the tax commissioner deems necessary: Provided,
That if the amount of consumers sales and use taxes due
averages less than one hundred dollars per month, the
tax commissioner may permit the filing of quarterly
returns in lieu of monthly returns and the amount of tax
shown thereon to be due shall be remitted on or before
the fifteenth day following the close of the calendar
quarter; and if the amount due averages less than fifty
dollars per calendar quarter, the tax commissioner may
permit the filing of an annual direct pay permit return
and the amount of tax shown thereon to be due shall be
remitted on or before the last day of January each year.
The tax commissioner, upon written request filed by the
permit holder before the due date of the return, may
grant a reasonable extension of time, upon such terms
as the tax commissioner may require, for the making
and filing of direct pay permit returns and paying the
tax due. Interest on such tax shall be chargeable on
every such extended payment at the rate specified in
section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall
continue to be valid until expiration of the taxpayer's
registration year under article twelve of this chapter.
This permit shall automatically be renewed when the
taxpayer's business registration certificate is issued for
the next succeeding fiscal year, unless the permit is
surrendered by the holder or canceled for cause by the
tax commissioner.

(d) Persons who hold a direct payment permit which
has not been canceled shall not be required to pay the
tax to the vendor as otherwise provided in this article
or article fifteen of this chapter. Such persons shall
notify each vendor from whom tangible personal
property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom tangible personal property or services are purchased of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales of tangible personal property or taxable services, thereafter made to or for such person.

CHAPTER 173
(H.B. 4175—By Delegates Kiss and Browning)

[Passed February 14, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred
ninety-two; 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-four, 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-three, 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-four, shall be given effect.

(b) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-four shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-three, to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-three, the law in effect for each of those years shall be fully preserved as to each such year.
AN ACT to amend and reenact sections eight and nine, article eight, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to stale dated checks held by state, local or federal entities; including stale dated checks as intangible property under the uniform disposition of unclaimed property act; relating to money order abandonment; and establishing time period for a presumption of abandonment of money orders as seven years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

§36-8-8. Property held by courts and public officers and agencies.

§36-8-9. Miscellaneous personal property held for another person; exception; prohibiting the levying of charges on inactive savings account.

§36-8-8. Property held by courts and public officers and agencies.

1 (a) All intangible personal property, including stale dated checks, 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.

13 (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
years after such estate or interest has vested or any such
class has closed and the persons entitled to such
property have been determined.

§36-8-9. Miscellaneous personal property held for
another person; exception; prohibiting the
levying of charges on inactive savings
account.

(a) 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
19 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.

(b) Any amount held by any organization for the payment of a money order on which such organization is directly liable shall be presumed abandoned if such amount is held or owing for payment of a money order which may have been outstanding for more than seven years from the date of its sale.

CHAPTER 175

(Com. Sub. for S. B. 377—By Senators Burdette, Mr. President, and Boley) [By Request of the Executive]

[Passed March 9, 1994; 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; to amend and reenact sections ten and ten-b, article five of said chapter; to amend and reenact sections one, ten and eleven, article six of said chapter; and to amend and reenact section four, article seven of said chapter, all relating to unemployment compensation; definitions; permissible earnings; surtax on foreign construction employers; transfers of businesses; contribution rates; eligibility requirements; updating benefit tables; and notice of hearings.

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; that sections ten and ten-b, article five of said chapter be amended and reenacted; that sections one, ten and eleven, article six of said chapter be amended and reenacted; that section four, article seven of
said chapter be amended and reenacted, all to read as follows:

Article
1. Unemployment Compensation.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

1. As used in this chapter, unless the context clearly requires otherwise:
2. "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.
3. "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.
4. "Average annual payroll" means the average of the last three annual payrolls of an employer.
5. "Base period" means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.
6. "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.
7. "Base period wages" means wages paid to an individual during the base period by all his base period employers.
8. "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
2118 \hspace{4cm} \textbf{UNEMPLOYMENT COMPENSATION} \hspace{4cm} [Ch. 175]

69 some portion of a day, not necessarily simultaneously, in
70 each of twenty different calendar weeks, which weeks
71 need not be consecutive, within either the current
72 calendar year, or the preceding calendar year, has had
73 in employment four or more individuals irrespective of
74 whether the same individuals were or were not em-
75 ployed on each of such days;

76 (2) Any employing unit which is or becomes a liable
77 employer under any federal unemployment tax act;

78 (3) Any employing unit which has acquired or
79 acquires the organization, trade or business, or substan-
80 tially all the assets thereof, of an employing unit which
81 at the time of such acquisition was an employer subject
82 to this chapter;

83 (4) Any employing unit which, after the thirty-first
84 day of December, one thousand nine hundred sixty-
85 three, and until the first day of January, one thousand
86 nine hundred seventy-two, in any one calendar quarter,
87 in any calendar year, has in employment four or more
88 individuals and has paid wages for employment in the
89 total sum of five thousand dollars or more, or which,
90 after such date, has paid wages for employment in any
91 calendar year in the sum total of twenty thousand
92 dollars or more;

93 (5) Any employing unit which, after the thirty-first
94 day of December, one thousand nine hundred sixty-
95 three, and until the first day of January, one thousand
96 nine hundred seventy-two, in any three-week period, in
97 any calendar year, has in employment ten or more
98 individuals;

99 (6) For the effective period of its election pursuant to
100 section three, article five of this chapter, any employing
101 unit which has elected to become subject to this chapter;

102 (7) Any employing unit which, after the thirty-first
103 day of December, one thousand nine hundred seventy-
104 one: (i) In any calendar quarter in either the current or
105 preceding calendar year paid for service in employment
106 wages of one thousand five hundred dollars or more; or
107 (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 employ-
ment, 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 employ-
ment, 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 employ-
ment, as defined in paragraphs (b) and (c), 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 compensation 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 incidental 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, occupation, profession or business;

(8) All service performed by an officer or member of the crew of an American vessel (as defined in Section 305 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 instrumentalities 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 "employment" 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 the 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 paragraphs (a) and (b) of this subdivision 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, 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; 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, 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, 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 paragraph (c) of this subdivision: (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, 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, 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 subparagraph (i) of this paragraph, 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
subparagraphs (i) and (ii) of this paragraph are not
applicable with respect to service performed in connec-
tion 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, 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 “employ-
ment” in this section;

(7) Service performed by an individual in the employ
of his son, daughter or spouse;

(8) Service performed by a child under the age of
eighteen years in the employ of his father or mother;

(9) Service as an officer or member of a crew of an
American vessel, performed on or in connection with
such vessel, if the operating office, from which the
operations of the vessel operating on navigable waters
within or without the United States are ordinarily and
regularly supervised, managed, directed and controlled,
is without this state;

(10) Service performed by agents of mutual fund
broker-dealers or insurance companies, exclusive of
industrial insurance agents, or by agents of investment
companies, who are compensated wholly on a commis-
sion basis;

(11) Service performed: (i) In the employ of a church
or convention or association of churches, or an organi-
ization which is operated primarily for religious pur-
poses and which is operated, supervised, controlled or
principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to the first day of January, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to the first day of January, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after the thirty-first day of December, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college or university, if such service is performed: (i) By a student who is enrolled and is regularly attending classes at such school, college or university; or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that: (I) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college or university; and (II) such employment will not be covered by any program of unemployment insurance;

(13) Service performed by an individual who is enrolled at a nonprofit or public educational institution
which normally maintains a regular faculty and
curriculum and normally has a regularly organized
body of students in attendance at the place where its
educational activities are carried on as a student in a
full-time program, taken for credit at such institution,
which combines academic instruction with work expe-
rience, 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-
formed 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,
der 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 compen-
sation 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 educa-
tional 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 postgraduate or
postdoctoral 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 unemploy-
ment compensation fund as provided in article five of
this chapter.

“Reorganized employer” means: (1) An employer that
alters its legal status, including changing from a sole
proprietorship or a partnership to a corporation; or (2)
an employer that otherwise changes its trade name or
business identity while remaining under substantially
"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.

"Successor employer" means an employer that acquires, by sale or otherwise, the entire organization, trade or business, or substantially all the assets thereof of another employer.

"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 sixty dollars: Provided, That said individual must have earnings of at least sixty-one 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 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-seven; 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, 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 remuneration in excess of four thousand two hundred dollars; or (d) effective on or after the first day of January, one thousand nine hundred seventy-eight, to include remuneration in excess of 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 deter­
mined 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 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and
rates; debit balance account rates.


§21A-5-10. Experience ratings; decreased rates; adjust­
ment of accounts and rates; debit balance
account rates.

(a) On and after the first day of July, one thousand
nine hundred eighty-one, an employer's payment shall
remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months
immediately preceding the computation date throughout
which an employer's account was chargeable with
benefits.
(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of the first day of January of a calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of the first day of January of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of the first day of January of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

TABLE II

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All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective the thirtieth day of June, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of the thirtieth day of June, one thousand nine hundred eighty-four, the noncredited contribution identified in section seven of this article shall not be added to the employer's debit balance to determine the employer contribution rate.

Effective on and after the computation date of the thirtieth day of June, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after the first day of July, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.
Effective on or after the first day of July, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of the thirtieth day of June, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after the first day July, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions
received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the state of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment.

(c) Effective the thirtieth day of June, one thousand nine hundred eighty-five, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the noncredited tax shall be reduced to zero.

(d) On and after the first day of January, one thousand nine hundred ninety-one, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits; and

(2) The payments credited to the account for all past years exceed the benefits charged to the account by an amount equal to at least the percent of the average annual payroll as shown in Column B of Table III. The rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of the first day of January of a calendar year equal or exceed one and seventy-five one-hundredths percent but are less than two and twenty-five one-hundredths percent of gross
covered wages for the twelve-month period ending on
the thirtieth day of June of the preceding year, an
employer's rate shall be the amount appearing in
Column D of Table III on line with the percentage in
Column B.

When the total assets of the fund as of the first day
of January of a calendar year equal or exceed two and
twenty-five one-hundredths percent but are less than
two and seventy-five one-hundredths percent of gross
covered wages for the twelve-month period ending on
the thirtieth day of June of the preceding year, an
employer's rate shall be the amount appearing in
Column E of Table III on line with the percentage in
Column B.

When the total assets of the fund as of the first day
of January of a calendar year equal or exceed two and
seventy-five one-hundredths percent but are less than
three percent of gross covered wages for the twelve-
month period ending on the thirtieth day of June of the
preceding year, an employer's rate shall be the amount
appearing in Column F of Table III on line with the
percentage in Column B.

When the total assets of the fund as of the first day
of January of a calendar year equal or exceed three
percent of gross covered wages for the twelve-month
period ending on the thirtieth day of June of the
preceding year, an employer's rate shall be the amount
appearing in Column G of Table III on line with the
percentage in Column B.

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208 (5)  9.0  3.5  3.0  2.5  2.0  1.0  
209 (6) 10.0  3.3  2.8  2.3  1.8  0.8  
210 (7) 10.5  3.1  2.6  2.1  1.6  0.6  
211 (8) 11.0  2.9  2.4  1.9  1.4  0.4  
212 (9) 11.5  2.7  2.2  1.7  1.2  0.2  
213 (10) 12.0  2.5  2.0  1.5  1.0  0.0  
214 (11) 12.5  2.3  1.8  1.3  0.8  0.0  
215 (12) 13.0  2.1  1.6  1.1  0.6  0.0  
216 (13) 14.0  1.9  1.4  0.9  0.4  0.0  
217 (14) 16.0  1.7  1.2  0.7  0.2  0.0  
218 (15) 18.0 and over  1.5  1.0  0.5  0.0  0.0  

(e) Notwithstanding any other provision of this section, all employers' rates for the calendar year beginning the first day of January, one thousand nine hundred ninety, and ending on the thirty-first day of December, one thousand nine hundred ninety, shall be the amount in Column D of Table II on line with the percentage in Column B.


If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to another employer, the commissioner shall combine the contribution records and the benefit experience records of the transferring and acquiring employers. The acquiring employer's contribution rate for the remainder of the calendar year shall not be affected by the transfer but such rate shall apply to the whole of his business, including the portion acquired by the transfer, through the following thirty-first day of December. If a subject employer shall make such transfer to an employing unit which is not an employer on the date of the transfer, such subject employer's rate shall continue as the rate of the acquiring employing unit until the next effective rate date. If an employing unit acquires simultaneously the entire organization, trade or business, or substantially all the assets thereof, of two or more covered employers, the successor shall be assigned as a contribution rate the then current rate.
of the transferring employer which had, in the calendar quarter immediately preceding the date of the transfer, the higher or highest payroll. If a subject employer shall transfer his entire organization, trade or business, or substantially all the assets thereof, to two or more employers or employing units, apportionment of the contribution records and benefit experience records of the transferring employer shall be made between the acquiring units in accordance with the ratio that the total assets acquired by each transferee bears to the total assets transferred by the transferring employer as of the date of the transfers. The current contribution rate of the transferring employer shall in such case continue as the rate of each transferee who or which is an employing unit until the next effective rate date; the current contribution rate of each transferee who or which is an employer shall continue as his or its rate until the next effective rate date. For the succeeding calendar year the rate of each transferee shall be determined as provided in section ten of this article. As to any transfers which occur prior to the thirty-first day of July of the current calendar year such rate shall remain effective for the balance of that calendar year: Provided, That if the transfers occur subsequent to the thirty-first day of July of the current calendar year such rate shall remain effective for the balance of that calendar year and the rate for the succeeding calendar year shall, notwithstanding anything to the contrary provided in section seven of this article, be recomputed on the basis of the combined experience of the transferring employers as of the thirty-first day of July of the year in which the transfers occur. In case the transferring employer is delinquent in the payment of contributions or interest thereof the acquiring employer shall not be entitled to any benefit of the contribution record of the transferring employer unless payment of such delinquent contributions and interest thereon is assumed by the acquiring employer. The commissioner shall upon joint request of the transferor and transferee furnish the transferee a statement of the amount of any contribution and interest due and unpaid by the transferor. A statement so furnished shall be controlling for the purposes of the
The provisions of this section shall not apply to any employer which is established through the assistance of any state economic development agency irrespective of the contribution rate of any related predecessor.

A reorganized employer shall keep the contribution rate of the employing unit before the reorganization and be liable for all contributions, interest and penalties owed by the employing unit before the reorganization. If the predecessor does not remain in business after the transfer of all or part of the assets, business, organization, or trade of the predecessor employer: (1) The successor employer is liable for all contributions, interest and penalties owed by the predecessor employer at the time of the transfer; and (2) if two or more successor employers receive the transfer, the successor employers shall be liable in the same proportion as the assets of the unit being transferred is to the total assets of the predecessor employer.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.


§21A-6-1. Eligibility qualifications.

An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

(1) He has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;

(2) He has made a claim for benefits in accordance with the provisions of article seven of this chapter and has furnished his social security number, or numbers if he has more than one such number;

(3) He is able to work and is available for full-time work for which he is fitted by prior training or experience and is doing that which a reasonably prudent person in his circumstances would do in seeking work;
(4) He has been totally or partially unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total or partial unemployment;

(5) He has within his base period been paid wages for employment equal to not less than two thousand two hundred dollars and must have earned wages in more than one quarter of his base period; and

(6) Beginning the first day of November, one thousand nine hundred ninety-four, he participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

(a) The individual has completed such services; or

(b) There is justifiable cause for the claimant's failure to participate in such services.

§21A-6-10. Benefit rate — Total unemployment; annual computation and publication of rates.

Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in section three, article one of this chapter. The employee's wage class shall be determined by his base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages. An individual who is totally unemployed but earns in excess of sixty dollars as a result of odd-job or subsidiary work, or is paid a bonus in any benefit week shall be paid benefits for such week in accordance with the provisions...
The maximum benefit for each wage class shall be equal to twenty-six times the weekly benefit rate.

On and after the first day of July, one thousand nine hundred eighty-five, and until the first day of July, one thousand nine hundred eighty-nine, the maximum weekly benefit rate shall be seventy percent of the average weekly wage in West Virginia, which average weekly wage shall not exceed three hundred twenty-two dollars per week; thereafter, the maximum benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

Beginning on the first day of July, one thousand nine hundred eighty-nine, and on the first day of July of each succeeding year thereafter, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.

**BENEFIT TABLE**

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After he has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning
wages in covered employment into the total wages paid
to employees in West Virginia in covered employment,
and by further dividing said result by fifty-two, and
shall be determined from employer wage and contribu-
tion reports for the previous calendar year which are
furnished to the department on or before the first day
of June following such calendar year. The average
weekly wage, as determined by the commissioner, shall
be rounded to the next higher dollar.

The computation and determination of rates as
aforesaid shall be completed annually before the first
day of July, and any such new wage class, with its
corresponding wages in base period, weekly benefit rate,
and maximum benefit in a benefit year established by
the commissioner in the foregoing manner effective on
a first day of July, shall apply only to a new claim
established by a claimant on and after said first day of
July, and shall not apply to continued claims of a
claimant based on his new claim established before said
first day of July.


An eligible individual who is partially unemployed in
any week shall, upon claim therefor filed within such
time and in such manner as the commissioner may by
regulation prescribe, be paid benefits for such partial
unemployment in an amount equal to his weekly benefit
rate, as determined in accordance with section ten of
this article, less that part of wages from any source
payable or bonus paid to him with respect to such week
which is in excess of sixty dollars: Provided, That such
amount of benefits if not a multiple of one dollar shall
be computed to the next lowest multiple of one dollar.
Such partial benefits shall be paid to such individual for
the week for which he is claiming benefits without
regard to the provisions of subdivision (1), section one
of this article.

ARTICLE 7. CLAIM PROCEDURE.

§21A-7-4. Investigation by deputy; notice and hearing
before deputy; referral of labor dispute claims for hearing and determination by
appeal tribunal; initial determination of
other claims by deputy; notice of findings and decision.

(a) A deputy shall promptly investigate all claims.

(b) Upon the filing of any claim for benefits, notice thereof shall promptly be given by the commissioner or his designee to the employer concerned, in writing. The employer shall have a period of four calendar days from the receipt of such notice within which to furnish to the deputy or his local office initial information respecting the claim and the facts and circumstances pertaining to the claimant's unemployment. If, within said four-day period, any party shall request a hearing before the deputy, such hearing shall be held, upon notice to all parties by the commissioner or his designee, either by delivery in person or by mail, within five calendar days of receipt of such request. Such hearing shall be informal in nature, but shall afford the parties reasonable opportunity to present, in person, information relevant to the eligibility and disqualification of the claimant.

(c) If it appears from the deputy's investigation and from all of the information before him, that a claim relates to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the claim shall be transferred to the board for full hearing and initial determination by an appeal tribunal.

(d) If it appears from the deputy's investigation, and from all of the information before him, that a claim does not relate to a labor dispute or to a disqualification under subdivision (4), section three, article six of this chapter, the deputy shall determine whether or not such claim is valid, and, if valid, shall determine:

(1) The week with respect to which benefits will commence;

(2) The amount of benefit;

(3) The maximum duration of benefits.

(e) After any finding or determination by a deputy, the deputy shall promptly notify the claimant and the employer of his findings and decision.
AN ACT to amend and reenact section two hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred one, one hundred three and one hundred eight, article four of said chapter, all relating to the uniform common interest ownership act; increasing maximum annual assessment; modifying exemptions for making public offerings; providing for amendments to declaration by a majority of unit owners rather than by unanimous consent; requiring a showing of actual damages by a purchaser who did not receive public offering; and imposing a three-year statute of limitation on claims for damages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-203. Applicability to new common interest communities. — Exception for small and limited expense liability planned communities.

1 If a planned community:

2 (1) Contains no more than twelve units and is not subject to any development rights; or

3 (2) Provides, in its declaration, that the annual
average common expense liability of all units restricted
to residential purposes, exclusive of optional user fees
and any insurance premiums paid by the association,
may not exceed three hundred dollars as adjusted
pursuant to section 1-114 (adjustment of dollar
amounts), it is subject only to sections 1-105 (separate
titles and taxation), 1-106 (applicability of local ordinan-
ces, regulations and building codes) and 1-107 (eminent
domain) unless the declaration provides that this entire
chapter is applicable.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.
§36B-4-103. Public offering statement; general provisions.
§36B-4-108. Purchaser's right to cancel.

§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this
chapter except as provided in subsection (b) or as
modified or waived by agreement of purchasers of units
in a common interest community in which all units are
restricted to nonresidential use.

(b) Neither a public offering statement nor a resale
certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental
agency;

(4) A disposition by foreclosure or deed in lieu of
foreclosure;

(5) A disposition to a dealer;

(6) A disposition that may be canceled at any time and
for any reason by the purchaser without penalty; or

(7) A disposition of a unit in a planned community in
which the declaration limits the maximum annual
assessment of any unit to not more than five hundred
dollars, as adjusted pursuant to section 1-114 (Adjust-
ment of dollar amounts) if:
22  (i) The declarant has a reasonable and good faith
23  belief that the maximum stated assessment will be
24  sufficient to pay the expenses of the planned community;
25  (ii) The declaration cannot be amended to increase the
26  assessment during the period of declarant or declarant's
27  family control without the consent of a majority of unit
28  owners other than the declarant; and
29  (iii) The planned community is not subject to any
30  development rights.

§36B-4-103. Public offering statement; general provisions.

1  (a) Except as provided in subsection (b), a public
2  offering statement must contain or fully and accurately
3  disclose:
4
5  (1) The name and principal address of the declarant
6  and of the common interest community and a statement
7  that the common interest community is either a
8  condominium, cooperative or planned community;
9
10  (2) A general description of the common interest
11  community, including to the extent possible, the types,
12  number, and declarant's schedule of commencement and
13  completion of construction of buildings and amenities
14  that the declarant anticipates including in the common
15  interest community;
16
17  (3) The number of units in the common interest
18  community;
19
20  (4) Copies and a brief narrative description of the
21  significant features of the declaration, other than any
22  plats and plans and any other recorded covenants,
23  conditions, restrictions and reservations affecting the
24  common interest community; the bylaws and any rules
25  or regulations of the association; copies of any contracts
26  and leases to be signed by purchasers at closing and a
27  brief narrative description of any contracts or leases
28  that will or may be subject to cancellation by the
29  association under section 3-105;
30
31  (5) Any current balance sheet and a projected budget
32  for the association, either within or as an exhibit to the
public offering statement, for one year after the date of
the first conveyance to a purchaser and thereafter the
current budget of the association, a statement of who
prepared the budget and a statement of the budget's
assumptions concerning occupancy and inflation factors.
The budget must include, without limitation:

(i) A statement of the amount or a statement that
there is no amount, included in the budget as a reserve
for repairs and replacement;

(ii) A statement of any other reserves;

(iii) The projected common expense assessment by
category of expenditures for the association; and

(iv) The projected monthly common expense assess-
ment for each type of unit;

(6) Any services not reflected in the budget that the
declarant provides, or expenses that he pays and which
he expects may become at any subsequent time a
common expense of the association and the projected
common expense assessment attributable to each of
those services or expenses for the association and for
each type of unit;

(7) Any initial or special fee due from the purchaser
at closing, together with a description of the purpose
and method of calculating the fee;

(8) A description of any liens, defects, or encumbran-
ces on or affecting the title to the common interest
community;

(9) A description of any financing offered or arranged
by the declarant;

(10) The terms and significant limitations of any
warranties provided by the declarant, including statu-
tory warranties and limitations on the enforcement	hereof or on damages;

(11) A statement that:

(i) Within fifteen days after receipt of a public
offering statement a purchaser, before conveyance, may
cancel any contract for purchase of a unit from a
declarant;

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community:

Provided, That purchaser is required to show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this paragraph is instituted within three years from the date on which purchaser's right of action shall have accrued; and

(iii) If a purchaser receives the public offering statement more than fifteen days before signing a contract, he cannot cancel the contract;

(12) A statement of any unsatisfied judgments or pending suits against the association and the status of any pending suits material to the common interest community of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4-108, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the common interest community and any restrictions: (i) On use, occupancy, and alienation of the units; and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be
paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 4-119 (Declarant's Obligation to Complete and Restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units; and

(20) In a cooperative, (i) whether the unit owners will be entitled, for federal, state and local income tax purposes, to a pass through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative; and (ii) a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than twelve units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17), (18) and (19) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

§36B-4-108. Purchaser's right to cancel.

(a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the
unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sale price of the unit, plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community: Provided, That purchaser must show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this subsection is instituted within three years from the date on which purchaser's right of action shall have accrued.

CHAPTER 177
(H. B. 4068—By Delegates Bennett and Manuel)

[Passed March 3, 1994; in effect ninety days from passage. Approved by the Governor.] AN ACT to amend and reenact section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the
veterans' preference on written examinations used to fill nonpartisan merit system positions in state government; and revising the definition of veteran to specifically include certain periods of active and reserve service and disabled veterans.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 For positions in any department or agency in which positions are filled under civil service or any job classification system, a preference of five points in addition to the regular numerical score received on examination shall be awarded to all veterans having qualified for appointment by making a minimum passing grade; and to all veterans awarded the purple heart, or having a compensable service-connected disability, as established by any proper veterans' bureau or department of the federal government, an additional five points shall be allowed.

For the purpose of this article, a person is defined as a "veteran" if he or she fulfills the requirements of one of the following subsections:

(a) Served on active duty anytime between the seventh day of December, one thousand nine hundred forty-one, and the first day of July, one thousand nine hundred fifty-five. However, any person who was a reservist called to active duty between the first day of February, one thousand nine hundred fifty-five, and the fourteenth day of October, one thousand nine hundred seventy-six must meet condition (b) stated below;

(b) Served on active duty anytime between the second day of July, one thousand nine hundred fifty-five, and
the fourteenth day of October, one thousand nine
hundred seventy-six, or a reservist called to active duty
between the first day of February, one thousand nine
hundred fifty-five, and the fourteenth day of October,
one thousand nine hundred seventy-six, and who served
for more than one hundred eighty days;

(c) Entered on active duty between the fifteenth day
of October, one thousand nine hundred seventy-six, and
the seventh day of September, one thousand nine
hundred eighty, or a reservist who entered on active
duty between the fifteenth day of October, one thousand
nine hundred seventy-six, and the thirteenth day of
October, one thousand nine hundred eighty-two, and
received a campaign badge or expeditionary medal or
is a disabled veteran; or

(d) Enlisted in the armed forces after the seventh day
of September, one thousand nine hundred eighty, or
entered active duty other than by enlistment on or after
the fourteenth day of October, one thousand nine
hundred eighty-two; and

(1) Completed twenty-four months of continuous
active duty or the full period called or ordered to active
duty, or was discharged under 10 U.S.C. 1171, or for
hardship under 10 U.S.C. 1173, and received or was
entitled to receive a campaign badge or expeditionary
medal; or

(2) Is a disabled veteran.

To receive veteran preference, separation from active
duty must have been under honorable conditions. This
includes honorable and general discharges. A clemency
discharge does not meet the requirements of the Veteran
Preference Act. Active duty for training in the military
reserve and national guard programs is not considered
active duty for purposes of veteran preference.

These awards shall be made for the benefit and
preference in appointment of all veterans who have
heretofore or who shall hereafter take examinations, but
shall not operate to the detriment of any person
heretofore appointed to a position in a department or
agency.
CHAPTER 178

(Com. Sub. for S. B. 360—By Senators Manchin, Wiedebusch, Wooten, Holliday, Macnaughtan, Schoonover and Chernenko)

[Passed March 9, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to regulation of trade; and weights and measures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-1. Definitions.
§47-1-2. State standards.
§47-1-3. Commissioner of labor to be commissioner of weights and measures; powers and duties; appointment of deputies and inspectors.
§47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.
§47-1-5. Requirements for packaging and labeling.
§47-1-6. Requirements for the method of sale of commodities.
§47-1-7. Requirements for unit pricing.
§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.
§47-1-9. Requirements for open dating.
§47-1-10. Requirements for type evaluation.
§47-1-11. Requirements for motor fuel.
§47-1-12. Misrepresentation of quantity.
§47-1-15. Sale from bulk.
§47-1-16. Information required on packages.
§47-1-17. Declarations of unit price on random weight packages.
§47-1-18. Advertising packages for sale.
§47-1-19. State weights and measures division.
§47-1-20. State measurement laboratory.
§47-1-22. Civil penalties.
§47-1-23. Criminal penalties.

§47-1-1. Definitions.
(a) "Commercial business" means any business, which
in the course of normal operation, offers or exposes
goods or services for sale, for the purpose of financial
or monetary gain.

(b) "Commercial location" means a physical location
or address where businesses conduct commercial
transactions. Each physical address or location consti-
tutes a separate "commercial location".

(c) "Commercial transaction" means the buying or
selling of goods or services.

(d) "Weight(s)” and/or “measure(s)” means all weights
and measures of every kind, instruments and devices for
weighing and measuring and any appliance and acces-
sories associated with any or all such instruments and
devices.

(e) “Weight” as used in connection with any commod-
ity or service means net weight. When a commodity is
sold by drained weight, the term means net drained
weight.

(f) “Correct” as used in connection with weights and
measures means conformance to all applicable require-
ments of this article.

(g) "Primary standards” means the physical standards
of the state that serve as the legal reference from which
all other standards and weights and measures are
derived.

(h) “Secondary standards” means the physical stand-
ards that are traceable to the primary standards
through comparisons, using acceptable laboratory
procedures, and used in the enforcement of weights and
measures laws and regulations.

(i) “Commissioner” means the commissioner of the
West Virginia division of labor.

(j) “Person” means both plural and the singular, as the
case demands, and includes individuals, partnerships,
corporations, companies, societies, associations and
government entities.
(k) "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

(l) "Package", whether standard package or random package, means any commodity:

(1) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or

(2) Whose weight or measure has been determined in advance of wholesale or retail sale.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or measure shall be considered a package (or packages).

(m) "Net weight" means the weight of a commodity excluding any materials, substances or items not considered to be part of the commodity. Materials, substances or items not considered to be part of the commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments and coupons, except that, depending on the type of service rendered, packaging materials may be considered to be part of the service. For example, the service of shipping includes the weight of packing materials.

(n) "Random weight package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with no fixed pattern of weights.

(o) "Standard package" means a package that is one of a lot, shipment or delivery of packages of the same commodity with identical net contents declarations. For example, one liter bottles of carbonated soda, five pound bags of sugar or 9.4 ounce packages of luncheon meat.

§47-1-2. State standards.

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state primary standards of weights and
measures, and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the commissioner and shall be verified upon their initial receipt, and as often thereafter as deemed necessary by the commissioner.

In addition to the state primary standards of weights and measures provided in this article, there shall be supplied by the state at least one complete set of copies of these standards, to be known as secondary standards; and such other weights, measures and apparatus as may be found necessary to carry out the provisions of this article, to be known as working standards. Such weights, measures and apparatus shall be verified by the commissioner, or at his discretion by his deputy or inspectors, upon the initial receipt of such weights, measures and apparatus and at least once in each year thereafter, the secondary standards by direct comparison with the primary standards, the working standards by comparison with the secondary standards. When found accurate upon these tests of secondary and working standards, the standards shall be marked as correct. The secondary standards shall be used in making all comparisons of weights, measures and weighing and measuring devices submitted for test in the office of the commissioner, and the primary standards shall be used only in verifying the primary standards and for scientific purposes.

§47-1-3. Commissioner of labor to be commissioner of weights and measures; powers and duties; appointment of deputies and inspectors.

The state commissioner of labor is the commissioner of weights and measures. He may appoint such deputies and inspectors as may be required to carry out the provisions and purposes of this article within the limits of such appropriation as may be made by the Legislature for the maintenance of the work of the division of labor.

The commissioner shall:

(a) Maintain traceability of the primary standards to
the national standards in the possession of the national
institute of standards and technology;

(b) Enforce the provisions of this article;

(c) Promulgate rules for the enforcement of this
article, which rules shall have the force and effect of
law;

(d) Establish labeling requirements, establish re-
quuirements for the presentation of cost-per-unit infor-
mation, establish standards of weight, measure or count
and reasonable standards of fill for any packaged
commodity, and may establish requirements for open
dating information;

(e) Grant any exemptions from the provisions of this
article or any rule promulgated pursuant thereto when
appropriate to the maintenance of good consumer
practices within the state;

(f) Conduct investigations to ensure compliance with
this article;

(g) Delegate to appropriate personnel any of these
responsibilities for the proper administration of this
office;

(h) Test annually the standards of weights and
measures used within the state, and approve the same
when found to be correct;

(i) Inspect and test weights and measures kept, of
offered or exposed for sale;

(j) Inspect and test, to ascertain if they are correct,
weights and measures commercially used:

(1) In determining the weight, measure or count of
commodities or things sold, or offered or exposed for
sale, on the basis of weight, measure or count; or

(2) In computing the basic charge or payment for
services rendered on the basis of weight, measure or
count;

(k) Test all weights and measures used in checking
the receipt or disbursement of supplies in every
institution, for the maintenance of which funds are appropriated by the Legislature;

(l) Approve for use, and shall mark, such weights and measures as are found to be correct, and shall reject and mark as rejected such weights and measures as are found to be incorrect. Weights and measures that have been rejected may be seized if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The commissioner shall condemn and may seize and destroy the weights and measures found to be incorrect that are not capable of being made correct;

(m) Weigh, measure or inspect packaged commodities kept, offered or exposed for sale, sold or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this article or rules promulgated pursuant thereto. In carrying out the provisions of this article, the commissioner shall employ recognized sampling procedures, such as are designated in national institute of standards and technology handbook 133, "Checking the Net Contents of Packaged Goods";

(n) Prescribe, by rule, the appropriate term or unit of weight or measure to be used, whenever the commissioner determines that an existing practice of declaring the quantity of a commodity or setting charges for a service by weight, measure, numeric count, time or combination thereof, does not facilitate value comparisons by consumers, or offers an opportunity for consumer confusion;

(o) Allow reasonable variations from the stated quantity of contents, which shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice only after the commodity has entered intrastate commerce;

(p) Provide for the training of weights and measures personnel, and may also establish minimum training and performance requirements which shall then be met
by all weights and measures personnel, whether county, municipal or state. The commissioner may adopt the training standards of the national conference on weights and measures national training program; and

(q) From time to time, randomly inspect and test the quality of motor fuels offered or exposed for sale in the state, to determine compliance with the provisions of this article. He shall also, as budget levels provide, act on complaints from consumers in this state where fuel quality is in question.

When necessary for the enforcement of this article or rules promulgated pursuant thereto, the commissioner is:

(1) Authorized to enter any commercial premises during normal business hours, without formal warrant, for the purpose of enforcement of this article;

(2) Empowered to issue stop-use, hold and removal orders with respect to any weights and measures commercially used, and stop-sale, hold and removal orders with respect to any packaged commodities or bulk commodities kept, offered or exposed for sale;

(3) Empowered to seize, for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of the provisions of this article or rules promulgated pursuant thereto;

(4) Empowered to stop any commercial vehicle and, after presentation of his credentials, inspect the contents, require that the person in charge of that vehicle produce any documents in his possession concerning the contents, and require him or her to proceed with the vehicle to some specified place for inspection; and

(5) With respect to the enforcement of this article, the commissioner is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of this article.
§47-1-4. Systems of weights and measures; technical requirements for weighing and measuring devices.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables and measure, and weights and measures equivalents as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

The specifications, tolerances and other technical requirements for commercial, law enforcement, data gathering and other weighing and measuring devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" and supplements thereto or revisions thereof, shall apply to weighing and measuring devices in the state, except insofar as modified or rejected by legislative rule.

§47-1-5. Requirements for packaging and labeling.

The uniform packaging and labeling regulation as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to packaging and labeling in the state, except insofar as modified or rejected by legislative rule.

§47-1-6. Requirements for the method of sale of commodities.

The uniform regulation for the method of sale of commodities as adopted by the national conference on weights and measures and published in the national institute of standards and technology handbook 130,
§47-1-7. Requirements for unit pricing.

The uniform unit pricing regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto and revisions thereof, shall apply to unit pricing in the state, except insofar as modified or rejected by legislative rule.

§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.

The uniform regulation for the voluntary registration of service persons and service agencies for commercial weighing and measuring devices as adopted by the national conference of weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to the registration of service persons and service agencies in the state, except insofar as modified or rejected by legislative rule.

§47-1-9. Requirements for open dating.

The uniform open dating regulation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to open dating in the state, except insofar as modified or rejected by legislative rule.

§47-1-10. Requirements for type evaluation.

The uniform regulation for national type evaluation as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, "Uniform Laws and Regulations" and supplements thereto or revisions thereof, shall apply to open dating in the state, except insofar as modified or rejected by legislative rule.
§47-1-11. Requirements for motor fuel.

The uniform regulation for motor fuel as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 130, “Uniform Laws and Regulations” and supplements thereto and revisions thereof, shall apply to motor fuel quality in the state, except insofar as modified or rejected by legislative rule.

§47-1-12. Misrepresentation of quantity.

No person may:

(a) Sell, offer or expose for sale less than the quantity represented; nor

(b) Take more than the represented quantity when, as buyer, he furnishes the weight or measure by means of which the quantity is determined; nor

(c) Represent the quantity in any manner calculated or tending to mislead or in any way deceive another person.


No person may misrepresent the price of any commodity or service sold, offered, exposed or advertised for sale by weight, measure or count, nor represent the price in any manner calculated or tending to mislead or in any way deceive a person.


Except as otherwise provided by the commissioner or by firmly established trade custom and practice:

(a) Commodities in liquid form shall be sold by liquid measure or by weight; and

(b) Commodities not in liquid form shall be sold by weight, by measure or by count.

The method of sale shall provide accurate and
adequate quantity information that permits the buyer to make price and quantity comparisons.

§47-1-15. Sale from bulk.

All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel and all other bulk sales specified by rule of the commissioner, shall be accompanied by a delivery ticket containing the following information:

(a) The name and address of the buyer and seller;
(b) The date delivered;
(c) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity, for example, when temperature compensated sales are made;
(d) The unit price, unless otherwise agreed upon by both buyer and seller;
(e) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
(f) The count of individually wrapped packages, if more than one, in the instance of commodities bought from bulk but delivered in packages.

§47-1-16. Information required on packages.

Except as otherwise provided in this article or by rule promulgated pursuant thereto, any package whether a random package or a standard package, kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

(a) The identity of the commodity in the package, unless the same can easily be identified through the wrapper or container;
(b) The quantity of contents in terms of weight, measure or count; and
(c) The name and place of business of the manufac-
§47-1-17. Declarations of unit price on random weight packages.

In addition to the declarations required by section fifteen of this article, any package being one of a lot containing random weights of the same commodity, at the time it is offered or exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per kilogram or pound and the total selling price of the package.

§47-1-18. Advertising packages for sale.

Whenever a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. Where a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

§47-1-19. State weights and measures division.

There shall be a state division of weights and measures located for administrative purposes within the division of labor. The division is charged with, but not limited to, performing the following functions on behalf of the citizens of the state:

(a) Assuring that weights and measures in commercial service with the state are suitable for their intended use, properly installed and accurate and are so maintained by their owner or user;

(b) Preventing unfair or deceptive dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within the state;

(c) Making available to all users of physical standards or weighing and measuring equipment who are registered under the provisions of section twenty-one of this article, the precision calibration and related metrolog-
(d) Promoting uniformity, to the extent practicable and desirable, between weights and measures requirements of the state and those of other states and federal agencies;

(e) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to assure equity among buyers and sellers.

§47-1-20. State measurement laboratory.

The commissioner shall operate and maintain a state measurement laboratory certified and approved by the national institute of standards and technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the national institute of standards and technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the national institute of standards and technology.


On or before the first day of October, one thousand nine hundred ninety-four, every commercial business in the state which, in the course of conducting business, utilizes weights, measures and weighing and measuring devices covered by this article shall obtain a certificate of device registration for the commercial devices covered by this article, from the division. After the first day of October, one thousand nine hundred ninety-four, it shall be unlawful in the state to conduct business
subject to the provisions of this article without having first obtained a certificate of device registration from the division. Application for a certificate of device registration shall be made on a form provided by the division.

A certificate of device registration is valid for twelve months from the date of issue. The certificate of device registration shall be posted within the place of business.

Application for the renewal of a certificate of device registration shall be made on a form provided by the division at least thirty days prior to the renewal due date. The commissioner may deny the renewal of device registration for cause where the cause is the result of the conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

§47-1-22. Civil penalties.

(a) No person shall:

(1) Use or have in possession for use in commerce any incorrect weight or measure;

(2) Sell or offer for sale for use in commerce any incorrect weight or measure;

(3) Remove any tag, seal or mark from any weight or measure, without specific authorization from the weights and measures section; or

(4) Violate any provisions of this article or rules promulgated under it, not defined in subsection (a), section twenty-three of this article.

(b) Any person who violates subsection (a) of this section or any rule promulgated by the commissioner may be assessed a civil penalty by the commissioner, which penalty shall not be more than one thousand dollars for each violation. Each violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the person's history of previous violations, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a
A civil penalty may be assessed by the commissioner only after the commissioner shall have given at least ten days notice to the person. Notice shall be in writing, shall contain a short, plain statement of the matter asserted, and shall designate a time and place for a hearing where the person may show cause why the civil penalty should not be imposed. Notice of hearing shall be sent by registered mail. The person may, at the time designated for the hearing, produce evidence on his or her behalf and be represented by counsel.

Any person aggrieved by a decision of the commissioner shall have the right to a contested case hearing under the provisions of article five, chapter twenty-nine-a of this code, et seq.

§47-1-23. Criminal penalties.

(a) No person shall:

(1) Hinder or obstruct any weights and measures official in the performance of his duties;

(2) Impersonate in any way the commissioner, his assistants, deputies or inspectors;

(3) Use in commerce any weight or measure which has not been inspected and approved by the commissioner of weights and measures of his or her authorized inspectors or deputies; or

(4) Use or have in his or her possession for the purpose of selling or using any device or instrument to be used to or calculated to falsify any weight or measure.

(b) Any person who, by himself or herself or by his or her servant or agent, or as the servant or agent of another person, knowingly violates subsection (a) of this section, is guilty of a misdemeanor, and, upon a first conviction, shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both fined and imprisoned; and upon a second or subsequent conviction, he or she shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned for not more than six months, or both fined and imprisoned.
AN ACT to amend and reenact section seven, article five, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the time to appeal an order or judgment of the county commission admitting or refusing to admit a will to probate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PRODUCTION, PROBATE AND RECORD OF WILLS.

§41-5-7. Appeal from probate order — When to be taken; procedure.

1 Any person feeling himself aggrieved by any order or judgment of the county commission admitting or refusing to admit any will to probate may, within three months, or, if such a person be under any disability within three months after such disability ceases, file his petition in the circuit court of such county, or before the clerk thereof, appealing to the circuit court from such order or judgment, stating in the petition the grounds of appeal and the parties interested in the probate of the will; and, in case of appeal, it shall be the duty of the clerk of the county commission promptly to transmit to the clerk of the circuit court, the will and all original papers filed or used in the proceedings for probate, together with copies of all orders made therein. The clerk of the circuit court shall, upon the filing of such petition, issue process thereon, and the case shall be proceeded in, tried and determined in such court, regardless of the proceedings before the county commission, and in the same manner and in all respects as if the application for such probate had been originally made to the circuit court.
AN ACT to amend and reenact section eleven, article five, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the appeal periods for impeaching or establishing a will.

Be it enacted by the Legislature of West Virginia:

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

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.

1 After a judgment or order entered as aforesaid in a proceeding for probate ex parte, any person interested who was not a party to the proceeding, or any person who was not a party to a proceeding for probate in solemn form, may proceed by complaint to impeach or establish the will, on which complaint, if required by any party, a trial by jury shall be ordered, to ascertain whether any, and if any, how much, of what was so 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 testamentary 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 six months from the date thereof, and if the judgment or order was entered by the county commission and there was no appeal therefrom, such complaint shall be filed within six months 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.

CHAPTER 181
(S. B. 410—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 10, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to repeal section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter, all relating to workers’ compensation; obtaining of wage information; correcting reference to unemployment compensation division; minimum level of temporary total disability benefits; exceptions; the information to be used in determining wages; extending the termination provisions related to trial return to work and to the vocational rehabilitation program; removing the expired time period for the adoption of legislative rules; and repealing the requirement that certain jurisdictional decisions be appealed directly to the appeal board.

Be it enacted by the Legislature of West Virginia:

That section four-b, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one-c, six, six-d, seven-b, nine and fourteen, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

§23-4-6. Classification of and criteria for disability benefits.

§23-4-6d. Benefits payable to part-time employees.

§23-4-7b. Trial return to work.

§23-4-9. Physical and vocational rehabilitation.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

(a) In any claim for benefits under this chapter, the commissioner shall determine whether the claimant has sustained a compensable injury within the meaning of section one of this article and he shall enter an order giving all parties immediate notice of such decision. Any party shall have the right to protest the order of the commissioner and obtain an evidentiary hearing as provided in section one, article five of this chapter.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in section five of this article, the commissioner may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, and the payment of the expenses provided for in subsection (a), section three of this article, relating to said injury, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall enter an order commencing the payment of temporary total disability or medical benefits within fifteen days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any other information necessary for a determination. The commissioner shall give to the parties immediate notice of any order granting temporary total disability or medical benefits.

(c) The commissioner may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of such benefits. In no claim shall the commissioner enter an
order granting prospective temporary total disability benefits for a period of more than ninety days: Provided,
That when the commissioner determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the commissioner shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed ninety days, and shall give immediate notice to all parties of such decision.

(d) Upon receipt of the first report of injury in claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the commissioner obtains from reports made to him or her pursuant to section eleven, article ten, chapter twenty-one-a of this code. If no such wages have been reported, then the commissioner shall make such payments at the rate he or she believes would be justified by the usual rate of pay for the occupation of the injured employee. The commissioner shall adjust the rate of benefits both retroactively and prospectively upon receipt of proper wage information. The commissioner shall have access to all wage information in the possession of any state agency, including wage information received by the unemployment compensation division under said chapter, pertinent to such determination.

(e) Upon a finding of the commissioner that a claimant who has sustained a previous compensable injury which has been closed by any order of the commissioner, or by the claimant’s return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, the commissioner shall immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the
amount provided for in sections six and fourteen of this article, and the expenses provided for in subsection (a), section three of this article, relating to said disability, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the parties of his order.

(f) Where the employer is a subscriber to the workers' compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workers' compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

(g) Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. A copy of the order shall be sent to the claimant. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that his employee is entitled to benefits, he may start payments before receiving a pay order from the commissioner.

(h) In the event that an employer files a timely objection to any order of the commissioner with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in subsection (a), section three of this article, the commissioner shall continue to pay to the claimant such benefits and expenses during the period of such disability. Where it is subsequently found by the commissioner that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the commissioner shall, when the employer is a subscriber to the fund,
credit said employer's account with the amount of the overpayment; and, when the employer has elected to carry its own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self insurer shall be charged by the commissioner to the surplus fund created in section one, article three of this chapter.

(i) When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in such case determines that the claimant was not entitled to such benefits or expenses, the amount of such benefits or expenses shall be considered overpaid. The commissioner may only recover the amount of such benefits or expenses by withholding, in whole or in part, as determined by the commissioner, future permanent partial disability benefits payable to the individual in the same or other claims and credit such amount against the overpayment until it is repaid in full.

(j) In the event that the commissioner finds that based upon the employer's report of injury, the claim is not compensable, the commissioner shall provide a copy of such employer's report in addition to the order denying the claim.

§23-4-6. 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 Virgi-
nia, 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-
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. In no
event, however, shall such minimum weekly benefits
exceed the level of benefits determined by use of the
then applicable federal minimum hourly wage: Pro-
vided. That any claimant receiving permanent total
disability benefits, permanent partial disability benefits
or dependents’ benefits prior to the first day of July, one
thousand nine hundred ninety-four, shall not have his or
her benefits reduced based upon the requirement herein
that the minimum weekly benefit shall not exceed the
applicable federal minimum hourly wage.
(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 rebuttable 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 disability resulting therefrom, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries, and the cost of any increase in 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 guided by, but shall not be limited to, the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:

The loss of a great toe shall be considered a ten percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a twenty-five percent disability.

The loss of forepart of foot shall be considered a thirty percent disability.

The loss of a foot shall be considered a thirty-five percent disability.
The loss of a leg shall be considered a forty-five percent disability.

The loss of thigh shall be considered a fifty percent disability.

The loss of thigh at hip joint shall be considered a sixty percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a ten percent disability.

The loss of thumb (one phalanx) shall be considered a twelve percent disability.

The loss of thumb shall be considered a twenty percent disability.

The loss of thumb and index finger shall be considered a thirty-two percent disability.

The loss of index and middle finger shall be considered a twenty percent disability.

The loss of middle and ring finger shall be considered a fifteen percent disability.

The loss of ring and little finger shall be considered a ten percent disability.
The loss of thumb, index and middle finger shall be considered a forty percent disability.

The loss of index, middle and ring finger shall be considered a thirty percent disability.

The loss of middle, ring and little finger shall be considered a twenty percent disability.

The loss of four fingers shall be considered a thirty-two percent disability.

The loss of hand shall be considered a fifty percent disability.

The loss of forearm shall be considered a fifty-five percent disability.

The loss of arm shall be considered a sixty percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a thirty-three percent disability. For the partial loss of vision in one, or both eyes, the percentages of disability shall be determined by the commissioner, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a twenty-two and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a fifty-five percent disability.

For the partial loss of hearing in one, or both ears, the percentage of disability shall be determined by the commissioner, using as a basis the total loss of hearing in both ears.

Should a claimant sustain a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision, die from sickness or noncompensable injury before the commissioner 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 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.

(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) of this section.

(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), section seven, article three, chapter twenty-one-a of this code shall be considered once they are effective.

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee means an employee who, at the date of injury, is customarily employed twenty-five hours per week or less on a regular basis and is classified by the employer as
a part-time employee: Provided, That the term "part-time employee" shall not include an employee who regularly works more than twenty-five hours per week for the employer, nor shall it include an employee who regularly works for more than one employer and whose regular combined working hours total more than twenty-five hours per week when that employee is rendered unable to perform the duties of all such employment as a result of the injury, nor shall it include any employee in the construction industry who works less than twenty-five hours per week.

(b) For purposes of establishing temporary total disability weekly benefits pursuant to subdivision (b), section six of this article for part-time employees, the "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", shall be computed:

(1) Until the first day of July, one thousand nine hundred ninety-four, based upon the average gross pay, wherever earned, which is received by the employee during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee; or

(2) On and after the first day of July, one thousand nine hundred ninety-four, based upon the best average weekly gross pay, wherever earned, which is received by the employee during the best quarter of wages out of the preceding four quarters of wages as reported to the commissioner pursuant to section eleven, article ten, chapter twenty-one-a of this code: Provided, That for part-time employees who have been employed less than two months but more than one week prior to the date of injury or any employee whose wages have not yet been reported to the commissioner, the average weekly wage earnings shall be calculated based upon the average gross earnings in the weeks actually worked: Provided, however, That for part-time employees who have been employed one week or less, the average weekly wage earnings shall be calculated based upon the average weekly wage prevailing for the same or similar part-time employment at the time of injury except that when an employer has agreed to pay a certain hourly wage
to such part-time employee, the average weekly wage shall be computed by multiplying such hourly wage by the regular numbers of hours contracted to be worked each week: Provided further, That notwithstanding any provision of this article to the contrary, no part-time employee shall receive temporary total disability benefits greater than his or her average weekly wage earnings as so calculated.

(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of this section.

§23-4-7b. Trial return to work.

(a) The Legislature hereby finds and declares that it is in the interest of employees, employers and the commissioner that injured employees be encouraged to return to work as quickly as possible after an injury and that appropriate protections be afforded to injured employees who return to work on a trial basis.

(b) Notwithstanding any other provisions of this chapter to the contrary, the injured employee shall not have his or her eligibility to receive temporary total disability benefits terminated when he or she returns to work on a trial basis as set forth herein. An employee shall be eligible to return to work on a trial basis when he or she is released to work on a trial basis by the treating physician.

(c) When an injured employee returns to work on a trial basis, the employer shall provide a trial return to work notification to the commissioner. Upon receipt thereof, the commissioner shall note the date of the first day of work pursuant to the trial return and shall continue the claimant's eligibility for temporary total disability benefits, but shall temporarily suspend the payment of temporary total disability benefits during the period actually worked by the injured employee. The claim shall be closed on a temporary total disability basis either when the injured employee or the autho-
26 rized treating physician notifies the commissioner that
27 the injured employee is able to perform his or her job
28 or automatically at the end of a period of three months
29 from the date of the first day of work unless the
30 employee notifies the commissioner that he or she is
31 unable to perform the duties of the job, whichever
32 occurs first. If the injured employee is unable to
33 continue working due to the compensable injury for a
34 three-month period, the injured employee shall notify
35 the commissioner and temporary total disability benefits
36 shall be reinstated immediately and he or she shall be
37 referred for a rehabilitation evaluation as provided in
38 section nine of this article. No provision of this section
39 shall be construed to prohibit the commissioner from
40 referring the injured employee for any permanent
41 disability evaluation required or permitted by any other
42 provision of this article.
43 (d) Nothing in this section shall prevent the employee
44 from returning to work without a trial return to work
45 period.
46 (e) Nothing in this section shall be construed to
47 require an injured employee to return to work on a trial
48 basis.
49 (f) The provisions of this section shall be terminated
50 and be of no further force and effect on the first day
51 of July, one thousand nine hundred ninety-eight.

§23-4-9. Physical and vocational rehabilitation.

1 (a) The Legislature hereby finds that it is a goal of
2 the workers' compensation program to assist workers to
3 return to suitable gainful employment after an injury.
4 In order to encourage workers to return to employment
5 and to encourage and assist employers in providing
6 suitable employment to injured employees, it shall be a
7 priority of the commissioner to achieve early identifica-
8 tion of individuals likely to need rehabilitation services
9 and to assess the rehabilitation needs of these injured
10 employees. It shall be the goal of rehabilitation to return
11 injured workers to employment which shall be compar-
12 able in work and pay to that which the individual
13 performed prior to the injury. If a return to comparable
work is not possible, the goal of rehabilitation shall be to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician and the commissioner to cooperate in the development of a rehabilitation process designed to promote reemployment for the injured employee.

(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability in excess of one hundred twenty days, and such fact has been determined by the commissioner, the commissioner shall at the earliest possible time determine whether the employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if the commissioner determines that the employee can be physically and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties or work hours modification, by the provision of crutches, artificial limbs, or other approved mechanical appliances, or medicines, medical, surgical, dental or hospital treatment, the commissioner shall forthwith develop a rehabilitation plan for the employee and, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes: Provided, That such expenditure for vocational rehabilitation shall not exceed ten thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the commissioner prior to the rendering of such physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would
relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of such treatment: Provided further, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of such devices and equipment, shall be considered expenses within the meaning of section three of this article and shall be subject to the provisions of sections three, three-a, three-b and three-c of this article. The provision of any rehabilitation services shall be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee.

(c) In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be seventy percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in sections six, six-d and fourteen of this article as such calculation is performed for temporary total disability benefits, subject to the following limitations: In no event shall such benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b), section six of this article, nor shall such benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to sections six, six-d and fourteen of this article during any period of temporary total...
Provided, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every ninety days to determine whether the injured employee's average weekly wage in the new employment has changed and, if such change has occurred, the amount of benefits payable hereunder shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section.

(e) The commissioner shall promulgate rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. Such rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section.

(f) The provisions of this section shall be terminated and be of no further force or effect on the first day of July, one thousand nine hundred ninety-eight.


(a) The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

(1) In cases involving occupational pneumoconiosis or other occupational diseases, the "date of injury" shall be the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

(2) In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct the amount of all prior workers' compensation
benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b) (1) Until the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(2) On and after the first day of July, one thousand nine hundred ninety-four, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the commissioner pursuant to section eleven, article ten, chapter twenty-one-a of this code, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of section six-d of this article.

(c) The expression "average weekly wage in West Virginia", within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of this code, and other applicable provisions of said chapter.

(d) In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after the first day of July, one thousand nine
hundred seventy-one, any award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant therein in effect on the date of such injury. If during the life of such award for temporary total, permanent partial or permanent total disability benefits or for dependent benefits, the weekly rates or the monthly amount in the case of dependent benefits are increased or decreased, the claimant shall receive such increased or decreased benefits beginning as of the effective date of said increase or decrease.

CHAPTER 182
(H. B. 4056—By Delegate Everson)

[Passed February 16, 1994; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Barbour County to meet as a levying body for the purpose of presenting to the voters of the county an election to consider an excess levy for the fire departments and emergency squads in Barbour County, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

BARBOUR COUNTY EXCESS LEVY.

§1. Extended time for Barbour County commission to meet as levying body for election to consider an excess levy for fire departments and emergency squads.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Barbour County is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its
AN ACT to establish a multicounty economic development authority for the counties of Greenbrier, Monroe and Pocahontas; to provide such authority with power to plan and coordinate economic development within these counties; to provide for a board of directors to manage and control the authority; to provide for appointment of representatives to the board; and to provide for the support and operation of the authority.

Be it enacted by the Legislature of West Virginia:

GREENBRIER, MONROE AND POCAHONTAS MULTICOUNTY ECONOMIC DEVELOPMENT AUTHORITY.

§1. Economic development authority for Greenbrier, Monroe and Pocahontas counties created; functions.

There is hereby created a multicounty economic development authority, consisting of the counties of Greenbrier, Monroe and Pocahontas, which shall plan and coordinate economic development within these counties. The Greenbrier economic development corporation is hereby abolished and its powers and assets transferred to the multicounty economic development authority created by this act.

No county member may withdraw from this authority without an amendment to this act.

§2. Definitions.
(a) "Corporate member" means any individual, association, corporation, partnership, estate or government body, excluding county members, who supports the objectives and purposes of the multicounty development authority and who has paid membership fees as determined by the board of directors. Members in good standing of the Greenbrier economic development corporation as of the thirtieth day of June, one thousand nine hundred ninety-four, shall become members of the newly created multicounty development authority.

(b) "County member" means one of the three counties designated in section one.

§3. Board of directors; appointment; terms; removal; compensation.

The management and control of the authority, its property, operations, business and affairs is lodged in a board of directors, consisting of not fewer than twelve persons entitled to vote. The number of directors entitled to vote shall be equally apportioned among persons representing interests in the counties of Greenbrier, Monroe and Pocahontas. The president of the county commission of each county member or his designee shall serve on the board as a voting member. Within thirty days after the effective date of this act, the county members and corporate members of the multicounty economic development authority shall begin meeting and selecting the remaining directors. The board of directors shall not be authorized to act until a minimum of twelve members has been elected.

Directors, excluding representatives of each county member, shall serve three-year terms, except that the initial terms shall be staggered so that at least three of the initial directors will serve for one year, at least three of the initial directors serve for two years, and at least three of the initial directors serve for three years. Directors may be reappointed to additional terms. Directors shall continue to serve until their successors have been chosen. Directors may be removed, excluding the representatives of each county member, by a majority vote of the board of directors.
No director of the authority shall receive any compensation for his services as such board member.

§4. **Authority as a public corporation.**

The authority constitutes a public corporation to be known as the Greenbrier Valley economic development corporation and, as such has perpetual succession, may contract and be contracted with, may sue and be sued, may plead and be pleaded, and may have and use a common seal.

§5. **Funding for support, maintenance and operation; audit.**

In order to provide for the support, maintenance and operation of the authority hereby created, beginning the first day of July, one thousand nine hundred ninety-four, each county member shall contribute annually at least one dollar twenty-five cents per capita, based on the most recent decennial census, for those residing within its corporate boundaries. The state tax commissioner shall not approve the budget of any county member of the authority which does not contain the funding hereinabove set forth.

In addition to the aforesaid amounts, any county member may support the authority with any other general or special revenues or excess levies at any time after the effective date of this act.

Corporate members shall make annual contributions as determined by the board of directors.

§6. **Powers.**

Except as otherwise specially provided in this act, the authority has the powers and duties which are conferred and imposed, respectively, upon county or municipal development authorities by sections seven, seven-a, eight, nine, ten, eleven, twelve, thirteen and fourteen, article twelve, chapter seven of the code of West Virginia, as amended.

In addition to the powers referred to above, the authority has the power to maintain such office or offices as it deems necessary to carry out its responsibilities and to staff and equip such office or offices.
AN ACT to authorize the county commission of Greenbrier County to convey a parcel of county-owned land to the Greenbrier Historical Society; reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

GREENBRIER COUNTY.

§1. County commission authorized to convey land to the Greenbrier Historical Society.

1 The Legislature hereby recognizes that the Greenbrier Historical Society has leased the North House Museum property from the county commission since one thousand nine hundred seventy-five and has made significant improvements to the North House Museum property while providing faithful stewardship over this valuable historical and educational community asset.

2 The Legislature further recognizes that ownership of the North House Museum property by the Greenbrier Historical Society will enable the Society to attract more private sector financial support to enable an expansion of its educational and historical programs to children and adults who visit the Museum. 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.

3 The county commission of Greenbrier County is hereby authorized and empowered to transfer and convey unto the Greenbrier Historical Society all that certain parcel of land situated within Lewisburg Municipal Tax District, in Central Magisterial District of Greenbrier County, West Virginia, more particularly bounded and described as:
DESCRIPTION OF PARCEL FOR
NORTH HOUSE MUSEUM PROPERTY

That certain parcel of land situated within Lewisburg Municipal Tax District, in Central Magisterial District of Greenbrier County, West Virginia, being all of that certain lot or parcel of land containing seven hundred twenty-two thousandths of an acre on which is situate that certain building known as "North House," together with the improvements thereon, including said "North House," and appurtenances thereunto belonging, and being more particularly bounded and described as:

"Beginning at a hub on the south line of U. S. Route No. 60 and at the west side of the driveway leading into the Mental Health Facility in the City of Lewisburg, West Virginia, said hub being situate N 46-15 W 120 feet from a SDH right-of-way marker at the southwest corner of the intersection of U. S. Route No. 60 and Church Street; thence following the south line of U. S. Route No. 60 N 48-32 W 176.05 feet to a hub at the edge of the parking lot pavement; thence leaving U. S. Route 60 with the edge of the parking lot and driveway pavements S 36-24 W 138.49 feet, S 07-29 W 73.81 feet, S 48-13 E 84.30 feet, S 82-57 E 33.53 feet to a 20" maple tree, N 58.44 E 28.48 feet, N 42-14 E 153.63 feet to the point of beginning, containing in all 31,457 square feet, or 0.722 acres, together with a right of way from Washington Street, or U. S. Route No. 60, across the parking lot situate on this property and on the westerly side of the above described property to the rear of said property, and also together with the use of the parking facilities on said parking lot situate on the westerly side of the above described property"

and being the same real estate which was conveyed unto the county commission by the State of West Virginia by deed dated the twenty-seventh day of May, 1975, of record in the office of the Clerk of the County Commission of Greenbrier County, West Virginia, in Deed Book 297 at page 230.
Any proper conveyance made by the county commission of Greenbrier County transferring ownership of the above described parcel to the Greenbrier Historical Society 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 operating a museum.

CHAPTER 185
(H. B. 4527—By Delegates Ashcraft, Fragale, Linch and Warner)
[Passed March 3, 1994: in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election on the question of continuing the excess levy for bus services in Harrison County, from between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED FOR AN ELECTION ON THE QUESTION OF CONTINUING THE EXCESS LEVY FOR BUS SERVICES.

§1. Extending time for the Harrison County Commission to meet as a levying body for an election on the question of continuing the excess levy for bus services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the county commission of Harrison 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 between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety-four, for the purpose of submitting to the voters of Harrison County the question of continuing the excess levy for bus services in Harrison County.
AN ACT to authorize the county commission of Jackson County to convey a parcel of county-owned land to the Jackson County Library; and reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JACKSON COUNTY.

§1. County commission authorized to convey land to the Jackson County Library.

1 The Legislature hereby recognizes that the Jackson County Library provides valuable educational and community services for the people of Jackson County. The Legislature further recognizes that ownership of the property described below will enable the Jackson County Library to improve its services. 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.

Subject to a new survey, the county commission of Jackson County is hereby authorized and empowered to transfer and convey unto the Jackson County Library a portion of that certain parcel of land situate, lying and being at the southwest intersection of Church Street and Sycamore Street in the City of Ripley, Jackson County, West Virginia bounded and described as follows:

20 On the north by Sycamore Street;
21 On the east by Church Street;
22 On the south by Library;
23 On the west by Library;
24 said lot fronting and abutting 63-1/2 feet on Church
25 Street and 84 feet on Sycamore Street, containing 5.334
26 feet, more or less, and being the same lot, tract or parcel
27 of land, commonly known as the "Wolfe Lot," conveyed
28 unto the Jackson County Commission by the First
29 National Bank of Ripley, Ripley, West Virginia on the
30 sixteenth day of November, 1973, of record in the office
31 of the Clerk of the County Commission of Jackson
32 County, West Virginia in Deed Book 214, page 422.
33
34 Any proper conveyance made by the county commis-
35 sion of Jackson County transferring ownership of the
36 above described parcel to the Jackson County Library
37 shall contain a provision that ownership of such
38 property shall revert to the county commission should
39 the land cease to be used in conjunction with the
40 operation of a library.

CHAPTER 187
(H. B. 4035—By Delegates Fantasia, Prezioso and Stewart)

[Passed February 7, 1994; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of
Marion County, West Virginia, to meet as a levying body
for the purpose of presenting to the voters of said county
an election on the question of continuing the excess levy
for mass transit, parks and recreation, and library
services and equipment, from between the seventh and
twenty-eighth days of March until the first Thursday in
June, one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS A LEVYING BODY
EXTENDED FOR AN ELECTION ON THE QUESTION OF
CONTINUING THE EXCESS LEVY FOR MASS TRANSIT,
PARKS AND RECREATION, AND LIBRARY SERVICES AND
EQUIPMENT.

§1. Extending time for the Marion County Commission
to meet as a levying body for an election on the
question of continuing the excess levy for mass
transit, parks and recreation, and library services
and equipment.
Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the county commission of Marion 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 between the seventh and twenty-eighth days of March until the first Thursday in June, one thousand nine hundred ninety-four, for the purpose of submitting to the voters of Marion County the question of continuing the excess county levy for mass transit, parks and recreation, and library services and equipment.

CHAPTER 188
(H. B. 4362—By Delegates Phillips, P. White, Vest and Paxton)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to authorize the Rock Branch Industrial Park to maintain an industrial maintenance association in Putnam County.

Be it enacted by the Legislature of West Virginia:

MAINTENANCE ASSOCIATIONS.

§1. Definitions.

1 In this bill unless a different meaning plainly is required:

2 (1) "Industrial maintenance association member" means any person, corporation or other business entity that owns property that fronts on either side of a road in an industrial park or area where industry occupies at least sixty percent of land fronting the road under consideration for designation.

3 (2) "Maintenance association" means an association established pursuant to the requirements of this bill.

4 (3) "Maintenance association documents" means documents approved by the county commission as
§2. Purpose of the maintenance association.

A maintenance association may be established in Putnam County at the Rock Branch Industrial Park to protect the health, safety and welfare of persons, businesses and the general public located within the Rock Branch Industrial Park. The maintenance association shall be created with the objective of establishing and maintaining improvements for the Rock Branch Industrial Park, which may include constructing and maintaining shared streets, drainage facilities, sidewalks, water and sewer systems, signs and other improvements necessary for the protection of health, safety and welfare of persons, businesses and the general public.

§3. Petition to establish maintenance association.

(a) A petition in writing may be made to the county commission, that duly verifies that property owners owning jointly at least sixty percent of the frontage of the lots on both sides of the Rock Bridge Industrial Park in any unincorporated area requesting the approval of the formation of a maintenance association. The petition shall be accompanied by the proposed maintenance association’s recordable documents that establish the association.

(b) Upon the filing of such petition and the proposed maintenance association documents, the county commission shall fix a time and place for hearing protests and shall require the petitioners to post notice of such hearing in at least two conspicuous places on the industrial subdivision road of the area affected, and to give notice thereof by publication of such notice as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one. The publication area for such publication shall be in Putnam County. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.
(c) At the time and place set for hearing protests, the county commission may examine witnesses and consider other evidence to show that:

1. Said petition was filed in good faith;
2. The signatures on the petition are genuine;
3. The maintenance association document addresses the maintenance association purpose; and
4. The proposed maintenance association will result in special benefits to all owners of property abutting on said industrial subdivision road.

The commission shall within ten days thereafter enter a formal order stating its decision.

(d) Any owner of property abutting upon said industrial subdivision road aggrieved by such order shall have the right to review the order on the record made before the county commission by filing a petition with the clerk of the circuit court within ten days after the entry of such order. The owner shall give bond in an amount to be fixed by the circuit court sufficient to pay costs or expenses incurred by the court and the maintenance association upon appeal if the order of the county commission is affirmed. The circuit court shall proceed to review the matter as in other appeals from the county commission.

§4. Assessment and collection of fees; notice.

(a) A maintenance association which furnishes essential services, including, but not limited to, construction and maintenance of shared streets, drainage facilities, sidewalks, water and sewer systems, signs and other improvements necessary for the health, safety and welfare of persons, businesses and the general public, may impose reasonable fees and charges on persons owning lots abutting the frontage of both sides of roads listed in the maintenance association document.

(b) Any new fee or fee increase assessed under this section shall not be collectable unless notice of the proposed fee or increase is sent by certified mail to each person owning property listed in the maintenance
association document. If thirty percent of the members, by signed petition, protest the assessment to the association within fifteen days of the mailing, the fee shall not become effective until it is ratified by sixty percent of the members.

(c) All fees assessed under this section are declared to be debts owing to the maintenance association for which the debtor shall be personally liable. The maintenance association, or an individual designated to act for it, may enforce this liability by appropriate civil action in a court of competent jurisdiction. After being reduced to judgment and filed with the clerk of the county commission, such liability shall be a lien on property owned by the maintenance association member and designated in the maintenance association document.

CHAPTER 189

(Com. Sub. for S. B. 450—By Senators Ross and Helmick)

[Passed March 11, 1994; in effect from passage. Approved by the Governor.]

AN ACT to provide a stable method of financing the operation of the Upshur county public library located in Upshur county, West Virginia, as the same was organized under the provisions of article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by creating a separate library board with power to operate the public library to serve the residents of the county of Upshur as a joint venture of the Upshur county board of education and the Upshur county commission; appointment of board of directors, members, terms; meetings of the board of directors; powers of the board of directors; incorporation of the board of directors; requiring levy at the request of the board of directors with an annual cap of seventy-five thousand dollars; deposit and disbursement of funds; providing workers’ compensation, social security and retirement coverage for library employees; vesting title to library property; and providing for application of future amendments to general law.
Be it enacted by the Legislature of West Virginia:

UPSHUR COUNTY PUBLIC LIBRARY.

§1. Public library board created; joint support by the county board of education and county commission of Upshur county, West Virginia.

There is hereby created a public library board, which shall operate the Upshur county public library. The library shall be supported by the board of education of the county of Upshur and by the county commission of Upshur county, as a joint endeavor of two governing authorities in the manner hereinafter provided.

§2. Board of directors; appointment, powers and duties generally; officers, bylaws and rules.

There shall be a board of directors consisting of five directors who shall serve without compensation. Before the first day of July, one thousand nine hundred ninety-four, the board of education of the county of Upshur shall appoint two members of the board of directors, appointing one member for the term of one year and one member for the term of four years. The county commission of Upshur county shall appoint three members to the board of directors, appointing one member for the term of two years, one member for a term of three years and one member for the term of five years. The initial terms of these appointees shall commence on the first day of July, one thousand nine hundred ninety-four. Annually thereafter, on or before the first day of July in each year beginning on the first day of July, one thousand nine hundred ninety-five, the two supporting entities shall in rotation, appoint one member of the board of directors annually, the first appointment to be made by the board of education of Upshur county and the second appointment to be made by the county commission of Upshur county. Each appointment to the board of directors of the library shall be for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of that term shall serve only for the unexpired portion of the term. Any member of the board is eligible for reappointment and the governing authority which appointed any
member to the board may remove that member for cause.

There shall be an annual meeting of the board of directors in July of each year and a monthly meeting on the day of each month which the board may designate. A special meeting may be called by the president, the secretary or any two members of the board and such special meeting shall be held only after all of the directors are given notice of the special meeting. At all meetings three members constitutes a quorum and at each annual meeting of the board of directors it shall elect, from its membership, a president, a vice president, a secretary and a treasurer: Provided, That the director of the library may be elected as the secretary. The board of directors shall adopt such bylaws and rules as are necessary for its own guidance and for the administration, supervision and protection of the library and all of the property belonging to the library. The board of directors shall have all of the powers necessary, convenient and advisable for the proper operation, equipment and management of the library; and except as otherwise especially provided in this article, shall have the powers and be subject to the duties which are conferred and imposed, respectively, upon library directors by sections six through eleven, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or by subsequent enactments of the Legislature of West Virginia.

§3. A body corporate.

The public library hereby created shall be a corporation. As such it may contract and be contracted with, sue and be sued, plead and be impleaded and shall have and use a common seal.

§4. Title to property.

The title to all property, both real and personal, hereinafter devoted to public library purposes by the board of education or the county of Upshur, in connection with the operation of it by a public library in the county of Upshur, and any branches of the library shall, on the first day of July, one thousand nine hundred ninety-four,
vest in the board of directors of the Upshur county public library, hereby created.

§5. Levies for support, maintenance and operation.

In order to provide for the support, maintenance and operations of the Upshur county public library and any branches thereof, the supporting governing authorities shall, upon written request by the board of directors of the public library, levy annually within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the respective classes of property taxable in the area served by it according to the last assessment for state and county purposes, up to the following rates beginning with the fiscal year beginning on the first day of July, one thousand nine hundred ninety-four.

(a) The county commission of Upshur county, for the first year and annually thereafter:

Class I, six-tenths cents;

Class II, III and IV, eight-tenths cents.

(b) The board of education of the county of Upshur for the first year and annually thereafter:

Class I, nine-tenths cents;

Class II, III and IV, one and one-tenths cents.

Each year the board of directors shall request each of the two supporting authorities to levy within the rates prescribed above, at the rates specified by the board, on each one hundred dollars of assessed valuation of property of the same class; and each of the two supporting authorities shall levy at the rates requested by the board of directors: Provided, That the sum of the revenues or levies shall not exceed seventy-five thousand dollars in any one year. Nothing herein shall prevent any of the supporting authorities from contributing to the public library, from time to time, any other general or specific revenues or excess levies.

§6. Deposit and disbursement of funds.

All money collected or appropriated by the two
governing authorities for library purposes shall be deposited on a quarterly basis directed by the board of directors of the Upshur county public library in a bank or savings account specified by the board.

All moneys appropriated to the Upshur county public library and all income realized by the operation of the public library from any sources other than the above levies shall be used by the board of directors for the support, maintenance and operation of the public library and its branches.

The board is hereby vested with authority to accumulate a surplus from year to year over and above the amount currently required for the proper operation, maintenance and management of the library. The accumulated surplus may be used if and as needed for support, maintenance and operation of the library, and for capital improvements, additions or extensions to library facilities.

§7. Status of employees.

All full-time employees of the Upshur county public library shall be entitled to the benefits of the provisions of chapter twenty-three, and articles seven and ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§8. Effect of future amendments of general law.

Amendments to article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other general laws shall control this article only to the extent that they do not conflict with the special features hereof, or unless the intent to amend this article is clear and unmistakable.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Adopted March 2, 1994]

Amending Joint Rules of the Senate and House of Delegates, relating to bill processing for bills which authorize the promulgation of proposed legislative rules.

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 Rule 5a, to read as follows:

Processing of bills authorizing the promulgation of proposed legislative rules; duplication and distribution of proposed legislative rules.

5a. A “bill authorizing the promulgation of proposed legislative rules” or a “bill of authorization” is a measure intended to be enacted as general law, which incorporates by reference a proposed legislative rule, with or without amendments or substitutions set forth in the bill, and which authorizes the promulgation and implementation of the proposed legislative rule. The processing of bills authorizing the promulgation of proposed legislative rules shall be governed by the standing rules of the Senate and the House of Delegates, which are supplemented by the provisions of this joint rule. In the case of any conflict between this rule and a standing rule of the Senate or the House of Delegates, the provisions of this rule control.

(1) The requirement of either house that bills shall be presented in quadruplicate applies to bills authorizing the promulgation of proposed legislative rules, but does not apply to the proposed legislative rule which the bill incorporates by reference. Of the quadruplicate copies, only the designated original copy shall have appended thereto the full text of the proposed legislative rule as finally approved by the agency.
seeking permission for its promulgation. Other copies of the full text of the proposed legislative rule shall be made available to members of the Legislature as hereinafter provided.

(2) Copies of the full text of each proposed legislative rule shall be reproduced by printing or duplication by the Clerk prior to, or as soon as is reasonably practicable after, the introduction of the bill which would authorize by law the promulgation of the proposed legislative rule. Prior to such printing or duplication, a notation shall be affixed to the proposed legislative rule which identifies the bill number of the introduced bill which would authorize its promulgation and which also identifies the committee or committees of the house to which the bill is to be referred by the presiding officer following its introduction. Otherwise, the copies printed or duplicated shall conform to the copy of the proposed legislative rule appended to the original bill, so as to facilitate the consideration and amendment of the rule throughout the legislative process.

(3) The clerk shall furnish to any member, upon his or her request, without cost, one copy of the full text of a proposed legislative rule as reproduced by the clerk in accordance with the provisions of subsection (2) of this joint rule. For any request for an additional copy or copies of the proposed legislative rule, the member requesting the copy or copies shall pay to the clerk, in advance, a charge which the clerk has reasonably determined to be adequate to cover the actual cost of the printing or duplication: Provided, That the provisions herein for the clerk to furnish a member with an additional copy or copies, with a cost charged, may not interfere with or delay the prompt and otherwise timely consideration of bills of authorization by the house or its committees or subcommittees.

(4) Whenever the standing rules of either house require the printing or reprinting of a bill, the rules apply to bills authorizing the promulgation of a proposed legislative rule with the same force and effect as they apply to other bills. However, no printing or reprinting of the proposed legislative rule which is incorporated by reference in the bill of authorization shall be required, other than the printing required by subsection (2) of this joint rule.
(5) Whenever the standing rules of either house require a bill to be read, or fully and distinctly read, the rules apply to bills authorizing the promulgation of a proposed legislative rule with the same force and effect as they apply to other bills. However, no reading of the proposed legislative rule which is incorporated by reference in the bill of authorization is required.

And,

That Rule 14 of the Joint Rules of the Senate and the House of Delegates be amended to read as follows:

**Printing Enrolled Bills**

14. After a bill has been passed by both houses, the type from which it was originally printed shall be corrected as to any typographical errors that may not previously have been corrected and to include any amendments that may have been made by either house since the last printing of the bill. After the type has been so corrected, three hundred fifty copies of the bill shall be printed (except charter bills, of which only twenty-five of each shall be printed). Twelve of these copies shall be on seven and one-fourth by ten bond paper, twenty-pound basis of at least fifty percent rag content for the use of the Joint Committee on Enrolled Bills, one of which copies, when properly authenticated, shall become the Enrolled Bill, and the remainder shall be on twenty-pound basis, sulphite bond paper. From these copies all judges shall be furnished enrolled bills as provided for in section fourteen, article one, chapter four of the code. In the case of enrolled bills authorizing the promulgation of a proposed legislative rule, a copy of the full text of the proposed legislative rule which the bill incorporates by reference shall be appended to the bill which has been properly authenticated and designated to be the Enrolled Bill. The copy appended to the Enrolled Bill shall conform to the copy of the full text of the proposed legislative rule appended to the introduced bill. Copies of the proposed legislative rule shall not be appended to the additional copies of the enrolled bill. Following action by the Governor, or the failure or refusal of the Governor to approve or disapprove a bill of authorization, the copy of the Enrolled Bill with the proposed legislative rule appended shall be the copy of the bill filed with the Secretary of State in accordance with the provisions of Rule 18 of these Joint Rules.
HOUSE CONCURRENT RESOLUTION 31

(By Mr. Speaker, Mr. Chambers, and Delegates Burk, McKinley, Kiss, Browning, Flanigan, Ashcraft, Spencer, Brown, Staton, Manuel, Higgins, Pethel, Pettit, Walters, Leach, Phillips, Farris, Houvouras, Doyle, Fealy, McGraw, Brum, Warner, Preece, Dempsey, Douglas, Sorah, Fragale, D. Cook, Compton, Petersen, Linch, Mezzatesta, S. Williams, Faircloth, Oliverio, Rutledge, Paxton, H. White, Kessel and Gallagher)

[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance to study the diverse impacts of, and future funding options for, the Nongame Wildlife and Natural Heritage Program.

WHEREAS, It is estimated that nongame wildlife and other natural heritage pursuits enrich the lives of over 1.2 million West Virginia citizens; and

WHEREAS, West Virginia residents contribute over $60,000,000 annually to the State's economy through nongame wildlife and natural heritage-related expenditures; and

WHEREAS, Nongame wildlife and natural heritage resources draw some 267,000 visitors to the State annually, generating $110,000,000 in tourism income; and

WHEREAS, Maintaining diversity of the State of West Virginia's unique nongame wildlife and plant communities is critical to the economy and quality of life in West Virginia; and

WHEREAS, The Nongame Wildlife and Natural Heritage Program is charged with the stewardship of over ninety percent of our State's wildlife resources and rare plant resources; and

WHEREAS, The Nongame Wildlife and Natural Heritage Program has lacked permanent adequate funding to carry out the stewardship of West Virginia's nongame wildlife and plant resources; and

WHEREAS, The $400,000 general revenue appropriation currently in the Governor's 1995 budget constitutes an
important beginning for funding the Nongame Wildlife and Natural Heritage Program; and

WHEREAS, The Legislature recognizes the need for future permanent and adequate funding in order for the Nongame Wildlife and Natural Heritage Program to continue and strengthen its stewardship goals; therefore, be it

Resolved by the Legislature of West Virginia:

That a study committee be appointed by the Speaker of the House and President of the Senate to include three members each of the House and Senate, the Director of the Division of Natural Resources, a staff member of the Nongame Wildlife and Natural Heritage Program of the Division of Natural Resources, a representative from the Division of Parks and Tourism, two members of the environmental community, a member of the Nongame Advisory Council, a member of the current Nongame/Natural Heritage Committee, two professional ecologists from universities in West Virginia, two industry representatives, and two members of the hunting and fishing community; and, be it

Further Resolved, That the committee examine the benefits and potential of the nongame wildlife assets of West Virginia, to examine funding needs of the Nongame Wildlife and Natural Heritage Program, to make recommendations, expand the public's appreciation of nongame wildlife through presentations, programs and reports, and to develop recommendations to the Legislature for future permanent and adequate funding methods; and, be it

Further Resolved, That the committee report to the regular session of the Legislature by January 15, 1995, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

HOUSE CONCURRENT RESOLUTION 37
(By Mr. Speaker, Mr. Chambers, and Delegates Rowe,
Staton, Burk and Ashley)
[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance, in cooperation with the Secretary of Tax and Revenue, to create an interim committee to study the taxation of
pollution control facilities, and to develop appropriate policies and procedures respecting the property tax assessment of personal property installed at coal waste electric generating facilities.

WHEREAS, The development of environmentally productive coal waste electric generating facilities that create new jobs and new property tax revenues is in the best interest of the citizens of this State; and

WHEREAS, The West Virginia Legislature acted to encourage the installation of some types of pollution control facilities in 1973 by enacting chapter eleven, article six-a which provides special property tax valuation treatment for such pollution control facilities; and

WHEREAS, Since 1992 three new coal waste electric generating plants, one in each of Monongalia, Grant and Marion Counties, have become operational in West Virginia employing technology and equipment not available in 1973 to burn and dispose of coal waste and generate electricity; and

WHEREAS, The property tax treatment of coal waste electric generating facilities under said article six-a, as expressed and applied by the State Department of Tax and Revenue, is now in dispute in Monongalia County with respect to the plant located in Monongalia County; and

WHEREAS, The appropriate manner for valuing personal property associated with coal waste electric generating facilities is of great concern to the citizens of this State; to the employees of the three coal waste electric generating facilities and to those employees filling the hundreds of indirectly affected jobs; to West Virginia University and its students; to all of the counties in this State in which gob piles are located; and to other potential developers of these types of facilities as they evaluate investing in this State; therefore, be it

Resolved by the Legislature of West Virginia:

That, without intending to affect any pending litigation, the Legislature finds the issues relating to the application of said article six-a to personal property installed at such coal waste electric generating facilities is a matter of great concern and importance to the State and its citizens; and, be it
Further Resolved, That in order to study article six-a and to address the issues involved in determining sound policies and procedures respecting the appropriate manner of assessment for personal property installed at coal waste electric generating facilities that a seven member subcommittee, consisting of three members of the House to be appointed by its Speaker, three members of the Senate appointed by its President and the Secretary of Tax and Revenue, is directed to examine the provisions of chapter eleven, article six-a of the West Virginia code, as amended, as well as policies and practices adopted by other states in this area of great public importance to report their recommendations for any statutory revisions to the Joint Committee no later than January 1, 1995, so that the Legislature can take any necessary actions during the 1994-1995 session.

SENATE CONCURRENT RESOLUTION 24
(By Senators Macnaughtan, Humphreys, Minard, Claypole, Miller, Yoder and Holliday)
[Adopted March 12, 1994]

Requesting the Joint Committee on Government and Finance to make a study of the standards of training and competence on the part of workers employed by contractors performing repair and construction in hazardous industries.

WHEREAS, The release of toxic, reactive or flammable liquids and gases in processes involving hazardous chemicals has been widely reported for a number of years; and

WHEREAS, Accidents have occurred in some industries which use or create hazardous chemicals; and

WHEREAS, Federal regulations exist which require process safety training for some industries which contract for service to repair, maintain or construct such facilities; and

WHEREAS, The use of unskilled, untrained or marginally trained workers employed by contractors on construction projects located near population centers in these industries may pose a risk of death or injury in these communities due to the potential for defectively built, repaired or maintained plant structures and equipment; and
WHEREAS, The continued employment of unskilled, untrained or marginally trained workers employed by contractors on such projects may be dangerous to those employed at the site and to residents of surrounding communities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to review, examine and study the possible risks presented by the employment of unskilled, untrained or marginally trained workers employed by contractors on construction sites at plant facilities, wherein hazardous materials are used or discharged, to determine possible risk to the human safety and the environment; and, be it

Further Resolved, That the Joint Committee on Government and Finance report back to the full Legislature with their findings on or before the first day of January, one thousand nine hundred ninety-five; and be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the president of the Senate, the speaker of the House and the governor of the State of West Virginia.

SENATE CONCURRENT RESOLUTION 26

(By Senators Burdette, Mr. President, Wooton, Manchin, Helmick, Chernenko, Ross, Schoonover, Whitlow, Holliday, Dittmar, Anderson, Bailey, Wiedebusch, Tomblin and Humphreys)

[Adopted March 12, 1994]

Requesting the joint committee on government and finance to make a study of possible dispositions in pension benefits for law-enforcement officers.

WHEREAS, There are approximately six hundred fifty sheriff’s deputies in the state of West Virginia; and

WHEREAS, Sheriff’s deputies receive thirty-three and one-third percent of their highest three consecutive aggregate years of service of the previous ten years as a pension upon retirement; and
WHEREAS, Municipal police officers receive sixty percent of their three years service as a pension upon retirement; and

WHEREAS, State police receive as a pension five and one-half percent of their salaries over their total years of service as a pension upon retirement; and

WHEREAS, The means of computation of law-enforcement officers' pensions may cause dispositions in benefits for similar forms of public service; and

WHEREAS, Disability pensions for disabled law-enforcement officers may be based upon dissimilar criteria; therefore, be it

Resolved by the Legislature of West Virginia:

That the joint committee on government and finance is hereby requested to review, examine and study possible disparities in law-enforcement pension laws and make recommendations regarding a comprehensive redrafting on such laws; and, be it

Further Resolved, That the joint committee on government and finance report back to the Legislature with their findings on or before the first day of January, one thousand nine hundred ninety-five; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the president of the Senate, the speaker of the House and the governor of the State of West Virginia.

SENATE CONCURRENT RESOLUTION 36

(By Senators Helmick, Withers Blatnik, Sharpe, Dalton, Dittmar, Plymale, Miller, Anderson, Ross, Chernenko, Craig, Wehrle, Jones, Manchin, Whitlow, Walker, Boley, Yoder, Humphreys, Burdette, Mr. President, Bailey and Minard)

[Adopted March 12, 1994]

Requesting the joint committee on government and finance to study the rapid rise in solid waste tipping fees and its effect on the environment.
WHEREAS, Protection of the environment is a concern of everyone; and

WHEREAS, The enormous costs involved in the protection of the environment are also realized by everyone; and

WHEREAS, Since 1988, the aggregate of the various tipping fees of solid waste have risen from $1.25 to $8.25 per ton; and

WHEREAS, The financial impact of such high fees places a heavy burden on the citizens of West Virginia of modest means, often causing a counterproductive effect on the environment; therefore, be it

Resolved by the Legislature of West Virginia:

That in order for the protection of the environment to continue without counterproductivity, the tipping fees for the disposal of solid waste should be carefully studied by the joint committee on government and finance in order to maintain an environmentally productive solid waste disposal program.

HOUSE RESOLUTION 5

(By Delegates Martin and Proudfoot)

[Adopted February 24, 1994]

Requesting the Joint Committee on Government and Finance to make a study of air quality in schools in West Virginia.

WHEREAS, The health of students and employees in school buildings in West Virginia is and should be a matter of highest priority; and

WHEREAS, Windows in school buildings in West Virginia in past decades have been designed, manufactured and installed so that they do not open and close; and

WHEREAS, An expanding body of knowledge on the quality of air and its effect on health now exists, and, as a result of this increased knowledge, there are today more stringent requirements on what constitutes acceptable air quality; and

WHEREAS, A need exists to assess the magnitude of our schools' air quality problem statewide, including the preparation of a cost estimate for correcting the problem and the
development of a proposal for solving the problem over a period of time; therefore, be it

Resolved by the House of Delegates:

That the Joint Committee on Government and Finance is hereby requested to review, examine and study the status of air quality in West Virginia schools, including how air quality is affected by windows which do not open and close, and to prepare a cost estimate for correcting the problem, and to develop a proposal to solve the problem over a period of time, and to make recommendations to the Legislature regarding the same; and, be it

Further Resolved, That the Joint Committee on Government and Finance report its findings, conclusions and recommendations, together with any drafts of legislation necessary to effectuate its recommendations, to the 1995 regular session of the West Virginia Legislature; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare the report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

COMMITTEE SUBSTITUTE FOR
HOUSE RESOLUTION 8

(By Delegates Brown, P. White, Spencer, Kessel, Douglas, Reed, Facemyer, Phillips, Brum, Leach, Warner, Pettit, Rutledge, Compton, D. Cook and Yeager)

[Adopted February 15, 1994]

Memorializing the President and Congress of the United States to propose the adoption of the Equal Rights Amendment to the United States Constitution.

WHEREAS, Legal injustice and discrimination on the basis of gender have long existed; and

WHEREAS, The citizens of West Virginia clearly support an end to discrimination on the basis of gender through an amendment to the Constitution of this Nation, as the United States has previously renounced slavery, racial discrimination, and denial of the right to vote on the basis of race or gender; and
WHEREAS, Congress in 1972 proposed a federal Equal Rights Amendment to the United States Constitution to provide for equality of the law regardless of gender, which was narrowly defeated in 1982; and

WHEREAS, The West Virginia House of Delegates prefers that each state ratify the federal Equal Rights Amendment to achieve a uniform national policy; and

WHEREAS, The Equal Rights Amendment provides that gender should not be a factor in determining the legal rights of men and women and thereby recognizes the fundamental dignity, individuality, and worth of each human being; and

WHEREAS, The West Virginia House of Delegates again stands ready to ratify a federal Equal Rights Amendment when approved by Congress for state ratification; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates of the State of West Virginia respectfully memorializes the President and the Congress of the United States to propose to the several states an amendment to the Constitution of the United States stating that all men and women are equal under the law; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from West Virginia in the Congress of the United States.

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HOUSE RESOLUTION 17

(By Delegates Burk, Trump, Facemyer, Miller, Ashley, Riggs, L. White, Henderson, Walters, Anderson, Wallace, Oliverio, Richards, Nesbitt, Evans, Harrison, Pulliam, Talbott and Huffman)

[Adopted March 5, 1994]

Amending Rule No. 91a of the Rules of the House relating to time limit on introduction of bills.
Resolved by the House of Delegates:

That effective the eleventh day of January, 1995, Rule No. 91a of the House of Delegates be amended to read as follows:

Time Limit on Introducing

91a. No House joint resolution and no House bill, other than a House supplementary appropriation bill or a House bill originating in a House standing or select committee, shall be introduced in the House after the forty-first day of a regular session unless permission to introduce the joint resolution or bill be given by a House resolution, setting out the title to the joint resolution or bill and adopted by a two-thirds vote of the House members present. The forty-first day of the regular session held in the year one thousand nine hundred ninety-seven and every fourth year thereafter shall be computed from and include the second Wednesday of February of such years. When permission is requested to introduce a joint resolution or bill under provisions of this rule, quadruplicate copies of the joint resolution or bill shall accompany the resolution when introduced.

SENATE RESOLUTION 11

(By Senators Manchin, Boley, Bailey, Jones, Helmick, Tomblin, Wooton, Sharpe, Anderson, Chernenko, Burdette, Mr. President, Craigo, Lucht, Minard, Whitlow, Ross, Claypole, Dittmar, Wagner, Plymale, Miller, Walker and Wehrle)

[Adopted February 3, 1994]

Urging the Congress and the president of the United States to oppose any regulation, policy proposal or legislative bill mandating programs or responsibilities to state and local governments without full federal funding.

Whereas, Unfunded federal mandates impose substantial financial burdens on state and local taxpayers which are, in effect, hidden federal taxes; and

Whereas, The extraordinary costs imposed by unfunded mandates are estimated to be in the tens of billions of dollars annually; and
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WHEREAS, A government that establishes public requirements without providing the corresponding funding has, by definition, failed to adequately consider the financial implications of its actions; and

WHEREAS, Studies of the federal government have consistently demonstrated that the government closest to the people is the most competent to design effective and efficient solutions to public needs; therefore, be it

Resolved by the Senate:

That the Senate urges the Congress and the president of the United States to oppose any regulation, policy proposal or legislative bill mandating programs or responsibilities to state and local governments without full federal funding; and, be it

Further Resolved, That the Senate is in hopes that the Congress and the president of the United States realize that unfunded mandates constitute inappropriate public policy and that no government should legitimately prioritize public needs without providing the funding for the programs that it enacts; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to members of the West Virginia delegation to the United States Congress and to the president of the United States.

SENATE RESOLUTION 29

(By Senators Humphreys, Anderson, Bailey, Blatnik, Boley, Burdette, Mr. President, Chafin, Chernenko, Claypole, Craigo, Dalton, Dittmar, Grubb, Helmick, Holliday, Jones, Lucht, Macnaughtan, Manchin, Miller, Minard, Plymale, Ross, Schoonover, Sharpe, Tomblin, Wagner, Walker, Wehrle, Whitlow, Wiedebusch, Withers, Wooton and Yoder)

[Adopted March 5, 1994]

Requesting that AT&T reconsider its decision to close its consumer sales and service center in Charleston, West Virginia.
WHEREAS, In February, 1994, AT&T announced its decision to close its sales and service center in Charleston, West Virginia, by October 1, 1994, an act which will eliminate four hundred jobs; and

WHEREAS, When the center was brought to West Virginia, incentives and concessions were made by the State of West Virginia to encourage AT&T to locate in Charleston; and

WHEREAS, The center in Charleston has been a top performer for AT&T with no negative aspects; and

WHEREAS, The loss of the four hundred jobs at the Charleston sales and service center will have a definite impact on the economy of the city of Charleston, the county of Kanawha and the State of West Virginia; and

WHEREAS, The four hundred employees of the AT&T sales and service center in Charleston have performed their jobs with exceptional dedication and reliability to AT&T and are undeserving of such unfair treatment; therefore, be it

Resolved by the Senate:

That the Senate hereby requests AT&T to reconsider its decision to close the AT&T sales and service center in Charleston, West Virginia, costing four hundred of their dedicated and loyal employees to lose their jobs; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the chairman of AT&T, Robert E. Allen; the governor of West Virginia, the Honorable Gaston Caperton; and the members of the West Virginia delegation to the United States Congress.

HOUSE JOINT RESOLUTION 13
(By Delegates Huffman and Moore)
[Adopted March 11, 1994]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one, article four thereof, relating to elections and officers; and repealing section eight, article twelve of said Constitution relating to prohibiting mixed schools; numbering and designating
such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-four, which proposed amendment is that section eight, article twelve be repealed; and that section one, article four of said Constitution be amended to read as follows:

ARTICLE IV. ELECTION AND OFFICERS.

§1. Election and officers.

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment Number 1” and designated as the “Constitutional Amendment to Repeal Archaic Language,” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to repeal and delete the section prohibiting mixed schools, removing language referring to paupers and male voters and reducing the residency requirements for voting to thirty days.”
Proposing an amendment to the Constitution of the State of West Virginia, repealing section three, article nine thereof, relating to removing the term limit for sheriffs; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election in the year one thousand nine hundred ninety-four, which proposed amendment is that section three, article nine be repealed.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 2” and designated as the “Removing Sheriff’s Term Limit Amendment” and the purpose of the proposed amendment is as follows: “To repeal section three, article nine of the State Constitution which provided that a person who has been elected or who has served as sheriff during all or any part of two consecutive terms shall be ineligible for the office of sheriff during any part of the term immediately following the second of the two consecutive terms.”
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-five.
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-five” shall mean the period from July first, one thousand nine hundred ninety-four, through June thirtieth, one thousand nine hundred ninety-five.

“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.

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.

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.

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 fund 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.

TITLE II—APPROPRIATIONS.

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<td><strong>MISCELLANEOUS BOARDS AND COMMISSIONS</strong></td>
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<td>Public Service Commission</td>
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<td>Maternal and Child Health</td>
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SECTION 2. Appropriations from state road fund.
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SECTION 11. Special revenue appropriations.
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SECTION 13. Specific funds and collection accounts.
SECTION 15. Sinking fund deficiencies.
SECTION 16. Appropriations for local governments.
SECTION 17. Total appropriations.
SECTION 18. General school fund.
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-five.

LEGISLATIVE

1—Senate

“Former” Account No. 1010

“WVFIMS” Account No.

Fund 0165 FY 1995 Org 2100

<table>
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<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
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<td>1</td>
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<td>10</td>
<td>$3,936,200</td>
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</table>

The appropriations for the senate for the fiscal year 1993-94 are to remain in full force and effect and are hereby reappropriated to June 30, 1995. Any balances so reappropriated may be transferred and credited to the 1994-95 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 which are 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 1995 Org 2200

<table>
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<tr>
<th>Item Description</th>
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<td>Compensation and Per Diem of Officers and Employees (R)</td>
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<td>Current Expenses and Contingent Fund (R)</td>
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<td>Expenses of Members (R)</td>
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<td><strong>Total</strong></td>
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</table>

The appropriations for the house of delegates for the fiscal year 1993-94 are to remain in full force and effect and are hereby reappropriated to June 30, 1995. Any balances so reappropriated may be transferred and credited to the 1994-95 accounts.

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the house of delegates, with the approval of the speaker, is authorized to draw his 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 which are to be accompanied by bills to be filed with the auditor.

The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such
house resolution for the session, or fixed by the speaker,
with the approval of the house committee on rules,
during and between sessions of the Legislature, notwith-
standing such house resolution. The clerk of the house
is hereby authorized to draw requisitions upon the
auditor for such services, payable out of the appropri-
ation for the Compensation and Per Diem of Officers
and Employees or Current Expenses and Contingent
Fund of the house of delegates.

For duties imposed by law and by the house of
deleagues, 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
delegates.

3—Joint Expenses
(WV Code Chapter 4)
“Former” Account No. 1030
“WVFIMS” Account No.
Fund 0175 FY 1995 Org 2300

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The appropriations for the joint expenses for the fiscal
year 1993-94 are to remain in full force and effect and
are hereby reappropriated to June 30, 1995. Any
balances so reappropriated may be transferred and
credited to the 1994-95 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 1995 Org 2400

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<td>Other Court Costs (R)</td>
<td>111</td>
<td>2,400,000</td>
</tr>
<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>250,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>725,000</td>
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<tr>
<td>Guardianship Attorney Fees</td>
<td></td>
<td>300,000</td>
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<tr>
<td>Family Law Master Program</td>
<td>190</td>
<td>691,285</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 42,407,557</td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals
and 1993-94 are to remain in full force and effect and
are hereby reappropriated to June 30, 1995. Any
balances so reappropriated may be transferred and
credited to the 1994-95 accounts.
This appropriation shall be administered by the administrative director of the supreme court of appeals, who shall draw his requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System is to be transferred to the consolidated public retirement board, 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 1995 Org 0100

<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 Governor</td>
<td>002</td>
<td>$72,000</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>1,432,523</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>316,156</td>
</tr>
<tr>
<td>5</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>63,580</td>
</tr>
<tr>
<td>6</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>28,732</td>
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<tr>
<td>7</td>
<td>Unclassified</td>
<td>099</td>
<td>589,224</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$2,511,215</td>
</tr>
</tbody>
</table>

6—Governor’s Office—Custodial Fund

(WV Code Chapter 5)

"Former" Account No. 1230

"WVFIMS" Account No.

Fund 0102 FY 1995 Org 0100

<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>$357,830</td>
</tr>
</tbody>
</table>

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.
### 7—Governor's Office

(WV Code Chapter 5)

**“Former” Account No. 1235**

**“WVFIMS” Account No.**

**Fund 0543 FY 1995 Org 0100**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$0</td>
</tr>
</tbody>
</table>

### 8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

**“Former” Account No. 1240**

**“WVFIMS” Account No.**

**Fund 0105 FY 1995 Org 0100**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Civil Contingent Fund—Total (R)</td>
<td>114</td>
<td>$1,250,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation (fund 0105, activity 114) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

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.

### 9—Governor’s Office—

Infrastructure Improvements

(WV Code Chapter 5)

**“Former” Account No. 1250**

**“WVFIMS” Account No.**

**Fund 0106 FY 1995 Org 0100**
Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0106, activity 096) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95 and 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 1995 Org 0100

Governor’s Cabinet on Children and Families—Total (R) ........ 116 $ 350,000

Any unexpended balance remaining in the appropriation (fund 0104, activity 116) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

11—Governor’s Office—

Health Care Planning Commission

(WV Code Chapter 5)

“Former” Account No. 1265
“WVFIMS” Account No.

Fund 0545 FY 1995 Org 0100

Unclassified—Total ............... 096 $ -0-

12—Auditor’s Office—

General Administration

(WV Code Chapter 12)

“Former” Account No. 1500
“WVFIMS” Account No.

Fund 0116 FY 1995 Org 1200

Salary of Auditor ............... 002 $ 46,800

Personal Services ............... 001 1,646,038
## Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>32,824</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>547,276</td>
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<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>615,933</td>
</tr>
<tr>
<td>6</td>
<td>Computer Disk</td>
<td>519</td>
<td>90,000</td>
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<tr>
<td>7</td>
<td>Office Automation (R)</td>
<td>117</td>
<td>750,000</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$3,728,871</td>
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</tbody>
</table>

9 Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099) and Office Automation (fund 0116, activity 117) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

### 13—Auditor’s Office—

**Family Law Master Administration Fund**

(WV Code Chapter 48A)

“Former” Account No. 1510

“WVFIMS” Account No.

Fund 0117 FY 1995 Org 1200

1 Unclassified—Total .................. 096 $ 450,000

2 The above appropriation shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits.

### 14—Treasurer’s Office

(WV Code Chapter 12)

“Former” Account No. 1600

“WVFIMS” Account No.

Fund 0126 FY 1995 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Treasurer</td>
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<td>$50,400</td>
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<td>2</td>
<td>Personal Services</td>
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<td>$478,110</td>
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<tr>
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<td>Annual Increment</td>
<td>004</td>
<td>$7,416</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$162,496</td>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>$272,824</td>
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<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>$320,576</td>
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<tr>
<td></td>
<td>Appropriations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Hardware/Software Upgrade</td>
<td>518</td>
<td>$54,000</td>
</tr>
<tr>
<td>8</td>
<td>Check Encoder</td>
<td>$125,000</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$1,470,822</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Check Encoder (fund 0126, activity 441) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

15—Attorney General

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

"Former" Account No. 2400

"WVFIMS" Account No.

Fund 0150 FY 1995 Org 1500

<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
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<tr>
<td>3</td>
<td>Annual Increment</td>
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<tr>
<td>4</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
</tr>
</tbody>
</table>

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.

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

"Former" Account No. 2500

"WVFIMS" Account No.
Ch. 1]  

**Appropriations**  

**Fund 0155 FY 1995 Org 1600**

1. Salary of Secretary of State ....... 002 $43,200  
2. Personal Services .................. 001 $479,891  
3. Annual Increment .................... 004 $5,724  
4. Employee Benefits .................. 010 $164,194  
5. National Voter Registration Act ...... 520 $90,000  
6. Publication of Election Laws ......... 521 $38,000  
7. Unclassified (R) ..................... 099 $262,376  
8. Total .................................. $1,083,385  

Any unexpended balance remaining in the appropriation for Unclassified (fund 0155, activity 099) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

**17—State Elections Commission**  

(WV Code Chapter 3)  

"Former" Account No. 2600  
"WVFIMS" Account No.  
**Fund 0160 FY 1995 Org 1601**

1. Unclassified—Total .................. 096 $10,616  

**18—Department of Agriculture**  

(WV Code Chapter 19)  

"Former" Account No. 5100  
"WVFIMS" Account No.  
**Fund 0131 FY 1995 Org 1400**

1. Salary of Commissioner ............. 002 $46,800  
2. Personal Services ................... 001 $2,589,859  
3. Annual Increment .................... 004 $41,148  
4. Employee Benefits ................... 010 $956,082  
5. Unclassified .......................... 099 $922,396  
6. Gypsy Moth Program ................. 119 $773,420  
7. Farmers Markets ..................... 20,000  
8. Small Business Loan Program ....... 200,000  
9. Charleston Capital Market Place .... 200,000  
10. Total ................................ $5,749,705
11 A portion of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

14 The above appropriation for Small Business Loan Program may be transferred to a special revenue fund to establish a revolving fund for such loan purposes.

19—Department of Agriculture—

Soil Conservation Committee

(WV Code Chapter 19)

“Former” Account No. 5120

“WVFIMS” Account No.

Fund 0132 FY 1995 Org 1400

1 Personal Services ...................... 001 $ 375,700
2 Annual Increment ...................... 004 6,408
3 Employee Benefits .................... 010 110,886
4 Unclassified (R) ....................... 099 284,758
5 Maintenance of Flood Control
6 Projects .............................. 522 1,750,000
7 Soil Conservation Projects .......... 3,000,000
8 Total ................................. $ 5,527,752

9 Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099) and Infrastructure Projects—Total (fund 0538, activity 516) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

20—Department of Agriculture—

Marketing and Development Division

(Matching Fund)

(WV Code Chapter 19)

“Former” Account No. 5130

“WVFIMS” Account No.

Fund 0134 FY 1995 Org 1400

1 Personal Services ...................... 001 $ -0-
### Ch. 1] Appropriations

21—Department of Agriculture—

**Meat Inspection**

(WV Code Chapter 19)

“Former” Account No. 5140

“WVFIMS” Account No.

Fund 0135 FY 1995 Org 1400

<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>$320,579</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$5,796</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$119,025</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$63,370</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$508,770</td>
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</tbody>
</table>

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.

22—Department of Agriculture—

**Agricultural Awards**

(WV Code Chapter 19)

“Former” Account No. 5150

“WVFIMS” Account No.

Fund 0136 FY 1995 Org 1400

<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>Agricultural Awards</td>
<td>121</td>
<td>$66,066</td>
</tr>
<tr>
<td>2</td>
<td>Fairs and Festivals</td>
<td>122</td>
<td>$241,598</td>
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<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$307,664</td>
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</table>

DEPARTMENT OF ADMINISTRATION

23—Department of Administration—

**Office of the Secretary**

(WV Code Chapter 5F)
“Former” Account No. 2105
“WVFIMS” Account No.
Fund 0186 FY 1995 Org 0201

1 Unclassified—Total .................. 096 $ 237,072

24—Division of Finance
(WV Code Chapter 5A)

“Former” Account No. 2110
“WVFIMS” Account No.
Fund 0203 FY 1995 Org 0209

1 Personal Services ................. 001 $ 507,454
2 Annual Increment ................. 004  6,960
3 Employee Benefits ............... 010 144,453
4 Unclassified ..................... 099  547,651
5 GAAP Project (R) ............... 125 1,314,300
6 Total ............................. $ 2,520,818

7 Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

25—Division of Purchasing
(WV Code Chapter 5A)

“Former” Account No. 2120
“WVFIMS” Account No.
Fund 0210 FY 1995 Org 0213

1 Personal Services ................. 001 $ 582,292
2 Annual Increment ................. 004  8,461
3 Employee Benefits ............... 010 159,069
4 Unclassified ..................... 099  72,409
5 Total ............................. $ 822,231

6 The division of highways shall reimburse the Unclassified appropriation (fund 2031, activity 099) 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.

26—Division of General Services
(WV Code Chapter 5A)

“Former” Account No. 2130
“WVFIMS” Account No.

Fund 0230 FY 1995 Org 0223

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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</tr>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$444,840</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$13,068</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$203,830</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$698,459</td>
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<tr>
<td>126</td>
<td>Fire Service Fee</td>
<td>$13,440</td>
</tr>
<tr>
<td>503</td>
<td>Capitol Building Preservation (R)</td>
<td>$500,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$1,873,637</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capitol Building Preservation (fund 0230, activity 503) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

27—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 1995 Org 0224

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified—Total</td>
<td>$4,656</td>
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</tbody>
</table>

28—Board of Risk and Insurance Management
(WV Code Chapter 29)

“Former” Account No. 2250
“WVFIMS” Account No.

Fund 0217 FY 1995 Org 0218

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$10,454,116</td>
</tr>
</tbody>
</table>
The above appropriation includes funding for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies, except those operating from special revenue funds, with such special revenue fund agencies to be billed by the board of risk and insurance management and with such costs to be a proper charge against such spending units.

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

**29—Commission on Uniform State Laws**

(WV Code Chapter 29)

“Former” Account No. 2450

“WVFIMS” Account No.

Fund 0214 FY 1995 Org 0217

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified—Total</td>
<td></td>
<td>$20,000</td>
</tr>
</tbody>
</table>

To pay expenses of members of the commission on uniform state laws.

**30—Public Defender Services**

(WV Code Chapter 29)

“Former” Account No. 5900

“WVFIMS” Account No.

Fund 0226 FY 1995 Org 0221

<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>
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<td>$244,047</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>$75,298</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td></td>
<td>$98,435</td>
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</tbody>
</table>
Appointed Counsel Fees and
Public Defender
Corporations (R) ................. 127  14,210,905

Total ................................ $ 14,631,529


31—Education and State Employees

Grievance Board
(WV Code Chapter 18)
“Former” Account No. 6015
“WVFIMS” Account No.
Fund 0220 FY 1995 Org 0219

1 Personal Services ................. 001 $ 455,454
2 Annual Increment ................. 004  4,176
3 Employee Benefits ............... 010 121,650
4 Unclassified ...................... 099 108,158
5 Total ............................ $ 689,438

32—Public Employees Retirement System
(WV Code Chapter 5)
“Former” Account No. 6140
“WVFIMS” Account No.
Fund 0195 FY 1995 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.

33—Public Employees Insurance Agency
(WV Code Chapter 5)
“Former” Account No. 6150
“WVFIMS” Account No.
Fund 0200 FY 1995 Org 0225

1 The division of highways, division of motor vehicles,
bureau of employment programs, public service com-
mission and other departments or divisions operating
from special revenue funds and/or federal funds shall
pay their proportionate share of the public employees
health insurance cost for their respective divisions.
When specific appropriations are not made, such
payments may be made from the balances in the various
special revenue funds in excess of specific appropria-
tions.

34—Ethics Commission
(WV Code Chapter 6B)
“Former” Account No. 6180
“WVFIMS” Account No.
Fund 0223 FY 1995 Org 0220

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
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<td>$612</td>
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<tr>
<td>Employee Benefits</td>
<td>$38,969</td>
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<tr>
<td>Unclassified</td>
<td>$157,561</td>
</tr>
<tr>
<td>Total</td>
<td>$360,357</td>
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</tbody>
</table>

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES
35—West Virginia Development Office
(WV Code Chapter 5B)
“Former” Account No. 1210
“WVFIMS” Account No.
Fund 0256 FY 1995 Org 0307
Ch. 1] APPROPRIATIONS

<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>$1,882,036</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>21,812</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>506,844</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,668,667</td>
</tr>
<tr>
<td>5</td>
<td>Partnership Grants (R)</td>
<td>131</td>
<td>3,000,000</td>
</tr>
<tr>
<td>6</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td>200,000</td>
</tr>
<tr>
<td>7</td>
<td>Local Economic Development Partnerships (R)</td>
<td>133</td>
<td>1,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Infrastructure</td>
<td>524</td>
<td>16,500,000</td>
</tr>
<tr>
<td>9</td>
<td>Leverage Technology Loan Program</td>
<td>525</td>
<td>0</td>
</tr>
<tr>
<td>10</td>
<td>Small Business Development Loan Program</td>
<td>526</td>
<td>0</td>
</tr>
<tr>
<td>11</td>
<td>ARC Assessment</td>
<td>242</td>
<td>109,445</td>
</tr>
<tr>
<td>12</td>
<td>Guaranteed Work Force Grant (R)</td>
<td>242</td>
<td>1,450,000</td>
</tr>
<tr>
<td>13</td>
<td>Leverage Technology and Small Business Development Program</td>
<td>800,000</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>WV Film Development Office</td>
<td>75,000</td>
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</tr>
<tr>
<td>15</td>
<td>Total</td>
<td></td>
<td>$27,213,804</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Partnership Grants (fund 0256, activity 131), Competitive Grants (fund 0256, activity 130), Guaranteed Work Force Grant (fund 0256, activity 242) and Local Economic Development Partnerships (fund 0256, activity 133) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

The above appropriation to 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.

From the above appropriation for Infrastructure, it is the intent of the Legislature that adequate funds be transferred to the state revolving fund to match available federal funds for water and sewer projects.

36—Division of Labor

(WV Code Chapters 21 and 47)

“Former” Account No. 4500

“WVFIMS” Account No.

Fund 0260 FY 1995 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$874,063</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>$12,363</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>$330,500</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>$184,849</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$1,401,775</td>
<td></td>
</tr>
</tbody>
</table>

37—Division of Tourism and Parks

(WV Code Chapter 5B)

“Former” Account No. 4625

“WVFIMS” Account No.

Fund 0246 FY 1995 Org 0304

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td></td>
<td>096</td>
<td>$10,278,684</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.

38—Division of Forestry

(WV Code Chapter 19)

“Former” Account No. 4650

“WVFIMS” Account No.

Fund 0250 FY 1995 Org 0305
1 Unclassified—Total .................. 096 $ 2,100,000
2 Out of the above appropriation a sum may be used to
3 match federal funds for cooperative studies or other
4 funds for similar purposes.

39—Board of Coal Mine
Health and Safety
(WV Code Chapter 22)
“Former” Account No. 4720
“WVFIMS” Account No.
Fund 0280 FY 1995 Org 0319

1 Personal Services ..................... 001 $ 75,000
2 Annual Increment ..................... 004 504
3 Employee Benefits .................... 010 25,000
4 Unclassified ........................ 099 29,400
5 Total ................................ $ 129,904

40—Interstate Commission on
Potomac River Basin
(WV Code Chapter 29)
“Former” Account No. 4730
“WVFIMS” Account No.
Fund 0263 FY 1995 Org 0313

1 West Virginia’s Contribution
to the Interstate Commission
on Potomac River Basin—
4 Total .............................. 134 $ 37,325

41—Ohio River Valley Water
Sanitation Commission
(WV Code Chapter 29)
“Former” Account No. 4740
“WVFIMS” Account No.
Fund 0264 FY 1995 Org 0313
<table>
<thead>
<tr>
<th></th>
<th>West Virginia's Contribution to the Ohio River Valley Water Sanitation Commission—Total</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>$135</td>
<td>$100,200</td>
</tr>
</tbody>
</table>

42—Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)
“Former” Account No. 4750
“WVFIMS” Account No.
Fund 0285 FY 1995 Org 0320

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>$096</td>
<td>$71,303</td>
</tr>
</tbody>
</table>

43—Air Pollution Control Commission
(WV Code Chapter 16)
“Former” Account No. 4760
“WVFIMS” Account No.
Fund ___ FY 1995 Org ___

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>$096</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

44—Division of Environmental Protection
(WV Code Chapter 22)
“Former” Account No. 4775
“WVFIMS” Account No.
Fund 0273 FY 1995 Org 0313

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>$001</td>
<td>$4,027,782</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$49,700</td>
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<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>$1,321,034</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td>$621,245</td>
</tr>
<tr>
<td>5</td>
<td>Black Fly Control</td>
<td></td>
<td>$216,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$6,235,761</td>
</tr>
</tbody>
</table>

45—Division of Miners' Health, Safety and Training
(WV Code Chapter 22)
“Former” Account No. 4780
### Ch. 1] Appropriations

**“WVFIMS” Account No.**

**Fund 0277 FY 1995 Org 0314**

<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>3,075,183</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>31,536</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,044,879</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>270,986</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>4,422,584</td>
</tr>
</tbody>
</table>

**46—Geological and Economic Survey**

(WV Code Chapter 29)

**“Former” Account No. 5200**

**“WVFIMS” Account No.**

**Fund 0253 FY 1995 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>1,140,476</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>20,194</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>351,301</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>100,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,611,971</td>
</tr>
</tbody>
</table>

The above Unclassified appropriation includes funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105, activity 099) for the purpose of providing advance funding for such contracts.

**47—Department of Commerce,**

**Labor and Environmental Resources—**

**Office of the Secretary**

(WV Code Chapter 5F)

**“Former” Account No. 5321**

**“WVFIMS” Account No.**

**Fund 0236 FY 1995 Org 0301**

<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>099</td>
<td>-0-</td>
</tr>
<tr>
<td>2</td>
<td>ARC Assessment</td>
<td>136</td>
<td>-0-</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>-0-</td>
</tr>
</tbody>
</table>
### Appropriations

#### 48—Water Resources Board

(WV Code Chapter 20)

"Former" Account No. 5640

"WVFIMS" Account No.

**Fund 0270 FY 1995 Org 0311**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$61,932</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>720</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>18,994</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>32,210</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$113,856</strong></td>
</tr>
</tbody>
</table>

#### 49—Division of Natural Resources

(WV Code Chapter 20)

"Former" Account No. 5650

"WVFIMS" Account No.

**Fund 0265 FY 1995 Org 0310**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$490,304</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,840</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>161,452</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>7,858</td>
</tr>
<tr>
<td>5</td>
<td>Non-Game Wildlife</td>
<td>527</td>
<td>400,000</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,066,454</strong></td>
</tr>
</tbody>
</table>

#### DEPARTMENT OF EDUCATION

50—State Department of Education

(WV Code Chapters 18 and 18A)

"Former" Account No. 2860

"WVFIMS" Account No.

**Fund 0313 FY 1995 Org 0402**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>$2,265,660</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>32,695</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>646,647</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,213,903</td>
</tr>
<tr>
<td>5</td>
<td>Competitive Grants</td>
<td>130</td>
<td>-0-</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>WV Education Information</strong></td>
<td></td>
<td></td>
</tr>
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</table>
### Appropriations

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>System (WVEIS)</td>
<td>138</td>
<td>2,640,778</td>
</tr>
<tr>
<td>8</td>
<td>34/1000 Waiver</td>
<td>139</td>
<td>100,000</td>
</tr>
<tr>
<td>9</td>
<td>Increased Enrollment</td>
<td>140</td>
<td>2,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Coordinator—Educational</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Medical Services</td>
<td>141</td>
<td>59,855</td>
</tr>
<tr>
<td>12</td>
<td>Computer Basic Skills (R)</td>
<td>145</td>
<td>0</td>
</tr>
<tr>
<td>13</td>
<td>Principals' Academy</td>
<td>455</td>
<td>0</td>
</tr>
<tr>
<td>14</td>
<td>Governor's Honors Academy</td>
<td>478</td>
<td>30,000</td>
</tr>
<tr>
<td>15</td>
<td>WVGC Writing Project</td>
<td>482</td>
<td>20,000</td>
</tr>
<tr>
<td>16</td>
<td>Micro Computer Network</td>
<td>506</td>
<td>150,000</td>
</tr>
<tr>
<td>17</td>
<td>WV Work Heritage Project</td>
<td>507</td>
<td>20,000</td>
</tr>
<tr>
<td>18</td>
<td>Inclusion</td>
<td></td>
<td>200,000</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td></td>
<td>$13,379,538</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation for Computer Basic Skills (fund 0313, activity 145) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

#### 51—State Department of Education—

**School Lunch Program**

(WV Code Chapters 18 and 18A)

"Former" Account No. 2870

"WVFIMS" Account No.

Fund **0303** FY **1995** Org **0402**

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Fund</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$154,256</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,800</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>44,697</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,664,787</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,865,540</td>
</tr>
</tbody>
</table>

#### 52—State Board of Education—

**Vocational Division**

(WV Code Chapters 18 and 18A)

"Former" Account No. 2890

"WVFIMS" Account No.
### Appropriations

**Fund 0390 FY 1995 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>$681,946</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$10,031</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$182,891</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$544,066</td>
</tr>
<tr>
<td>5</td>
<td>Wood Products—Forestry Vocational Program</td>
<td>146</td>
<td>$63,024</td>
</tr>
<tr>
<td>6</td>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>$139,300</td>
</tr>
<tr>
<td>7</td>
<td>Vocational Aid</td>
<td>148</td>
<td>$10,517,851</td>
</tr>
<tr>
<td>8</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>$2,052,666</td>
</tr>
<tr>
<td>9</td>
<td>Equipment Replacement</td>
<td>150</td>
<td>$1,019,750</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$15,211,525</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Wood Products—Forestry Vocational Program (fund 0390, activity 146) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

### 53—State Department of Education—State Aid to Schools

(WV Code Chapters 18 and 18A)

"Former" Account No. 2950

"WVFIMS" Account No.

**Fund 0317 FY 1995 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>Other Current Expenses</td>
<td>022</td>
<td>$91,961,343</td>
</tr>
<tr>
<td>2</td>
<td>Professional Educators</td>
<td>151</td>
<td>$650,542,766</td>
</tr>
<tr>
<td>3</td>
<td>Service Personnel</td>
<td>152</td>
<td>$202,311,012</td>
</tr>
<tr>
<td>4</td>
<td>Fixed Charges</td>
<td>153</td>
<td>$74,027,708</td>
</tr>
<tr>
<td>5</td>
<td>Transportation</td>
<td>154</td>
<td>$28,251,254</td>
</tr>
<tr>
<td>6</td>
<td>Administration</td>
<td>155</td>
<td>$6,871,990</td>
</tr>
<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>$32,520,994</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowances</td>
<td></td>
<td>$1,086,487,067</td>
</tr>
<tr>
<td>9</td>
<td>Less Local Share</td>
<td>332</td>
<td>(216,537,100)</td>
</tr>
</tbody>
</table>
### Ch. 1] Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 1995 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Total Basic State Aid</td>
<td>869,949,967</td>
</tr>
<tr>
<td>11</td>
<td>Public Employees Insurance</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Match</td>
<td>012 116,027,065</td>
</tr>
<tr>
<td>13</td>
<td>Teachers' Retirement System</td>
<td>019 161,935,870</td>
</tr>
<tr>
<td>14</td>
<td>School Building Authority</td>
<td>453 23,350,809</td>
</tr>
<tr>
<td>15</td>
<td>School Building Authority—</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Renovation</td>
<td>3,000,000</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td>$1,174,263,711</td>
</tr>
</tbody>
</table>

#### 54—State Department of Education—
**Aid for Exceptional Children**
(WV Code Chapters 18 and 18A)

"Former" Account No. 2960
"WVFIMS" Account No.
Fund 0314 FY 1995 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 1995 Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
<td>159 $7,336,561</td>
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<tr>
<td>2</td>
<td>Special Education—Institutions</td>
<td>160 2,514,465</td>
</tr>
<tr>
<td>3</td>
<td>Education of Institutionalized</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Juveniles</td>
<td>161 3,150,973</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>$13,001,999</td>
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</table>

#### 55—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 1995 Org 0403

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 1995 Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001 $5,335,825</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004 4,860</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010 1,696,737</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099 1,009,048</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$8,046,470</td>
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</table>

#### 56—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)
### 57—State Board of Rehabilitation—
#### Division of Rehabilitation Services
(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>3360</td>
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<td>001</td>
<td>$97,985</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$3,262</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$47,009</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$157,127</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$305,383</td>
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</table>

### DEPARTMENT OF EDUCATION AND THE ARTS
#### 58—Board of Directors of the State College System
#### Control Account
(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>2785</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,657,127</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$89,970</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,233,830</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$151,165</td>
</tr>
<tr>
<td></td>
<td>Case Services</td>
<td>162</td>
<td>$2,757,289</td>
</tr>
<tr>
<td></td>
<td>Workshop Development</td>
<td>163</td>
<td>$1,449,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$9,338,381</td>
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</table>

### Appropriations

#### “Former” Account No. 3360
#### “WVFIMS” Account No.
Fund 0306 FY 1995 Org 0402

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<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>$97,985</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$3,262</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$47,009</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
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<td>$157,127</td>
</tr>
<tr>
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<td>Total</td>
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<td>$305,383</td>
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#### “Former” Account No. 4405
#### “WVFIMS” Account No.
Fund 0310 FY 1995 Org 0932

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<th>Description</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>$3,657,127</td>
</tr>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$89,970</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,233,830</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$151,165</td>
</tr>
<tr>
<td></td>
<td>Case Services</td>
<td>162</td>
<td>$2,757,289</td>
</tr>
<tr>
<td></td>
<td>Workshop Development</td>
<td>163</td>
<td>$1,449,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
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#### “Former” Account No. 2785
#### “WVFIMS” Account No.
Fund 0330 FY 1995 Org 0481

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<th>Account No.</th>
<th>Description</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$77,058,231</td>
</tr>
<tr>
<td></td>
<td>Micro Computer Labs for Teacher Education (R)</td>
<td>171</td>
<td>$-0-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$77,058,231</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Micro Computer Labs for Teacher Education (fund 0330, activity 171) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

59—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 1995 Org 0461

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1995 Org</th>
<th>Total</th>
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<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$142,154,211</td>
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</tr>
<tr>
<td>Marshall University—Southern WV Community</td>
<td>170</td>
<td>160,000</td>
<td></td>
</tr>
<tr>
<td>College 2+2 Program (R)</td>
<td>171</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Micro Computer Labs for Teacher Education (R)</td>
<td>171</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>Marshall University—Autism Training Center</td>
<td></td>
<td>400,000</td>
<td></td>
</tr>
<tr>
<td>Marshall University—Forensic Lab</td>
<td></td>
<td>100,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$142,814,211</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Marshall University-Southern WV Community College 2+2 Program (fund 0327, activity 170) and Micro Computer Labs for Teacher Education (fund 0327, activity 171) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

60—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 1995 Org 0452

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>1</td>
<td>Unclassified</td>
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<td>$868,084</td>
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<tr>
<td>2</td>
<td>Higher Education Grant</td>
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<td>$4,507,050</td>
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<td>3</td>
<td>Tuition Contract Program</td>
<td>165</td>
<td>$599,940</td>
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<td>4</td>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
<td>$90,000</td>
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<td>5</td>
<td>Underwood-Smith Scholarship</td>
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<tr>
<td>6</td>
<td>Program—Student Awards</td>
<td>167</td>
<td>$410,000</td>
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<td>7</td>
<td>WVNET</td>
<td>169</td>
<td>$2,088,776</td>
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<td>8</td>
<td>Micro Computer Labs for Teacher Education</td>
<td>171</td>
<td>$0</td>
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<tr>
<td>9</td>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$8,563,850</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Higher Education Grant Program (fund 0333, activity 164), Marshall University—Southern WV Community College 2+2 Program (fund 0333, activity 170) and Micro Computer Labs for Teacher Education (fund 0333, activity 171) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

61—Board of Trustees of the University System of West Virginia

University of West Virginia

Health Sciences Account

Control Account

(WV Code Chapter 18B)

"Former" Account No. 2855

"WVFIMS" Account No.

Fund 0323 FY 1995 Org 0478

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>School of Osteopathic Medicine</td>
<td>172</td>
<td>$5,452,654</td>
</tr>
<tr>
<td>2</td>
<td>Marshall Medical School</td>
<td>173</td>
<td>$9,755,954</td>
</tr>
<tr>
<td>3</td>
<td>WVU—School of Health Sciences</td>
<td>174</td>
<td>$34,762,257</td>
</tr>
<tr>
<td>4</td>
<td>WVU—School of Health Sciences—Charleston Division</td>
<td>175</td>
<td>$3,427,935</td>
</tr>
<tr>
<td>5</td>
<td>WVU Charleston Division—</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
7 Poison Control Hot Line ........ 510 250,000
8 Health Sciences Scholarship Fund 176 148,500
9 Primary Health Education
10 Program Support (R) ............ 177 3,960,000
11 Rural Health Initiative
12 Site Support (R) ............... 295 1,980,000
13 Total ................................ $ 59,737,300

Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177) and Rural Health Initiative Site Support (fund 0323, activity 295) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

62—Educational Broadcasting Authority
(WV Code Chapter 10)
“Former” Account No. 2910
“WVFIMS” Account No.
Fund 0300 FY 1995 Org 0439

1 Personal Services ............... 001 $ 3,054,536
2 Annual Increment .................. 004 48,240
3 Employee Benefits ............... 010 901,743
4 Unclassified ...................... 099 1,231,334
5 WPBY Transmitter ................ 460,000
6 Total .............................. $ 5,695,853
7 These funds may be transferred to special revenue accounts for matching college, university, city, county, federal and/or other generated revenues.

63—Library Commission
(WV Code Chapter 10)
“Former” Account No. 3500
“WVFIMS” Account No.
Fund 0296 FY 1995 Org 0433

1 Personal Services ............... 001 $ 1,014,982
2 Annual Increment .................. 004 25,668
3 Employee Benefits ............... 010 355,635
4 Unclassified 099 225,212
5 Books and Films 179 150,000
6 Services to State Institutions 180 156,310
7 Services to Blind and
8 Handicapped 181 42,729
9 Grants to Public Libraries 182 6,288,884
10 Total $ 8,259,420

64—Division of Culture and History

(WV Code Chapter 29)

“Former” Account No. 3510

“WVFIMS” Account No.

Fund 0293 FY 1995 Org 0432

1 Personal Services 001 $ 1,436,585
2 Annual Increment 004 23,220
3 Employee Benefits 010 474,160
4 Unclassified 099 2,302,096
5 Capital Outlay, Repairs and
6 Equipment (R) 542 749,210
7 Total $ 4,985,271

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0293, activity 542) at the close of the fiscal year 1993-94 is hereby appropriated for expenditure during the fiscal year 1994-95.

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.
### 65—Department of Education and the Arts—

**Office of the Secretary**

(WV Code Chapter 5F)

"Former" Account No. 5332

"WVFIMS" Account No.

Fund 0294 FY 1995 Org 0431

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
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<th>Budgeted Amount</th>
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</thead>
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<td>Unclassified (R)</td>
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<td>$462,881</td>
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<td>2</td>
<td>Center for Professional Development (R)</td>
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<tr>
<td>3</td>
<td>Technical Preparation</td>
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</tr>
<tr>
<td>4</td>
<td>Program (R)</td>
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<td>5</td>
<td>Arts and Literacy Programs</td>
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<td>6</td>
<td>Arts Programs</td>
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<td></td>
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<tr>
<td>7</td>
<td>Governor's Work Force</td>
<td></td>
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</tr>
<tr>
<td>8</td>
<td>Development Council</td>
<td>529</td>
<td>-0-</td>
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<td>9</td>
<td>Community Schools</td>
<td>530</td>
<td>-0-</td>
</tr>
<tr>
<td>10</td>
<td>Mini Grants</td>
<td>531</td>
<td>-0-</td>
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<tr>
<td>11</td>
<td>WV Humanities Council</td>
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<tr>
<td>12</td>
<td>Community Schools/Mini Grants</td>
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<td>$200,000</td>
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<td>13</td>
<td>Faculty and Staff Salaries</td>
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<td>$5,400,000</td>
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<tr>
<td>14</td>
<td>Mercer Study</td>
<td></td>
<td>$1,000,000</td>
</tr>
<tr>
<td>15</td>
<td>Marshall and West Virginia</td>
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</tr>
<tr>
<td>16</td>
<td>University Faculty and</td>
<td></td>
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<tr>
<td>17</td>
<td>Course Development</td>
<td></td>
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<tr>
<td>18</td>
<td>International Study Projects</td>
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<tr>
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<td>Total</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), except fiscal year 1991-92, Center for Professional Development (fund 0294, activity 115), except fiscal year 1991-92, Technical Preparation Program (fund 0294, activity 440) and Rural Health Initiative Site Support (fund 0294, activity 295) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

From the Unclassified line item above, one hundred thousand dollars shall be utilized by the secretary of
education and the arts to hire a director of federal programs, for the board of trustees and board of directors systems, who shall not be an employee of any college or university.

The above appropriation for Faculty and Staff Salaries and Benefits shall be allocated by utilizing the resource allocation model, with faculty receiving an increase of one thousand dollars across the board and classified staff and non-classified staff receiving an increase of seven hundred fifty dollars across the board.

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**66—Division of Health—**

**Central Office**

(WV Code Chapter 16)

"**Former**" Account No. 4000

"**WVFIMS**" Account No.

Fund **0407 FY 1995 Org 0506**

<table>
<thead>
<tr>
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<th>Account</th>
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<tr>
<td>Personal Services</td>
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<td>004</td>
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<td>Employee Benefits</td>
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<td>099</td>
<td>3,376,802</td>
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<td>Paramedic Training</td>
<td>490</td>
<td>-0-</td>
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<tr>
<td>Corporate Nonprofit Community Health Centers—F.M.H.A.</td>
<td>184</td>
<td>167,968</td>
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<td>Mortgage Finance</td>
<td>184</td>
<td>167,968</td>
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<tr>
<td>Appalachian States Low Level Radioactive Waste Commission</td>
<td>185</td>
<td>58,300</td>
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<td>Safe Drinking Water Program</td>
<td>187</td>
<td>451,710</td>
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<tr>
<td>State Aid to Local Agencies</td>
<td>209</td>
<td>7,517,204</td>
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<tr>
<td>Women, Infants and Children</td>
<td>210</td>
<td>75,000</td>
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<tr>
<td>Maternal and Child Health</td>
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<tr>
<td>Clinics, Clinicians and Medical Contracts and Fees</td>
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<td>4,423,043</td>
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<tr>
<td>Pediatric Dental Services</td>
<td>211</td>
<td>100,000</td>
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<tr>
<td>Vaccine for Children</td>
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<tr>
<td>Adult Influenza Vaccine</td>
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<td>65,000</td>
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<tr>
<td>Tuberculosis Control</td>
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<td>Appropriations</td>
<td>2281</td>
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</tr>
<tr>
<td>21</td>
<td>Wellness Institute</td>
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<tr>
<td>22</td>
<td>Primary Care Uncompensated</td>
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<tr>
<td>23</td>
<td>Care Fund 213</td>
<td>3,900,000</td>
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<tr>
<td>24</td>
<td>Equipment and Capital Costs</td>
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<tr>
<td>25</td>
<td>Primary Care Support</td>
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<td>26</td>
<td>Program 215</td>
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<td>27</td>
<td>Epidemiology Research</td>
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<tr>
<td>28</td>
<td>EMS Area Entity</td>
<td>756,320</td>
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<tr>
<td>29</td>
<td>Rural Non-Profit EMS Equipment 493</td>
<td>400,000</td>
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<td>30</td>
<td>Regional EMS Entities</td>
<td>630,000</td>
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<tr>
<td>31</td>
<td>Early Intervention</td>
<td>2,018,357</td>
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<td>32</td>
<td>Cancer Registry</td>
<td>192,487</td>
</tr>
<tr>
<td>33</td>
<td>Total</td>
<td>$35,861,182</td>
</tr>
</tbody>
</table>

67—Division of Human Services

(WV Code Chapters 9, 48 and 49)

"Former" Account No. 4050

"WVFIMS" Account No.

Fund 0403 FY 1995 Org 0511

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services 001</td>
<td>$17,309,185</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment 004</td>
<td>353,333</td>
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<tr>
<td>3</td>
<td>Employee Benefits 010</td>
<td>5,962,476</td>
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<tr>
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<td>Unclassified 099</td>
<td>11,939,583</td>
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<tr>
<td>5</td>
<td>OSCAR and RAPIDS 515</td>
<td>3,158,211</td>
</tr>
<tr>
<td>6</td>
<td>Medical Services 189</td>
<td>152,700,000</td>
</tr>
<tr>
<td>7</td>
<td>In-Home Services for</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Senior Citizens 224</td>
<td>700,000</td>
</tr>
<tr>
<td>9</td>
<td>Women’s Commission 191</td>
<td>80,000</td>
</tr>
<tr>
<td>10</td>
<td>Commission on</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Hearing Impaired 192</td>
<td>42,451</td>
</tr>
<tr>
<td>12</td>
<td>Public Assistance 193</td>
<td>30,231,418</td>
</tr>
<tr>
<td>13</td>
<td>Emergency Assistance 194</td>
<td>1,510,216</td>
</tr>
<tr>
<td>14</td>
<td>Social Services 195</td>
<td>23,550,348</td>
</tr>
<tr>
<td>15</td>
<td>Family Preservation Program 196</td>
<td>1,565,000</td>
</tr>
<tr>
<td>16</td>
<td>JOBS Program 197</td>
<td>3,730,069</td>
</tr>
<tr>
<td>17</td>
<td>Education Medical Services 198</td>
<td>724,887</td>
</tr>
<tr>
<td>18</td>
<td>Community JOBS Program 199</td>
<td>-0-</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$253,557,177</td>
</tr>
<tr>
<td>20</td>
<td>Notwithstanding the provisions of title one, section two</td>
<td></td>
</tr>
</tbody>
</table>
of this bill, 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.

68—Commission on Aging
(WV Code Chapter 29)
“Former” Account No. 4060
“WVFIMS” Account No.
Fund 0420 FY 1995 Org 0508

<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>$113,655</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,373</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$51,551</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$175,442</td>
</tr>
<tr>
<td>Local Programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Delivery Costs</td>
<td>200</td>
<td>$2,475,250</td>
</tr>
<tr>
<td>Senior Citizens Centers—Land</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acquisition, Construction and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>201</td>
<td>$100,000</td>
</tr>
<tr>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>$14,400</td>
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<tr>
<td>Area Agencies Administration</td>
<td>203</td>
<td>$87,429</td>
</tr>
<tr>
<td>Ombudsman</td>
<td>204</td>
<td>$245,325</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,265,425</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizens Centers—Land Acquisition, Construction and Repairs and Alterations (fund 0420, activity 201) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

69—Consolidated Medical Service Fund
“Former” Account No. 4190
“WVFIMS” Account No.
Fund 0525 FY 1995 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,189,539</td>
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<tr>
<td>Item</td>
<td>Code</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------</td>
<td>---------------</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,241</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>14,587,978</td>
</tr>
<tr>
<td>Foster Grandparents Stipends/Travel</td>
<td>205</td>
<td>57,734</td>
</tr>
<tr>
<td>Special Olympics</td>
<td>208</td>
<td>26,074</td>
</tr>
<tr>
<td>State Aid to Local Agencies</td>
<td>209</td>
<td>-0-</td>
</tr>
<tr>
<td>Women, Infants and Children</td>
<td>210</td>
<td>-0-</td>
</tr>
<tr>
<td>Maternal and Child Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clinics, Clinicians and Medical Contracts and Fees</td>
<td>211</td>
<td>-0-</td>
</tr>
<tr>
<td>Preventative Revaccination</td>
<td>212</td>
<td>-0-</td>
</tr>
<tr>
<td>Primary Care Uncompensated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Care Fund</td>
<td>213</td>
<td>-0-</td>
</tr>
<tr>
<td>Primary Care Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>215</td>
<td>-0-</td>
</tr>
<tr>
<td>Epidemiology Research</td>
<td>216</td>
<td>-0-</td>
</tr>
<tr>
<td>Grants to Counties and EMS Entities</td>
<td>217</td>
<td>-0-</td>
</tr>
<tr>
<td>Rural Non-Profit EMS</td>
<td></td>
<td></td>
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<tr>
<td>Equipment</td>
<td>493</td>
<td>-0-</td>
</tr>
<tr>
<td>Behavioral Health Program—Unclassified</td>
<td>219</td>
<td>474,475</td>
</tr>
<tr>
<td>Behavioral Health Program—</td>
<td></td>
<td></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>1,088,605</td>
</tr>
<tr>
<td>Early Intervention</td>
<td>223</td>
<td>-0-</td>
</tr>
<tr>
<td>In-Home Services For Senior Citizens</td>
<td>224</td>
<td>-0-</td>
</tr>
<tr>
<td>Behavioral Health Medicaid—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Match</td>
<td>492</td>
<td>9,345,670</td>
</tr>
<tr>
<td>Paramedic Training</td>
<td>490</td>
<td>-0-</td>
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<tr>
<td>Cancer Registry</td>
<td>225</td>
<td>-0-</td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operations</td>
<td>335</td>
<td>31,901,076</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 69,685,392</td>
</tr>
</tbody>
</table>

The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor 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 for Institutional
Facilities Operations. 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 fund 5156, fiscal year 1995, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriations to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 355), on July 1, 1994, the sum of two hundred thousand dollars shall be transferred to the farm management commission as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

Funds appropriated above for 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.

70—Department of Health and Human Resources—Office of the Secretary

(WV Code Chapter 5F)

“Former” Account No. 5343
“WVFIMS” Account No.

Fund 0400 FY 1995 Org 0501

1 Unclassified—Total .......... 096 $ 177,890

71—Human Rights Commission

(WV Code Chapter 5)
### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 72—Office of Emergency Services

(WV Code Chapter 15)

"Former" Account No. 1300

"WVFIMS" Account No.

Fund 0443 FY 1995 Org 0606

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$152,797</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,186</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$67,652</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,644</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$225,279</strong></td>
</tr>
</tbody>
</table>

#### 73—Board of Probation and Parole

(WV Code Chapter 62)

"Former" Account No. 3650

"WVFIMS" Account No.

Fund 0440 FY 1995 Org 0605

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$58,000</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$864</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$49,522</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$38,823</td>
</tr>
<tr>
<td>Salaries of Members of Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>of Probation and Parole</td>
<td>227</td>
<td>$200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$347,209</strong></td>
</tr>
</tbody>
</table>
74—Division of Corrections—
Central Office
(WV Code Chapters 25, 28, 49 and 62)
“Former” Account No. 3680
“WVFIMS” Account No.
Fund 0446 FY 1995 Org 0608

<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>$355,044</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>109,302</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>98,928</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$569,826</td>
</tr>
</tbody>
</table>

75—Division of Corrections—
Correctional Units
(WV Code Chapters 25, 28, 49 and 62)
“Former” Account No. 3770
“WVFIMS” Account No.
Fund 0450 FY 1995 Org 0608

<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>$9,539,883</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>164,942</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,779,562</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,773,628</td>
</tr>
<tr>
<td>5</td>
<td>Payment to Counties and/or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Regional Jails</td>
<td>229</td>
<td>384,000</td>
</tr>
<tr>
<td>7</td>
<td>Denmar Facility</td>
<td>448</td>
<td>2,000,000</td>
</tr>
<tr>
<td>8</td>
<td>WV Penitentiary Transition</td>
<td>532</td>
<td>2,337,090</td>
</tr>
<tr>
<td>9</td>
<td>Mt. Olive Correctional Complex</td>
<td>533</td>
<td>17,602,138</td>
</tr>
<tr>
<td>10</td>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>3,013,440</td>
</tr>
<tr>
<td>11</td>
<td>Inmate Medical Expense</td>
<td>535</td>
<td>2,259,100</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
<td>$46,853,783</td>
</tr>
</tbody>
</table>

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
appropiation. He 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.

From the above appropriation to Unclassified, on July 1, 1994, the sum of two hundred thousand dollars shall be transferred to the farm management commission as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

From the above Unclassified appropriation, the commissioner of the division of corrections is hereby authorized to expend not more than two hundred thousand dollars for relocation expenses incurred by correctional staff transferring from the West Virginia penitentiary to the Mt. Olive correctional complex, with the maximum reimbursement not to exceed three hundred dollars per affected employee. Further, the commissioner shall formulate guidelines covering the method and those expenses eligible for reimbursement.

76—Division of Veterans' Affairs—

Veterans' Home

(WV Code Chapter 9A)

"Former" Account No. 4010

"WVFIMS" Account No.

Fund 0460 FY 1995 Org 0618

<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>$536,849</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$13,788</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$235,986</td>
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<tr>
<td>Total</td>
<td></td>
<td>$786,623</td>
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</tbody>
</table>

77—Division of Veterans' Affairs

(WV Code Chapter 9A)
### Appropriations (Ch. 1)

**“Former” Account No. 4040**

**“WVFIMS” Account No.**

**Fund 0456 FY 1995 Org 0613**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$660,389</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>13,716</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>295,026</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>15,919</td>
</tr>
<tr>
<td>5 Veterans’ Field Offices</td>
<td>228</td>
<td>129,692</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,114,742</strong></td>
</tr>
</tbody>
</table>

78—Division of Veterans’ Affairs—

**Veterans’ Bonus**

(WV Code Chapter 9A)

**“Former” Account No. 4041**

**“WVFIMS” Account No.**

**Fund 0457 FY 1995 Org 0613**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>-0-</td>
</tr>
</tbody>
</table>

79—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 1995 Org 0601**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$150,098</td>
</tr>
</tbody>
</table>

80—Division of Public Safety

(WV Code Chapter 15)

**“Former” Account No. 5700**

**“WVFIMS” Account No.**

**Fund 0453 FY 1995 Org 0612**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$15,808,330</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Code</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------------</td>
<td>------</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>Barracks Maintenance and Construction (R)</td>
<td>494</td>
</tr>
<tr>
<td>6</td>
<td>Communications and Other</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Equipment</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Communications Equipment</td>
<td>502</td>
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<td>9</td>
<td>Equipment</td>
<td>070</td>
</tr>
<tr>
<td>10</td>
<td>Court Judgment</td>
<td>230</td>
</tr>
<tr>
<td>11</td>
<td>Vehicle Purchase</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Barracks Maintenance and Construction (fund 0453, activity 494) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditures during the fiscal year 1994-95.

81—Division of Criminal Justice and Highway Safety
(WV Code Chapter 15)

"Former" Account No. 5750
"WVFIMS" Account No.
Fund 0546 FY 1995 Org 0620

<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>$ 91,102</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,529</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>27,782</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>41,004</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 161,417</td>
</tr>
</tbody>
</table>

82—Adjutant General—State Militia
(WV Code Chapter 15)

"Former" Account No. 5800
"WVFIMS" Account No.
Fund 0433 FY 1995 Org 0603

<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>$ 271,477</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>6,480</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>95,845</td>
</tr>
</tbody>
</table>
The College Education Fund line item above shall be the total annual appropriation for awarding scholarships. The secretary of the department of military affairs and public safety shall devise a method to equitably reimburse all eligible participants on a pro-rata basis should the appropriation be insufficient to cover total annual eligible expenses.

83—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
“Former” Account No. 6010
“WVFIMS” Account No.
Fund 0536 FY 1995 Org 0615

1 Regional Jail—Capital

2 Outlay—Total $10,000,000

84—Fire Commission
(WV Code Chapter 29)
“Former” Account No. 6170
“WVFIMS” Account No.
Fund 0436 FY 1995 Org 0619

1 Personal Services ................. 001 $447,536
2 Annual Increment .................. 004 7,740
3 Employee Benefits ................. 010 150,912
4 Unclassified ........................ 099 115,394
5 Total ................................. $721,582

DEPARTMENT OF TAX AND REVENUE
85—Tax Division
(WV Code Chapter 11)
“Former” Account No. 1800
"WVFIMS" Account No.
Fund 0470 FY 1995 Org 0702

<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>$9,360,583</td>
</tr>
<tr>
<td>2  Annual Increment</td>
<td>004</td>
<td>$163,000</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
<td>010</td>
<td>$3,143,734</td>
</tr>
<tr>
<td>4  Lincoln County School</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5  Board—Technical</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6  Correction Refund Account</td>
<td></td>
<td>$250,000</td>
</tr>
<tr>
<td>7  Unclassified</td>
<td>099</td>
<td>$5,881,190</td>
</tr>
<tr>
<td>8  Total</td>
<td></td>
<td>$18,798,507</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Automation Project (fund 0470, activity 442) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

86—Division of Professional and Occupational Licenses—
State Athletic Commission
(WV Code Chapter 29)
“Former” Account No. 4790
“WVFIMS” Account No.
Fund 0523 FY 1995 Org 0933

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified</td>
<td>096</td>
<td>$4,719</td>
</tr>
</tbody>
</table>

87—Department of Tax and Revenue—
Office of the Secretary
(WV Code Chapter 5F)
“Former” Account No. 5365
“WVFIMS” Account No.
Fund 0465 FY 1995 Org 0701

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified</td>
<td>096</td>
<td>$161,908</td>
</tr>
</tbody>
</table>

DEPARTMENT OF TRANSPORTATION
88—Department of Transportation—
Office of the Secretary
(WV Code Chapter 5F)

"Former" Account No. 5376

“WVFIMS” Account No.

Fund 0500 FY 1995 Org 0801

1 Unclassified 099 $153,490
2 Civil Air Patrol 234 79,152
3 Port Authority (R) 443 268,200
4 Potomac Highlands
5 Airport Authority 444 50,000
6 Total 096 $550,842

Any unexpended balance remaining in the appropriation for Port Authority (fund 0500, activity 443) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditures during the fiscal year 1994-95.

89—Division of Public Transit

(WV Code Chapter 17)

“Former” Account No. 5380

“WVFIMS” Account No.

Fund 0510 FY 1995 Org 0805

1 Unclassified—Total 096 $872,680

90—State Rail Authority

(WV Code Chapter 29)

“Former” Account No. 5690

“WVFIMS” Account No.

Fund 0506 FY 1995 Org 0804

1 Duffield Station $25,000
2 Unclassified 096 455,373
3 Total 480,373

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 0506, activity 309) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.
MISCELLANEOUS BOARDS AND COMMISSIONS

91—Board of Investments
(WV Code Chapter 12)
"Former" Account No. 1900
"WVFIMS" Account No.
Fund 0513 FY 1995 Org 0920

<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>$1,176,013</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>12,634</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>385,411</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,188,086</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$3,762,144</td>
</tr>
</tbody>
</table>

92—Board of Investments—
School Building Sinking Fund
(WV Code Chapter 12)
"Former" Account No. 1905
"WVFIMS" Account No.
Fund 0526 FY 1995 Org 0920

1 Debt Service—Total (R) ............ 310 $ 11,118,500
2 Any unexpended balance remaining in the appropriation for Board of Investments—School Building Sinking Fund (fund 0526, activity 310) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

93—Claims Against the General Revenue Fund

1 Claims Against the State............ 319 $ -0-

1 Total TITLE II, Section 1—
2 General Revenue.................... $2,219,305,240

1 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-five.
DEPARTMENT OF TRANSPORTATION

94—Division of Highways

(WV Code Chapters 17 and 17C)

“Former” Account No. 6700

“WVFIMS” Account No.

Fund 9017 FY 1995 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>136</td>
</tr>
<tr>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>271</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road</td>
<td>272</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>275</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>276</td>
</tr>
<tr>
<td>General Operations</td>
<td>277</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>278</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>279</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>281</td>
</tr>
<tr>
<td>Highway Litter Control</td>
<td>282</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></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.

95—Division of Highways—
Federal Aid Highway Matching Fund
(WV Code Chapters 17 and 17C)
“Former” Account No. 6705
“WVFIMS” Account No.
Fund 9018 FY 1995 Org 0803

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interstate Construction</td>
<td>278</td>
<td>$11,500,000</td>
</tr>
<tr>
<td>2</td>
<td>Appalachian Program</td>
<td>280</td>
<td>$80,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>$171,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$262,500,000</td>
</tr>
</tbody>
</table>

96—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
“Former” Account No. 6710
“WVFIMS” Account No.
Fund 9007 FY 1995 Org 0802

<table>
<thead>
<tr>
<th>Line</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>$3,506,056</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$47,213</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,173,750</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>11,377,400</td>
</tr>
<tr>
<td>Optic Scan System (R)</td>
<td>283</td>
<td>500,000</td>
</tr>
<tr>
<td>Electronic Photo Operator and License System (R)</td>
<td>284</td>
<td>250,000</td>
</tr>
<tr>
<td>International Fuel Tax Agreement</td>
<td>536</td>
<td>620,000</td>
</tr>
<tr>
<td>License Plate—Reissue</td>
<td>734</td>
<td>734,160</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$18,208,579</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Optic Scan System (fund 9007, activity 283) and Electronic Photo Operator and License System (fund 9007, activity 284) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

### Title II, Section 2

#### Claims Against the State Road Fund

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims Against the State</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$768,869,579</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-five.

### Legislative

#### Crime Victims Compensation Fund—

(WV Code Chapter 14)

**Former** Account No. 8412

**WVFIMS** Account No. Fund 1731 FY 1995 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004 $</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 $</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 $</td>
</tr>
</tbody>
</table>

Other Funds

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>128,299</td>
</tr>
<tr>
<td></td>
<td>2,736</td>
</tr>
<tr>
<td></td>
<td>43,161</td>
</tr>
<tr>
<td></td>
<td>42,000</td>
</tr>
</tbody>
</table>
### Economic Loss Claim Payment Fund

<table>
<thead>
<tr>
<th>Economic Loss Claim</th>
<th>334</th>
<th>2,520,000</th>
</tr>
</thead>
</table>

**Total** $2,736,196

---

### EXECUTIVE

**99—Auditor's Office—**

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

"Former" Account No. 8120

"WVFIMS" Account No. Fund 1206 FY 1995 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$25,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$10,836</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$24,250</td>
</tr>
</tbody>
</table>

**Total** $60,086

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

---

**100—Auditor's Office—**

Securities Regulation Fund

(WV Code Chapter 32)

"Former" Account No. 8127

"WVFIMS" Account No. Fund 1225 FY 1995 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$216,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,200</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$49,049</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$182,751</td>
</tr>
</tbody>
</table>

**Total** $450,000

---

**101—Department of Agriculture**

(WV Code Chapter 19)

"Former" Account No. 8180

"WVFIMS" Account No.
102—Department of Agriculture—

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

“Former” Account No. 8192

“WVFIMS” Account No.

Fund 1408 FY 1995 Org 1400

1 Student and Farm Loans—Total... 235 $ 445,547

103—General John McCausland Memorial Farm

(WV Code Chapter 19)

“Former” Account No. 8194

“WVFIMS” Account No.

Fund 1409 FY 1995 Org 1400

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

104—Department of Agriculture—

Farm Operating Fund

(WV Code Chapter 19)

“Former” Account No. 8202

“WVFIMS” Account No.
### Department of Administration

**106—Division of Purchasing—Revolving Fund**

(WV Code Chapter 5A)

**"Former" Account No. 8140**  
**“WVFIMS” Account No.**

<table>
<thead>
<tr>
<th>Fund 2320 FY 1995 Org 0216</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ..........</td>
</tr>
<tr>
<td>2 Annual Increment ..........</td>
</tr>
<tr>
<td>3 Employee Benefits ..........</td>
</tr>
<tr>
<td>4 Unclassified ...............</td>
</tr>
<tr>
<td>5 Total ......................</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund 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/coping, microfilming, records storage and the sale of general office supplies.

107—Division of Information Services and Communications
(WV Code Chapter 5A)
“Former” Account No. 8151
“WVFIMS” Account No.
Fund 2220 FY 1995 Org 0210

| 1 | Personal Services .................. | 001 | $ 3,816,416 |
| 2 | Annual Increment .................. | 004 | 53,543 |
| 3 | Employee Benefits ................ | 010 | 1,187,414 |
| 4 | Unclassified ...................... | 099 | 1,340,957 |
| 5 | Total ............................. |     | $ 6,398,330 |

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.

108—Division of Personnel
(WV Code Chapter 29)
“Former” Account No. 8402
"WVFIMS" Account No.
Fund 2440 FY 1995 Org 0222

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1995 Org 0222</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,039,638</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>40,032</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>640,567</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,083,744</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,803,981</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

109—West Virginia Development Office

(WV Code Chapter 5B)

"Former" Account No. 8045

"WVFIMS" Account No.
Fund 3144 FY 1995 Org 0307

1 Any unexpended balance remaining in the appropriation for Energy Assistance (fund 3144, activity 099) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

110—Oil and Gas Conservation Commission

(WV Code Chapter 22)

"Former" Account No. 8097

"WVFIMS" Account No.
Fund 3371 FY 1995 Org 0315

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1995 Org 0315</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$168,435</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>720</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>41,316</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>179,074</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$389,545</strong></td>
</tr>
</tbody>
</table>
### Appropriations

**111—Division of Labor—**

**Contractor Licensing Board Fund**

(WV Code Chapter 21)

"Former" Account No. 8128

"WVFIMS" Account No. Fund 3187 FY 1995 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$477,848</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,635</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>186,576</td>
</tr>
<tr>
<td>Elevator Safety Program—Transfer</td>
<td></td>
<td>381,828</td>
</tr>
<tr>
<td>Gasoline Testing Program</td>
<td></td>
<td>100,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>785,706</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$1,936,593</td>
</tr>
</tbody>
</table>

The above appropriation for Elevator Safety—Transfer is to be utilized to fund the start-up phase of the program. Furthermore, once the division of labor has collected in elevator safety inspection fees the amount equivalent to the amount listed in the Elevator Safety—Transfer line item above, the money collected shall be transferred back to account number 8128, division of labor—contractor licensing board fund.

**112—Division of Labor—**

**Elevator Safety Act**

"Former" Account No. 8271

"WVFIMS" Account No. Fund 3188 FY 1995 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$-0-</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>-0-</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>-0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$-0-</td>
</tr>
</tbody>
</table>

The Division of Labor—Elevator Safety Act, account no. 8271 is hereby authorized to transfer to the Division of Labor—Contractor Licensing Board Fund, account no. 8182 as a result of funds collected from elevator safety
9 inspection fees, an amount equivalent to the three
10 hundred eighty-one thousand eight hundred twenty-eight
11 dollars appropriated in account no. 8128 to Elevator
12 Safety.

### 113—Division of Natural Resources
(WV Code Chapter 20)

"Former" Account No. 8300

"WVFIMS" Account No.

Fund 3200 FY 1995 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$5,985,638</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$99,756</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$2,262,899</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$4,275,093</td>
</tr>
<tr>
<td>Capital Improvements and Land Purchase (R)</td>
<td>248</td>
<td>$1,128,684</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$13,752,070</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid
from a special revenue fund out of fees collected by the
division of natural resources.

Any unexpended balances remaining in the appropri-
ations for Renovation of Dams (fund 3200, activity 414)
and Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

### 114—Division of Environmental Protection—Leaking Underground Storage Tanks

Administrative Fund
(WV Code Chapter 20)

"Former" Account No. 8302

"WVFIMS" Account No.

Fund 3325 FY 1995 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$309,500</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,736</td>
</tr>
</tbody>
</table>
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APPROPRIATIONS

[Ch. 1

<table>
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115—Division of Natural Resources—
Game, Fish and Aquatic Life Fund
(WV Code Chapter 20)

“Former” Account No. 8303
“WVFIMS” Account No.
Fund 3202 FY 1995 Org 0310

1 Unclassified—Total 096 $50,000

116—Division of Natural Resources—
Nongame Fund
(WV Code Chapter 20)

“Former” Account No. 8304
“WVFIMS” Account No.
Fund 3203 FY 1995 Org 0310

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117—Division of Natural Resources—
Planning and Development Division
(WV Code Chapter 20)

“Former” Account No. 8306
“WVFIMS” Account No.
Fund 3205 FY 1995 Org 0310

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<td>4</td>
<td>Independence Hall Renovation (R)</td>
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Any unexpended balance remaining in the appropriation for Independence Hall Renovation (fund 3205, activity 249) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

118—Division of Natural Resources—

Whitewater Study and Improvement Fund
(WV Code Chapter 20)

"Former" Account No. 8307
"WVFIMS" Account No.
Fund 3253 FY 1995 Org 0310

<table>
<thead>
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119—Division of Natural Resources—

Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)

"Former" Account No. 8308
"WVFIMS" Account No.
Fund 3256 FY 1995 Org 0310

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120—Division of Environmental Protection—

Groundwater Planning
(WV Code Chapter 20)

"Former" Account No. 8312
"WVFIMS" Account No.
Fund 3330 FY 1995 Org 0313

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121—Division of Natural Resources—

Recycling Assistance Fund
(WV Code Chapter 20)

"Former" Account No. 8316

"WVFIMS" Account No.

Fund 3254 FY 1995 Org 0310

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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

122—Division of Environmental Protection—

Hazardous Waste Emergency and Response Fund

(WV Code Chapter 20)

"Former" Account No. 8323

"WVFIMS" Account No.

Fund 3331 FY 1995 Org 0313

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123—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 1995 Org 0313

<table>
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<tr>
<td>1</td>
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### 124—Division of Environmental Protection—

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

"Former" Account No. 8327

"WVFIMS" Account No.

FUND 3333 FY 1995 Org 0313

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<td>4 Litter Control Conservation</td>
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<td><strong>Total</strong></td>
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### 125—Division of Environmental Protection—

**Fees and Operating Expenses**

(WV Code Chapter 16)

"Former" Account No. 8391

"WVFIMS" Account No.

FUND 3336 FY 1995 Org 0313

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<td>5 Office of Air Quality</td>
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### 126—Solid Waste Management Board

(WV Code Chapter 20)

"Former" Account No. 8461
"WVFIMS" Account No.

Fund 3288 FY 1995 Org 0312

<table>
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<td>Employee Benefits</td>
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127—Division of Forestry—
Timberland Enforcement Operations
(WV Code Chapter 19)

"Former" Account No. 8475
"WVFIMS" Account No.
Fund 3082 FY 1995 Org 0305

<table>
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<th>Description</th>
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128—Division of Forestry—
Woodlands and Timberlands
Stamp Fund
(WV Code Chapter 19)

"Former" Account No. 8476
"WVFIMS" Account No.
Fund 3083 FY 1995 Org 0305

<table>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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129—Division of Forestry—
Severance Tax Operations
(WV Code Chapter 11)

"Former" Account No. 8477
"WVFIMS" Account No.
## Appropriations

Fund 3084 FY 1995 Org 0305

<table>
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130—Division of Forestry

(WV Code Chapter 19)

"Former" Account No. 8478

"WVFIMS" Account No.

Fund 3081 FY 1995 Org 0305

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131—Division of Environmental Protection—

Special Reclamation Fund

(WV Code Chapter 22A)

"Former" Account No. 8537

"WVFIMS" Account No.

Fund 3321 FY 1995 Org 0313

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132—Division of Environmental Protection—

Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

"Former" Account No. 8538

"WVFIMS" Account No.

Fund 3322 FY 1995 Org 0313

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<td>465,000</td>
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133—Division of Environmental Protection—
### Oil and Gas Operating Permits

(WV Code Chapter 22B)

**“Former” Account No. 8539**

“WVFIMS” Account No.

**Fund 3323 FY 1995 Org 0313**

<table>
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### 134—Division of Environmental Protection—Mines and Minerals Operations Fund

(WV Code Chapter 22)

**“Former” Account No. 8540**

“WVFIMS” Account No.

**Fund 3324 FY 1995 Org 0313**

<table>
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### 135—Geological and Economic Survey

(WV Code Chapter 29)

**“Former” Account No. 8589**

“WVFIMS” Account No.

**Fund 3100 FY 1995 Org 0306**

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

136—Bureau of Employment Programs—

Workers’ Compensation Fund
(WV Code Chapter 23)

“Former” Account No. 9000
“WVFIMS” Account No.

Fund 3440 FY 1995 Org 0322

<table>
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<td>7</td>
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</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
137—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 1995 Org 0932

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<td>FY 1995 Org</td>
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139—State Department of Education—
School Building Authority
(WV Code Chapter 18)
“Former” Account No. 8247
“WVFIMS” Account No.
Fund 3959 FY 1995 Org 0402

<table>
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<td>$696,751</td>
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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
140—Department of Education and the Arts—
Office of the Secretary
Health Care Reform Studies
“Former” Account No. 8481
"WVFIMS" Account No.

Fund 4009 FY 1995 Org 0431

1 Personal Services ..................... 001 $ 116,100
2 Annual Increment ...................... 004 1,608
3 Employee Benefits .................... 010 30,134
4 Unclassified ......................... 099 102,158
5 Total ................................ $ 250,000

141—State University System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

"Former" Account No. 8830

"WVFIMS" Account No.

Fund 4007 FY 1995 Org 0461

1 Debt Service (R) ...................... 040 $ 5,879,337
2 Capital Repairs and
3 Alterations (R) ....................... 251 2,698,105
4 Miscellaneous Projects (R) ......... 252 400,000
5 Computer and
6 Telecommunications
7 Technology (R) ...................... 438 914,873
8 Total ................................ $ 9,892,315

Any unexpended balances remaining in the prior years’ and the 1993-94 appropriations are hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

142—State College System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

Control Account
(WV Code Chapters 18 and 18B)
“Former” Account No. 8835
“WVFIMS” Account No.
Fund 4289 FY 1995 Org 0481

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$1,479,921</td>
</tr>
<tr>
<td>Capital Repairs and Alterations (R)</td>
<td>251</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Miscellaneous Projects (R)</td>
<td>252</td>
<td>$700,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,679,921</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years’ and 1993-94 appropriations except activity 343, fiscal year 1974-75; activity 341, fiscal year 1975-76; activity 346, fiscal year 1975-76; activity 339, fiscal year 1977-79; activity 344, fiscal year 1978-79; and activity 352, fiscal year 1981-82 are hereby reappropriated for expenditure during the fiscal year 1994-95.

The unexpended balance in the appropriation for the Southern West Virginia Community College—McDowell County Center in the amount of one hundred twenty-five thousand dollars, as originally appropriated in this account in fiscal year 1992-93 and as herein reappropriated for expenditure during fiscal year 1994-95, is hereby redesignated as to purpose and shall be expended in fiscal year 1994-95 for Southern West Virginia Community College Campus at Saulsville by the state college system—state system registration fee—special capital improvement fund.

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.
143—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 1995 Org 0453

Any unexpended balances remaining in the prior years’ and 1993-94 appropriations except activity 406, fiscal year 1988-89, are hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

144—State College System—
State System Tuition Fee—
Special Capital Improvement Fee—

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

“Former” Account No. 8855
“WVFIMS” Account No.
Fund 4290 FY 1995 Org 0481

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040 $3,247,224</td>
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<tr>
<td>Capital Improvements (New) (R)</td>
<td>259 $2,364,090</td>
</tr>
<tr>
<td>Building and Campus</td>
<td></td>
</tr>
<tr>
<td>Renewal and Facilities Planning</td>
<td></td>
</tr>
<tr>
<td>and Administration</td>
<td>538 $2,690,000</td>
</tr>
<tr>
<td>Capital Contingencies</td>
<td></td>
</tr>
<tr>
<td>and Emergencies</td>
<td>537 $250,000</td>
</tr>
<tr>
<td>Total</td>
<td>$8,551,314</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior
years’ and 1993-94 appropriations except activity 343, fiscal year 1980-81; activity 365, fiscal year 1982-83; activity 368, fiscal year 1982-83; activity 369, fiscal year 1982-83; activity 378, fiscal year 1984-85; and activity 382, fiscal year 1986-87 are hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

145—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 1995 Org 0453

Any unexpended balances remaining in the prior years’ and 1993-94 appropriations except activity 395, fiscal year 1985-86, are hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

146—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

“Former” Account No. 8865

“WVFIMS” Account No.
### Appropriations

**Fund 4008 FY 1995 Org 0461**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$3,079,871</td>
</tr>
<tr>
<td>2</td>
<td>Building and Campus</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Renewal (R)</td>
<td>258</td>
<td>10,210,000</td>
</tr>
<tr>
<td>4</td>
<td>Facilities Planning and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Administration (R)</td>
<td>386</td>
<td>765,000</td>
</tr>
<tr>
<td>6</td>
<td>Computer and Telecommunications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Technology (R)</td>
<td>438</td>
<td>726,676</td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$14,781,547</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years' and the 1993-94 appropriations except activity 259, fiscal year 1990-91, are hereby reappropriated for expenditure during the fiscal year 1994-95.

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.

---

**147—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 1995 Org 0463

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>$14,974,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the fiscal year 1993-94 appropriation for the West Virginia university health sciences center is hereby reappropriated for expenditure during the fiscal year 1994-95.

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**148—Division of Health—**

**Hepatitis B Vaccine**
### 149—Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

<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>$31,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>576</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>11,267</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>630,000</td>
</tr>
<tr>
<td>5</td>
<td>Vaccine for Volunteer Squads</td>
<td></td>
<td>50,000</td>
</tr>
<tr>
<td>6</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 722,843</strong></td>
</tr>
</tbody>
</table>

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

### 150—Division of Health—Vital Statistics

(WV Code Chapter 16)

<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>$202,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,508</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>94,152</td>
</tr>
</tbody>
</table>
4 Unclassified .......................... 099  82,504
5 Total .................................. $  384,164

151—Hospital Finance Authority
(WV Code Chapter 16)

"Former" Account No. 8330
 "WVFIMS" Account No.

Fund 5475 FY 1995 Org 0509

<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>$ 49,619</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$ 144</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$ 15,126</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 67,116</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 132,005</td>
</tr>
</tbody>
</table>

6 The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

152—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)

"Former" Account No. 8500
 "WVFIMS" Account No.

Fund 5156 FY 1995 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$ 2,740,000</td>
</tr>
<tr>
<td>2</td>
<td>Broad Based Provider Tax</td>
<td></td>
<td>2,750,000</td>
</tr>
<tr>
<td>3</td>
<td>Institutional Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Operations (R)</td>
<td>335</td>
<td>$ 36,861,000</td>
</tr>
<tr>
<td>5</td>
<td>Medical Services Trust Fund—Transfer</td>
<td></td>
<td>$ 23,300,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$ 65,651,000</td>
</tr>
</tbody>
</table>

8 Any unexpended balance remaining in the appropriation for hospital services revenue account at the close
of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95, except for fund 5156, activity 335 (fiscal year 1991-92) and fund 5156, activity 040 (fiscal year 1992-93) which shall expire on June 30, 1994.

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 Colin Anderson center and Weston state hospital, and disportionate 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 service fund (fund 0525, fiscal year 1995, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335), on July 1, 1994, the sum of two hundred thousand dollars shall be transferred to the farm management commission as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

153—Division of Health—

Laboratory Services

(WV Code Chapter 16)

"Former" Account No. 8509

"WVFIMS" Account No.

Fund 5163 FY 1995 Org 0506

| 1 | Personal Services ................. | 001 | $ | 419,768 |
| 2 | Annual Increment ................. | 004 |   | 5,904 |
### Ch. 1] Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>137,556</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>449,900</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 1,013,128</strong></td>
</tr>
</tbody>
</table>

154—Division of Health—
Health Facility Licensing
(WV Code Chapter 16)
“Former” Account No. 8529
“WVFIMS” Account No.
Fund 5172 FY 1995 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>$ 161,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>56,599</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>85,200</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 303,851</strong></td>
</tr>
</tbody>
</table>

155—Health Care Cost Review Authority
(WV Code Chapter 16)
“Former” Account No. 8564
“WVFIMS” Account No.
Fund 5375 FY 1995 Org 0507

<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>$ 968,477</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,956</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>309,742</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,088,157</td>
</tr>
<tr>
<td>5</td>
<td>Vice Chancellor for Health Sciences Health Care Reform Studies—Transfer</td>
<td>513</td>
<td>250,000</td>
</tr>
<tr>
<td>8</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,624,332</strong></td>
</tr>
</tbody>
</table>

9 The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

14 The appropriation for health care reform studies shall be transferred to the vice chancellor for health science—
health care reform studies ("former" account no. 9290) upon the written request of the vice chancellor for health sciences.

156—Division of Human Services—  
Medical Services Trust Fund  
(WV Code Chapter 9)  
"Former" Account No. 8569  
"WVFIMS" Account No.  
Fund 5185 FY 1995 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Eligibility Expansion</td>
<td>$8,475,258</td>
</tr>
<tr>
<td>State Institutions DPSH Payments</td>
<td>$5,852,960</td>
</tr>
<tr>
<td>Hospice Services</td>
<td>$390,902</td>
</tr>
<tr>
<td>Match Drop</td>
<td>$5,400,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$20,119,120</strong></td>
</tr>
</tbody>
</table>

The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services in the Medical Services line item (fund 0403, activity 189).

157—Division of Human Services—  
Health Care Provider Tax  
(WV Code Chapter 11)  
"Former" Account No. 9175  
"WVFIMS" Account No.  
Fund 5090 FY 1995 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$096 115,000,000</td>
</tr>
</tbody>
</table>

From the above appropriation, 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 for administrative purposes. 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

#### 158—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

"Former" Account No. 8051

"WVFIMS" Account No.

Fund 6675 FY 1995 Org 0615

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Annual Increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$429,113</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>4,500</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
<td>146,236</td>
</tr>
<tr>
<td>4. Debt Service</td>
<td>040</td>
<td>10,000,000</td>
</tr>
<tr>
<td>5. Unclassified</td>
<td>099</td>
<td>220,950</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$10,800,799</strong></td>
</tr>
</tbody>
</table>

#### 159—Division of Veterans' Affairs—Veterans' Home

(WV Code Chapter 19A)

"Former" Account No. 8261

"WVFIMS" Account No.

Fund 6754 FY 1995 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Annual Increment</th>
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<tbody>
<tr>
<td>1. Unclassified—Total</td>
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<td>$280,000</td>
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</tbody>
</table>

#### 160—Division of Public Safety—Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

"Former" Account No. 8350

"WVFIMS" Account No.

Fund 6501 FY 1995 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Account Code</th>
<th>Annual Increment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>001</td>
<td>$543,444</td>
</tr>
<tr>
<td>2. Annual Increment</td>
<td>004</td>
<td>1,656</td>
</tr>
<tr>
<td>3. Employee Benefits</td>
<td>010</td>
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<td>4. Unclassified</td>
<td>099</td>
<td>699,783</td>
</tr>
</tbody>
</table>
5 Total ........................................ $ 1,393,347
6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees collected for
8 inspection stickers as provided by law.

161—Division of Public Safety—
Surplus Real Property Proceeds Fund
(WV Code Chapter 15)
“Former” Account No. 8354
“WVFIMS” Account No.
Fund 6516 FY 1995 Org 0612

<table>
<thead>
<tr>
<th></th>
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<th>$</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>300,000</td>
</tr>
</tbody>
</table>

162—Division of Public Safety—
Drunk Driving Prevention Fund
(WV Code Chapter 15)
“Former” Account No. 8355
“WVFIMS” Account No.
Fund 6513 FY 1995 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total ..............</th>
<th>096</th>
<th>$</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>686,240</td>
</tr>
</tbody>
</table>

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.

163—State Armory Board—
General Armory Fund
(WV Code Chapter 15)
“Former” Account No. 8446
“WVFIMS” Account No.
Fund 6102 FY 1995 Org 0604

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total ..............</th>
<th>096</th>
<th>$</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>310,000</td>
</tr>
</tbody>
</table>
164—Fire Commission—
Fire Marshal Fees
(WV Code Chapter 29)
“Former” Account No. 8465
“WVFIMS” Account No.
Fund 6152 FY 1995 Org 0619

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$367,285</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,132</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>121,544</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>285,766</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$777,727</strong></td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1993-94 is hereby available for expenditure as part of the fiscal year 1994-95 appropriation.

DEPARTMENT OF TAX AND REVENUE

165—Insurance Commissioner—
Examination Revolving Fund
(WV Code Chapter 33)

“Former” Account No. 8014
“WVFIMS” Account No.
Fund 7150 FY 1995 Org 0704

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$254,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,368</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>71,113</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>181,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$507,981</strong></td>
</tr>
</tbody>
</table>

166—Insurance Commissioner—
Consumer Advocate
(WV Code Chapter 33)

“Former” Account No. 8015
“WVFIMS” Account No.
### Fund 7151 FY 1995 Org 0704

<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>$73,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$252</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$29,226</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$127,593</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$230,571</td>
</tr>
</tbody>
</table>

### 167—Insurance Commissioner

(WV Code Chapter 33)

“Former” Account No. 8016

“WVFIMS” Account No.

### Fund 7152 FY 1995 Org 0704

<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>$1,333,088</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$16,884</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$512,517</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$581,074</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,443,563</td>
</tr>
</tbody>
</table>

6  The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.

### 168—Racing Commission—Relief Fund

(WV Code Chapter 19)

“Former” Account No. 8080

“WVFIMS” Account No.

### Fund 7300 FY 1995 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>Medical Expenses—Total</td>
<td>245</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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

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

### 169—Racing Commission—
Administration and Promotion
(WV Code Chapter 19)
“Former” Account No. 8082
“WVFIMS” Account No.
Fund 7304 FY 1995 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$53,700</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>504</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>20,252</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>47,408</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$121,864</td>
</tr>
</tbody>
</table>

170—Racing Commission—
General Administration
(WV Code Chapter 19)
“Former” Account No. 8083
“WVFIMS” Account No.
Fund 7305 FY 1995 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,007,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,680</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>273,298</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>67,598</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,357,576</td>
</tr>
</tbody>
</table>

171—Racing Commission—
Administration, Promotion and Education Fund
(WV Code Chapter 19)
“Former” Account No. 8084
“WVFIMS” Account No.
Fund 7307 FY 1995 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$35,000</td>
</tr>
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</table>

172—Tax Division—
Special Audit and Investigative Unit
(WV Code Chapter 11)
### 173—Tax Division—

**Cemetery Company Account**

(WV Code Chapter 35)

<table>
<thead>
<tr>
<th></th>
<th>Fund 7073 FY 1995 Org 0702</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 16,116</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>010</td>
<td>4,800</td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>099</td>
<td>11,084</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 32,000</strong></td>
</tr>
</tbody>
</table>

### 174—Tax Division—

**Office of Chief Inspector**

(WV Code Chapter 6)

<table>
<thead>
<tr>
<th></th>
<th>Fund 7067 FY 1995 Org 0702</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 1,449,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>17,064</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>449,632</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>401,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 2,317,196</strong></td>
</tr>
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</table>

### 175—Municipal Bond Commission

(WV Code Chapter 13)

**“Former” Account No. 8340**

---

<table>
<thead>
<tr>
<th></th>
<th>Fund 7067 FY 1995 Org 0702</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 591,846</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>010</td>
<td>189,390</td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>099</td>
<td>318,764</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 1,100,000</strong></td>
</tr>
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</table>

---
### APPROPRIATIONS

**“WVFIMS” Account No.**

**Fund 7253 FY 1995 Org 0706**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$106,270</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,728</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>37,154</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>42,640</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$187,792</strong></td>
</tr>
</tbody>
</table>

**176—Division of Banking—**

**Lending and Credit Rate Board**

(WV Code Chapter 47A)

**“Former” Account No. 8393**

**“WVFIMS” Account No.**

**Fund 3040 FY 1995 Org 0303**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$10,586</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>4,411</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>10,648</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$25,645</strong></td>
</tr>
</tbody>
</table>

**177—Division of Banking**

(WV Code Chapter 31A)

**“Former” Account No. 8395**

**“WVFIMS” Account No.**

**Fund 3041 FY 1995 Org 0303**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,112,653</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>7,416</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>337,832</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>541,920</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,999,821</strong></td>
</tr>
</tbody>
</table>

**178—Alcohol Beverage Control Administration—**

**Wine License Special Fund**

(WV Code Chapter 60)

**“Former” Account No. 8592**
### Appropriations

#### “WVFIMS” Account No.
**Fund 7351 FY 1995 Org 0708**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$198,908</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$3,240</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$59,074</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$170,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$431,222</td>
</tr>
</tbody>
</table>

179—Alcohol Beverage Control Administration

(WV Code Chapter 60)

“Former” Account No. 9270

“WVFIMS” Account No.
**Fund 7352 FY 1995 Org 0708**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,427,656</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$50,688</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,353,006</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,172,970</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,004,320</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 the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

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

### DEPARTMENT OF TRANSPORTATION

180—Division of Motor Vehicles—

**Driver's License Reinstatement Fund**

(WV Code Chapter 17B)

“Former” Account No. 8422

“WVFIMS” Account No.
**Fund 8213 FY 1995 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$180,068</td>
</tr>
</tbody>
</table>
181—Division of Motor Vehicles—
Driver Rehabilitation
(WV Code Chapter 17C)
“Former” Account No. 8423
“WVFIMS” Account No.
Fund 8214 FY 1995 Org 0802

<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>$51,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,008</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$23,476</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$698,506</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$773,990</td>
</tr>
</tbody>
</table>

182—Division of Motor Vehicles—
Insurance Certificate Fees
(WV Code Chapter 20)
“Former” Account No. 8424
“WVFIMS” Account No.
Fund 8215 FY 1995 Org 0802

<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>$542,152</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$8,028</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$239,485</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$146,872</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$936,537</td>
</tr>
</tbody>
</table>

183—Division of Motor Vehicles—
Motorboat Licenses
(WV Code Chapter 20)
“Former” Account No. 8425
“WVFIMS” Account No.
### Appropriations

**Fund 8216 FY 1995 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$71,500</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,019</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$27,548</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$43,915</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$144,982</strong></td>
</tr>
</tbody>
</table>

184—Division of Motor Vehicles—

**Returned Check Fees**

(WV Code Chapter 17)

"Former" Account No. 8426

"WVFIMS" Account No.

**Fund 8217 FY 1995 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$15,500</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$216</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$5,394</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$6,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$27,610</strong></td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

185—Real Estate Commission

(WV Code Chapter 47)

"Former" Account No. 8010

"WVFIMS" Account No.

**Fund 8635 FY 1995 Org 0927**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$267,332</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,124</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$91,206</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$212,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$573,062</strong></td>
</tr>
</tbody>
</table>

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

186—West Virginia Board of Examiners for Speech-Language Pathology and Audiology
Ch. 1] Appropriations

(WV Code Chapter 30)

"Former" Account No. 8113
"WVFIMS" Account No.
Fund 8646 FY 1995 Org 0930

1 Unclassified—Total .................. 096 $ 60,000
2 The total amount of this appropriation shall be paid
3 out of collections of license fees and fines as provided by
4 law.

187—West Virginia Cable Television
Advisory Board

(WV Code Chapter 5)

"Former" Account No. 8173
"WVFIMS" Account No.
Fund 8609 FY 1995 Org 0924

1 Personal Services .................... 001 $ 176,200
2 Annual Increment .................... 004 3,600
3 Employee Benefits .................. 010 46,691
4 Unclassified ......................... 099 60,268
5 Total ................................ $ 286,759

188—Public Service Commission

(WV Code Chapter 24)

"Former" Account No. 8280
"WVFIMS" Account No.
Fund 8623 FY 1995 Org 0926

1 Personal Services .................... 001 $ 5,559,220
2 Annual Increment .................... 004 52,000
3 Employee Benefits .................. 010 1,813,434
4 Unclassified ........................ 099 1,924,000
5 Total ............................... $ 9,348,654
6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections for special
8 license fees from public service corporations as provided
9 by law.

189—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
“Former” Account No. 8285
“WVFIMS” Account No.
Fund 8624 FY 1995 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>$128,613</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>37,391</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>87,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$256,504</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.

190—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)
“Former” Account No. 8290
“WVFIMS” Account No.
Fund 8625 FY 1995 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>$1,272,204</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>20,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>394,273</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>670,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,356,977</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.
191—Public Service Commission—
Consumer Advocate
(WV Code Chapter 24)
“Former” Account No. 8295
“WVFIMS” Account No.
Fund 8627 FY 1995 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>$336,195</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,412</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>106,332</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>292,991</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$737,930</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.

192—Claims Against Other Funds

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Claims Against the State</td>
<td>319</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Total TITLE II, Section 3—</td>
<td></td>
<td>$417,672,463</td>
</tr>
</tbody>
</table>

1 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 fund nos. 6677, 5405, 3951, 3963, 3067, 4030 and 5063 in the proportion the appropriation for each account bears to the total of the appropriations for the five accounts.

193—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
“Former” Account No. 8052
“WVFIMS” Account No.
Fund 6677 FY 1995 Org 0615

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total</td>
<td>$310</td>
</tr>
</tbody>
</table>

194—Commission on Aging
(WV Code Chapter 29)
“Former” Account No. 8209
“WVFIMS” Account No.
Fund 5405 FY 1995 Org 0508

1 In-Home Services for Senior Citizens—Total $600,000

195—State Department of Education
(WV Code Chapters 18 and 18A)
“Former” Account No. 8243
“WVFIMS” Account No.
Fund 3951 FY 1995 Org 0402

1 Computer Basic Skills—Total $6,000,000

2 Any unexpended balance remaining in the appropriation for Elementary Computer Education (fund 3951, activity 285) at the close of the fiscal year 1993-94 is hereby reappropriated for expenditure during the fiscal year 1994-95.

196—State Department of Education—School Building Authority
(WV Code Chapter 18)
“Former” Account No. 8248
“WVFIMS” Account No.
Fund 3963 FY 1995 Org 0402

1 Debt Service—Total $18,000,000

197—Division of Tourism and Parks
(WV Code Chapter 5B)
"Former" Account No. 8546

"WVFIMS" Account No.

Fund 3067 FY 1995 Org 0304

<p>| | | | | | | | | | | | | | |</p>
<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$</td>
<td>4,380,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Capital Outlay—Park</td>
<td>539</td>
<td>$</td>
<td>2,500,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Coopers Rock Land Acquisition (R)</td>
<td>439</td>
<td>$</td>
<td>200,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$</td>
<td>7,080,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3067, activity 099) except fiscal year 1991-92, Capital Outlay—Parks (fund 3067, activity 288) and Coopers Rock Land Acquisition (fund 3067, activity 439) at the close of the fiscal year 1993-94 are hereby reappropriated for expenditure during the fiscal year 1994-95.

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

Control Account

(WV Code Chapter 18B)

"Former" Account No. 8825

"WVFIMS" Account No.

Fund 4030 FY 1995 Org 0453

<p>| | | | | | | | | | | | | | |</p>
<table>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$</td>
<td>3,520,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

199—Division of Human Services

(WV Code Chapters 9, 48 and 49)

"Former" Account No. 9132

"WVFIMS" Account No.

Fund 5063 FY 1995 Org 0511

<p>| | | | | | | | | | | | | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Health Care and Title</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>XIX Waiver for Senior Citizens—Total</td>
<td>434</td>
<td>$</td>
<td>8,500,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>
The above appropriation 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.

Total TITLE II, Section 4—
Lottery Funds $ 43,700,000

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-five.

LEGISLATIVE

200—Crime Victims Compensation Fund
(WV Code Chapter 14)
"Former" Account No. 7907
"WVFIMS" Account No.
Fund 8738 FY 1995 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096 $ 730,000</td>
</tr>
</tbody>
</table>

EXECUTIVE

201—Governor’s Office—
Governor’s Cabinet on Children and Families
(WV Code Chapter 5)
"Former" Account No. 7753
"WVFIMS" Account No.
Fund 8792 FY 1995 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096 $ 387,350</td>
</tr>
</tbody>
</table>

202—Governor’s Office—
Governor's Cabinet on Children and Families—
Office of Economic Opportunity
(WV Code Chapter 5)
"Former" Account No. 7755
"WVFIMS" Account No.
Fund 8797 FY 1995 Org 0100
1 Unclassified—Total .................. 096 $ 4,228,397

203—Governor's Office—
Commission for National and Community Service
(Executive Order 1-94)
"Former" Account No. 7754
"WVFIMS" Account No.
Fund 8800 FY 1995 Org 0100
1 Unclassified—Total .................. 096 $ 800,000

204—Department of Agriculture—
Marketing and Development Division
(WV Code Chapter 19)
"Former" Account No. 7910
"WVFIMS" Account No.
Fund 8735 FY 1995 Org 1400
1 Unclassified—Total .................. 096 $ -0-

205—Department of Agriculture
(WV Code Chapter 19)
"Former" Account No. 7911
"WVFIMS" Account No.
Fund 8736 FY 1995 Org 1400
1 Unclassified—Total .................. 096 $ 2,093,025
206—Department of Agriculture—
   Meat Inspection
   (WV Code Chapter 19)
   “Former” Account No. 7918
   “WVFIMS” Account No.
   Fund 8737 FY 1995 Org 1400
   1 Unclassified—Total .................. 096 $ 574,442

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES
207—West Virginia
   Development Office
   (WV Code Chapter 5B)
   “Former” Account No. 7755
   “WVFIMS” Account No.
   Fund 8705 FY 1995 Org 0307
   1 Unclassified—Total .................. 096 $ 5,502,012

208—Division of Miners’ Health,
   Safety and Training
   (WV Code Chapter 22)
   “Former” Account No. 7868
   “WVFIMS” Account No.
   Fund 8709 FY 1995 Org 0314
   1 Unclassified—Total .................. 096 $ 420,348

209—Division of Labor
   (WV Code Chapters 21 and 47)
   “Former” Account No. 7884
   “WVFIMS” Account No.
   Fund 8706 FY 1995 Org 0308
<table>
<thead>
<tr>
<th>Code</th>
<th>Division Name</th>
<th>Former Account No.</th>
<th>WVFIMS Account No.</th>
<th>Fund</th>
<th>Fiscal Year</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>210</td>
<td>Division of Environmental Protection</td>
<td>7897</td>
<td></td>
<td>8708</td>
<td>FY 1995</td>
<td>0313</td>
</tr>
<tr>
<td>211</td>
<td>Division of Forestry</td>
<td>7924</td>
<td></td>
<td>8703</td>
<td>FY 1995</td>
<td>0305</td>
</tr>
<tr>
<td>212</td>
<td>Geological and Economic Survey</td>
<td>7929</td>
<td></td>
<td>8704</td>
<td>FY 1995</td>
<td>0306</td>
</tr>
<tr>
<td>213</td>
<td>Division of Natural Resources</td>
<td>7930</td>
<td></td>
<td>8707</td>
<td>FY 1995</td>
<td>0310</td>
</tr>
</tbody>
</table>

**DEPARTMENT OF EDUCATION**

<table>
<thead>
<tr>
<th>Code</th>
<th>Division Name</th>
<th>Former Account No.</th>
<th>WVFIMS Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>214</td>
<td>State Department of Education</td>
<td>7772</td>
<td></td>
</tr>
</tbody>
</table>
“WVFIMS” Account No.
Fund 8712 FY 1995 Org 0402
1 Unclassified—Total .................. 096 $ 5,517,000

215—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)
“Former” Account No. 7783
“WVFIMS” Account No.
Fund 8713 FY 1995 Org 0402
1 Unclassified—Total .................. 096 $ 54,310,000

216—State Board of Education—
Vocational Division
(WV Code Chapters 18 and 18A)
“Former” Account No. 7794
“WVFIMS” Account No.
Fund 8714 FY 1995 Org 0402
1 Unclassified—Total .................. 096 $ 14,619,450

217—State Department of Education—
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
“Former” Account No. 7805
“WVFIMS” Account No.
Fund 8715 FY 1995 Org 0402
1 Unclassified—Total .................. 096 $ 27,509,000

218—State Board of Rehabilitation—
Division of Rehabilitation Services
(WV Code Chapter 18)
“Former” Account No. 7873
"WVFIMS" Account No. Fund 8734 FY 1995 Org 0932
1 Unclassified—Total .................. 096 $ 36,373,657

DEPARTMENT OF EDUCATION AND THE ARTS

219—Educational Broadcasting Authority
(WV Code Chapter 10)
"Former" Account No. 7803
"WVFIMS" Account No. Fund 8721 FY 1995 Org 0439
1 Unclassified—Total .................. 096 $ 765,400

220—Library Commission
(WV Code Chapter 10)
"Former" Account No. 7817
"WVFIMS" Account No. Fund 8720 FY 1995 Org 0433
1 Unclassified—Total .................. 096 $ 1,810,692

221—Division of Culture and History
(WV Code Chapter 29)
"Former" Account No. 7828
"WVFIMS" Account No. Fund 8718 FY 1995 Org 0432
1 Unclassified—Total .................. 096 $ 1,091,900

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

222—Division of Health—
Central Office
(WV Code Chapter 16)
"Former" Account No. 7845
"WVFIMS" Account No.
Fund 8802 FY 1995 Org 0506

1 Unclassified—Total ............... 096 $ 28,721,000

223—Division of Human Services

(WV Code Chapters 9, 48 and 49)

“Former” Account No. 7851

“WVFIMS” Account No.

Fund 8722 FY 1995 Org 0511

1 Unclassified ...................... 099 $ 73,070,130
2 OSCAR and RAPIDS ............... 515 15,061,621
3 Medical Services ................. 189 950,000,000
4 Family Law Masters ............... 190 320,000
5 Public Assistance ................ 193 103,500,000
6 JOBS Program .................... 197 9,500,000
7 Education Medical Services ...... 198 1,200,000
8 Total ............................ $1,152,651,751

224—Consolidated Medical Service Fund

“Former” Account No. 7839

“WVFIMS” Account No.

Fund 8723 FY 1995 Org 0506

1 Unclassified—Total ............... 096 $ 17,833,000

225—Commission on Aging

(WV Code Chapter 29)

“Former” Account No. 7862

“WVFIMS” Account No.

Fund 8724 FY 1995 Org 0508

1 Unclassified—Total ............... 096 $ 11,431,000

226—Human Rights Commission

(WV Code Chapter 5)

“Former” Account No. 7968

“WVFIMS” Account No.

Fund 8725 FY 1995 Org 0510
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

227—Office of Emergency Services
(WV Code Chapter 15)
“Former” Account No. 7761
“WVFIMS” Account No.
Fund 8727 FY 1995 Org 0606

1 Unclassified—Total ................. 096 $ 151,352

228—Division of Veterans’ Affairs—Veterans’ Home
(WV Code Chapter 9A)
“Former” Account No. 7840
“WVFIMS” Account No.
Fund 8728 FY 1995 Org 0618

1 Unclassified—Total ................. 096 $ 3,484,879

229—Division of Public Safety
(WV Code Chapter 15)
“Former” Account No. 7946
“WVFIMS” Account No.
Fund 8741 FY 1995 Org 0612

1 Unclassified—Total ................. 096 $ 454,400

230—Adjutant General—State Militia
(WV Code Chapter 15)
“Former” Account No. 7957
“WVFIMS” Account No.
Fund 8726 FY 1995 Org 0603

1 Unclassified—Total ................. 096 $ 16,976,680
231—Division of Criminal Justice 
and Highway Safety
“Former” Account No. 7958
“WVFIMS” Account No.
Fund 8798 FY 1995 Org 0620
1 Unclassified—Total .................. 096 $ 6,940,000

DEPARTMENT OF TAX AND REVENUE

232—Tax Division
(WV Code Chapter 11)
“Former” Account No. 7763
“WVFIMS” Account No.
Fund 7069 FY 1995 Org 0702
1 Unclassified—Total .................. 096 $ 50,000

DEPARTMENT OF TRANSPORTATION

233—State Rail Authority
(WV Code Chapter 29)
“Former” Account No. 7932
“WVFIMS” Account No.
Fund 8733 FY 1995 Org 0804
1 Unclassified—Total .................. 096 $ 600,000

234—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
“Former” Account No. 7970
“WVFIMS” Account No.
Fund 8787 FY 1995 Org 0802
1 Unclassified—Total .................. 096 $ 41,087

235—Department of Transportation—
Office of the Secretary
**Ch. 1] APPROPRIATIONS**

(WV Code Chapter 5F)

"Former" Account No. 7982

"WVFIMS" Account No.

Fund 8782 FY 1995 Org 0801

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$1,300,000</th>
</tr>
</thead>
</table>

**236—Division of Public Transit**

(WV Code Chapter 17)

"Former" Account No. 7983

"WVFIMS" Account No.

Fund 8745 FY 1995 Org 0805

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$15,456,698</th>
</tr>
</thead>
</table>

**MISCELLANEOUS BOARDS AND COMMISSIONS**

**237—Public Service Commission—**

*Motor Carrier Division*

(WV Code Chapter 24A)

"Former" Account No. 7993

"WVFIMS" Account No.

Fund 8743 FY 1995 Org 0926

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$680,973</th>
</tr>
</thead>
</table>

**238—Public Service Commission—**

*Gas Pipeline Division*

(WV Code Chapter 24B)

"Former" Account No. 7996

"WVFIMS" Account No.

Fund 8744 FY 1995 Org 0926

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total</th>
<th>096</th>
<th>$254,615</th>
</tr>
</thead>
</table>

1 Total TITLE II, Section 5—

2 Federal Funds .................. $1,526,346,744
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 1994-95.

239—West Virginia Development Office—
Community Development
“Former” Account No. 8029
“WVFIMS” Account No.
Fund 8746 FY 1995 Org 0307

1 Unclassified—Total ............... 096 $ 20,400,000

240—State Department of Education—
Education Grant
“Former” Account No. 8242
“WVFIMS” Account No.
Fund 8748 FY 1995 Org 0402

1 Unclassified—Total ............... 096 $ 69,900,000

241—Bureau of Employment Programs—
Job Training Partnership Act
“Former” Account No. 8255
“WVFIMS” Account No.
Fund 8749 FY 1995 Org 0323

1 Unclassified—Total ............... 096 $ 45,343,521

242—Governor’s Office—
Governor’s Cabinet on Children and Families
“Former” Account No. 8432
“WVFIMS” Account No.
Fund 8799 FY 1995 Org 0100

1 Unclassified—Total ............... 096 $ 7,136,077

243—Division of Health—
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>FY 1995 Org</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8501</td>
<td>Substance Abuse Prevention and Treatment</td>
<td>0506</td>
<td>$6,400,000</td>
</tr>
<tr>
<td>8502</td>
<td>Maternal and Child Health</td>
<td>0506</td>
<td>$7,200,000</td>
</tr>
<tr>
<td>8505</td>
<td>Community Mental Health Services</td>
<td>0506</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>8506</td>
<td>Preventive Health</td>
<td>0506</td>
<td>$1,400,000</td>
</tr>
<tr>
<td>9147</td>
<td>Energy Assistance</td>
<td>0511</td>
<td></td>
</tr>
</tbody>
</table>
1 Unclassified—Total ............... 096 $ 17,000,000

248—Division of Human Services—
Child Care and Development
“Former” Account No. 9149
“WVFIMS” Account No.
Fund 8756 FY 1995 Org 0511

1 Unclassified—Total ............... 096 $ 6,500,000

249—Division of Human Services—
Social Services
“Former” Account No. 9161
“WVFIMS” Account No.
Fund 8757 FY 1995 Org 0511

1 Unclassified—Total ............... $ 24,000,000

250—Division of Human Services—
Family Preservation/Family Support
“Former” Account No. 9165
“WVFIMS” Account No.
Fund 8801 FY 1995 Org 0511

1 Family Support—
2 Service Delivery ................... $ 286,000
3 Unclassified ....................... 286,000
4 Total .............................. $ 572,000

1 Total TITLE II, Section 6—
2 Federal Block Grants ............ $ 208,851,598

Sec. 7. Awards for claims against the state.—There are hereby appropriated, for the remainder of the fiscal year 1993-1994 and to remain in effect until June 30, 1995, from the fund as designated, in the amounts as specified and for the claimants named in enrolled house bill no. 4565, regular session 1994—crime victims compensation funds of $207,000.00 for payment of claims
There are hereby appropriated for the fiscal year 1994-1995 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled committee substitute for senate bill no. 517, regular session 1994, and enrolled house bill no. 4564, regular session 1994—general revenue funds of $3,697,721.09.

The total of general revenue funds above do not include payment for claims in the amount of $1,875.00 from the supreme court—general judicial, account no. 1110, specifically made payable from the appropriation for the current fiscal year 1993-1994.

There are hereby appropriated for the fiscal year 1994-1995 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled committee substitute for senate bill no. 517, regular session 1994—special revenue funds of $237,881.82, state road funds of $87,053.20 and workers' compensation funds of $7,122.65

Sec. 8. Expirations.—Notwithstanding the provisions of section eight of the budget bill for the fiscal year 1993-94, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, the balance of funds deposited in fund 0100, cash reserve account no. 0032, and the balance of funds deposited in fund 0539, activity 0514, are hereby expired to the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-five, and shall not be available for expenditure until the commencement of the fiscal year which ends the thirtieth day of June, one thousand nine hundred ninety-five.

Sec. 9. 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 1994-95 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-four.

In the event that surplus revenues available on the thirty first day of July, one thousand nine hundred ninety-four, 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.

251—Division of Veterans’ Affairs—Veterans’ Bonus

(WV Code Chapter 9A)

"Former" Account No. 4041

“WVFIMS” Account No.

Fund 0457 FY 1995 Org 0613

| Unclassified—Total | 096 | $3,000,000 |

From the above appropriation, an amount not to exceed ninety thousand dollars may be expended for administrative activities associated with the veterans’ bonus.

252—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 5700

“WVFIMS” Account No.

Fund 0453 FY 1995 Org 0612

| Equipment | 070 | $0 |
| Overtime and Wage | | |
| Court Awards | | $2,000,000 |
| Total | | $2,000,000 |
Sec. 10. Appropriations from surplus accrued—lottery fund.—The following items are hereby appropriated from the lottery fund and are to be available for expenditure during the fiscal year 1994-95 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 thirtieth day of June, one thousand nine hundred ninety-four.

In the event that surplus revenues available on the thirtieth day of June, one thousand nine hundred ninety-four, 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 before any funds are provided for the next subsequent appropriation.
Sec. 11. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-five 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.
Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-five, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred ninety-five to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 13. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

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

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

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

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

Sec. 16. Appropriations for local governments.—
There are hereby appropriated for payment to counties,
districts and municipal corporations such amounts as
will be necessary to pay taxes due counties, districts and
municipal corporations and which have been paid into
the treasury:

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

Sec. 17. Total appropriations.—Where only a total
sum is appropriated to a spending unit, the total sum
shall include personal services, annual increment,
employee benefits, current expenses, repairs and alter-
ations, equipment and capital outlay, where not other-
wise specifically provided and except as otherwise
provided in TITLE I—GENERAL PROVISIONS,
Sec. 3.

Sec. 18. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with section
sixteen, article nine-a, chapter eighteen of the code.
§1. Appropriations conditional.
§2. Constitutionality.

TITLe III—ADMINISTRATION.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter five-a of the code.

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

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

CHAPTER 2

(S. B. 1013—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the governor’s office—civil contingent fund, “former” account no. 1240, “WVFIMS” account no. fund 0105, fiscal year 1994, organization 0100, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

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

TITLE II—APPROPRIATIONS.

Sec. 8. Appropriations from surplus accrued.

241b—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—
2 Total (R) ....................... 144 $ 1,000,000

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1993-1994 by providing for a new item of appropriation to be established therein to appropriate surplus accrued in the general revenue fund for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, and to be available for expenditure in the fiscal year 1993-1994. Such amount shall be available for expenditure upon passage of this bill.

CHAPTER 3
(S. B. 1022—Originating in the Committee on Finance.)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the crime victims compensation fund, "former" account no. 8412, "WVFIMS" account no. fund 1731, fiscal year 1994,
organization 2300, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to "former" account no. 8412, "WVFIMS" account no. fund 1731, fiscal year 1994, organization 2300, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2
3 Sec. 3. Appropriations from other funds.
4
5 LEGISLATIVE
6
7 93—Crime Victims Compensation Fund
8 (WV Code Chapter 14)
9 “Former” Account No. 8412
10 “WVFIMS” Account
11 Fund 1731 FY 1994 Org 2300
12
13 Activity | Other Funds
14 001 $125,778
15 004 $1,116
16 010 $37,742
17 099 $27,000
18 334 $1,450,000
19
20 The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between line items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year 1994 shall be made available for expenditure upon passage of this bill.
AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of commerce, labor and environmental resources, division of natural resources, “former” account no. 8300, “WVFIMS” account no. fund 3200, fiscal year 1994, organization 0308, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to “former” account no. 8300, “WVFIMS” account no. fund 3200, fiscal year 1994, organization 0308, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred thereafter to read as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$5,582,828</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>99,756</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between line items of the existing appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year 1993-1994 shall be made available for expenditure upon passage of this bill.

CHAPTER 5
(S. B. 1011—Originating in the Committee on Finance.)

[Passed March 17, 1994: in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and inserting additional language in a specific item of the existing appropriation to the department of education and the arts, division of culture and history, “former” account no. 3510, “WVFIMS” account no. fund 0293, fiscal year 1994, organization 0432, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That a specific item of the existing appropriation to “former” account no. 3510, “WVFIMS” account no. fund 0293, fiscal year 1994, organization 0432, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended by inserting additional language on line five thereafter to read as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION
AND THE ARTS

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>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Capital Outlay, Repairs</td>
<td>$197,000</td>
</tr>
<tr>
<td>5a and Equipment 542</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and insert additional language in a specific line item of the existing appropriation for fiscal year 1993-1994 for the designated spending unit to allow the purchase of equipment from the item of appropriation formerly entitled “capital outlay”, with such amended language to be effective upon passage of this bill.

CHAPTER 6
(S. B. 1012—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the division of corrections—correctional units, “former” account no. 3770, “WVFIMS” account no. fund 0450, fiscal year 1994, organization 0608, supplementing and amending chapter one, acts of the
Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

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

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

1 TITLE II—APPROPRIATIONS.

2 Sec. 8. Appropriations from surplus accrued.

3 241a—Division of Corrections—

4 Correctional Units

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

6 “Former” Account No. 3770

7 “WVFIMS” Account No.

8 Fund 0450 FY 1994 Org 0608

9 1 Unclassified—Total .......... $ 2,000,000

10 The purpose of this supplementary appropriation bill
11 is to supplement the budget act for the fiscal year 1993-1994 by providing for a new item of appropriation to be
12 established therein to appropriate surplus accrued in
13 the general revenue fund for the fiscal year ending the
14 thirtieth day of June, one thousand nine hundred ninety-
15 three, and to be available for expenditure in the fiscal
16 year 1993-94. Such amount shall be available for
17 expenditure upon passage of this bill.

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**CHAPTER 7**

(S. B. 1010—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations from the state fund, general revenue, to the department of health and human
resources, division of human services, "former" account no. 4050, "WVFIMS" account no. fund 0403, fiscal year 1994, organization 0511, and consolidated medical service fund, "former" account no. 4190, "WVFIMS" account no. fund 0525, fiscal year 1994, organization 0506, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That specific items of the total appropriations to "former" account no. 4050, "WVFIMS" account no. fund 0403, fiscal year 1994, organization 0511, and "former" account no. 4190, "WVFIMS" account no. fund 0525, fiscal year 1994, organization 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended and transferred with such items to thereafter read as follows:

<table>
<thead>
<tr>
<th></th>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>2</td>
<td>DEPARTMENT OF HEALTH</td>
</tr>
<tr>
<td>3</td>
<td>AND HUMAN RESOURCES</td>
</tr>
<tr>
<td>5</td>
<td>65—Division of Human Services</td>
</tr>
<tr>
<td>6</td>
<td>(WV Code Chapters 9, 48 and 49)</td>
</tr>
<tr>
<td>7</td>
<td>&quot;Former&quot; Account No. 4050</td>
</tr>
<tr>
<td>8</td>
<td>&quot;WVFIMS&quot; Account No.</td>
</tr>
<tr>
<td>9</td>
<td>Fund 0403 FY 1994 Org 0511</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $16,258,716</td>
</tr>
<tr>
<td>Total</td>
<td>$240,191,416</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend and transfer two million dollars to the personal services line item in the division of human services from the institutional facilities operations line item in the consolidated medical service fund, with no new moneys being appropriated. These amounts, as newly itemized, shall be available for expenditure in fiscal year 1993-1994 upon passage of this bill.
TITLE II—APPROPRIATIONS.

Sec. 8. Appropriations from surplus accrued.

241c—Division of Public Safety

(WV Code Chapter 15)

"Former" Account No. 5700

"WVFIMS" Account No.

Fund 0453 FY 1994 Org 0612

<table>
<thead>
<tr>
<th>Brady Act Implementation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$77,000</td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1993-1994 by providing for a new item of appropriation to be established therein to appropriate surplus accrued in the general revenue fund for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, and to be available for expenditure in the fiscal year 1993-1994. Such amount shall be available for expenditure upon passage of this bill.

CHAPTER 9
(H. B. 5005—By Delegates Kiss, Doyle, Campbell, S. Cook, Farris, Rutledge and Burk)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the public defender services, "former" account no. 5900, "WVFIMS" account no. fund 0226, fiscal year 1994, organization 0221, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

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

1 TITLE II—APPROPRIATIONS.
2 Sec. 8. Appropriation from surplus accrued.
3
4 EXECUTIVE
5 241d—Public Defender Services
6 (WV Code Chapter 29)
7 "Former" Account No. 5900
8 "WVFIMS" Account No.
9 Fund 0226 FY 1994 Org 0221
10 1 Appointed Council Fees
11 2 and Public Defender
12 3 Corporations (R) ............ 127 $ 4,138,488
13
14 The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1993-1994 by providing for a new item of appropriation to be established therein to appropriate surplus accrued in the general revenue fund for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, and to be available for expenditure in the fiscal year 1993-1994. Such amount shall be available for expenditure upon passage of this bill.

CHAPTER 10
(S. B. 1019—Originating in the Committee on Finance.)

{Passed March 17, 1994; in effect from passage. Approved by the Governor.}

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year
ending the thirtieth day of June, one thousand nine
hundred ninety-four, to the department of agriculture,
"former" account no. 7911, "WVFIMS" account no. fund
8736, fiscal year 1994, organization 1400, supplementing
and amending chapter one, acts of the Legislature, first
extraordinary session, one thousand nine hundred
ninety-three, known as the budget bill.

Whereas, The governor has established the availability of
federal funds for a continuing program, now available for
expenditure in fiscal year 1993-1994, a portion of which is
hereby appropriated by the terms of this supplementary
appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 7911,
"WVFIMS" account no. fund 8736, fiscal year 1994, organi-
zation 1400, chapter one, acts of the Legislature, first
extraordinary session, one thousand nine hundred ninety-
three, known as the budget bill, be supplemented and
amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

EXECUTIVE

192—Department of Agriculture
(WV Code Chapter 19)

"Former" Account No. 7911
"WVFIMS" Account No.

Fund 8736 FY 1994 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096 $ 1,994,318</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill
is to supplement this account in the budget bill for fiscal
year 1993-1994 by adding one hundred ninety thousand
dollars to the existing appropriation. These moneys shall
be available for expenditure upon passage of this bill.
AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from “former” account no. 8014-99, “WVFIMS” account no. fund 7150, fiscal year 1994, organization 0704, insurance commission—examination fund—cash control; “former” account no. 8016-99, “WVFIMS” account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control; and “former” account no. 8121-06, “WVFIMS” account no. fund 1207, fiscal year 1994, organization 1200, social security contributions, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, and transferring such amounts to the state fund, general revenue.

Be it enacted by the Legislature of West Virginia:

That the sum of one hundred ten thousand eight hundred sixty-six dollars be expired from “former” account no. 8014-99, “WVFIMS” account no. fund 7150, fiscal year 1994, organization 0704, insurance commission—examination fund—cash control; the sum of eight hundred twenty-seven thousand six hundred twenty-two dollars be expired from “former” account no. 8016-99, “WVFIMS” account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control; and the sum of four hundred thousand dollars be expired from “former” account no. 8121-06, “WVFIMS” account no. fund 1207, fiscal year 1994, organization 1200, social security contributions, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill be supplemented, amended, reduced and caused to expire and that such sums be transferred to the state fund, general revenue, and be available for other and further appropriation.
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the aforesaid accounts the total sum of one million three hundred thirty-eight thousand four hundred eighty-eight dollars into the general revenue fund for other and further appropriation and expenditure immediately upon passage of this bill.

CHAPTER 12
(S. B. 1015—Originating in the Committee on Finance.)

[Passed March 20, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of available moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of commerce, labor and environmental resources, division of natural resources—whitewater study and improvement fund, "former" account no. 8307, "WVFIMS" account no. fund 3253, fiscal year 1994, organization 0310, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of public moneys, receivable for new programs and available for expenditure in fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

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

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
Chapter 13

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

111a—Division of Natural Resources—
Whitewater Study and Improvement Fund

(WV Code Chapter 20)

"Former" Account No. 8307

"WVFIMS" Account No.

Fund 3253 FY 1994 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096 $ 50,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1993-1994 by providing for a new account to be established therein to appropriate other moneys received for expenditure in the fiscal year 1993-1994. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 13

(H. B. 5009—By Delegates P. White and Kiss)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury to the department of health and human resources, division of health—hospital services revenue account (special fund) (capital improvement, renovation and operations), “former” account no. 8500, “WVFIMS” account no. fund 5156, fiscal year 1994, organization 0506, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred
ninety-three, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated a balance in "former" account no. 8500, "WVFIMS" account no. fund 5156, fiscal year 1994, organization 0506, available for further appropriation during the fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 8500, "WVFIMS" account no. fund 5156, fiscal year 1994, organization 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF HEALTH
4 AND HUMAN RESOURCES
5 145—Division of Health—
6 Hospital Services Revenue Account
7 (Special Fund)
8 (Capital Improvement, Renovation and Operations)
9 (WV Code Chapter 16)
10 “Former” Account No. 8500
11 “WVFIMS” Account No.
12 Fund 5156 FY 1994 Org 0506
13 Activity Other
14 Funds
15 1 Debt Service (R) .............. 040 $2,740,000
16 2 Institutional Facilities
17 3 Operations (R) .............. 335 35,953,198
18 3a Broad Based Provider Tax ...
19 4 Medical Services Trust
20 5 Fund—Transfer .............. 512 118,000,000
21 6 Total ..................... $161,332,791
The purpose of this supplementary appropriation bill is to supplement and amend this account in the budget act for the fiscal year 1993-1994 from the unappropriated balance by adding six million, eight hundred thousand dollars to the institutional facilities operations line item, by adding ninety-five million, nine hundred eighty thousand dollars to the medical services trust fund—transfer line item, and by creating a new item of appropriation to facilitate payment of the broad based provider tax, for a total increase in authorized spending authority of one hundred seven million, four hundred nineteen thousand, five hundred ninety-three dollars to be available for expenditure upon passage of this bill.

From the above increase to the appropriation for Institutional Facilities Operations, not less than two million, four hundred thirty thousand, six hundred eighty dollars shall be expended for the purpose of repairs and alterations and three hundred thousand dollars shall be transferred to the City of Weston to upgrade the sewage system to accommodate the new Weston State Hospital.

CHAPTER 14
(S. B. 1016—Originating in the Committee on Finance.)
[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury to the public service commission, “former” account no. 8280, “WVFIMS” account no. fund 8623, fiscal year 1994, organization 0926, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated a balance in “former” account no. 8280, “WVFIMS”
account no. fund 8623, fiscal year 1994, organization 0926, available for further appropriation during the fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to "former" account no. 8280, "WVFIMS" account no. fund 8623, fiscal year 1994, organization 0926, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 MISCELLANEOUS BOARDS AND COMMISSIONS
4 181—Public Service Commission
5 (WV Code Chapter 24)
6 “Former” Account No. 8280
7 “WVFIMS” Account No.
8 Fund 8623 FY 1994 Org 0926
9

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
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</thead>
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<tr>
<td>001 Personal Services</td>
<td>$5,400,000</td>
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<tr>
<td>004 Annual Increment</td>
<td>$42,578</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>$1,725,352</td>
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<tr>
<td>099 Unclassified</td>
<td>$1,790,238</td>
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<tr>
<td>485 765 KV Transmission Line Study</td>
<td>$150,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$9,108,168</td>
</tr>
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</table>

The purpose of this supplementary appropriation bill is to supplement and amend this account in the budget act for the fiscal year 1993-1994 from the unappropriated balance by adding three hundred thousand dollars to the personal services line item and by adding fifty-five thousand dollars to the employee benefits line item, for a total increase in authorized spending authority of three hundred fifty-five thousand dollars to be available for expenditure upon passage of this bill.
CHAPTER 15
(S. B. 1018—Originating in the Committee on Finance.)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of agriculture—meat inspection, “former” account no. 7918, “WVFIMS” account no. fund 8737, fiscal year 1994, organization 1400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a continuing program, now available for expenditure in fiscal year 1993-1994, a portion of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to “former” account no. 7918, “WVFIMS” account no. fund 8737, fiscal year 1994, organization 1400, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill, be supplemented and amended thereafter to read as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
<th></th>
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<tbody>
<tr>
<td>Sec. 5. Appropriations of federal funds.</td>
<td></td>
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<tr>
<td>EXECUTIVE</td>
<td></td>
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<td>193—Department of Agriculture—</td>
<td></td>
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<tr>
<td>Meat Inspection</td>
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<td>(WV Code Chapter 19)</td>
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<tr>
<td>“Former” Account No. 7918</td>
<td></td>
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<tr>
<td>“WVFIMS” Account No.</td>
<td></td>
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<tr>
<td>Fund 8737 FY 1994 Org 1400</td>
<td></td>
</tr>
<tr>
<td>Act-</td>
<td>Federal</td>
</tr>
<tr>
<td>ivity</td>
<td>Funds</td>
</tr>
<tr>
<td>1 Unclassified—Total ............ 096 $ 538,729</td>
<td></td>
</tr>
</tbody>
</table>
13 The purpose of this supplementary appropriation bill
14 is to supplement this account in the budget act for fiscal
15 year 1993-1994 by adding seventy thousand dollars to
16 the existing appropriation. These moneys shall be
17 available for expenditure upon passage of this bill.

CHAPTER 16
(S. B. 1001—By Senators Jones, Plymale, Burdette, Mr. President,
Craigo, Wagner, Chernenko, Minard, Anderson, Dalton, Lucht,
Whitlow, Wooton, Humphreys, Boley, Manchin, Grubb, Schoonover,
Dittmar, Bailey, Ross, Withers, Helmick, Blatnik, Walker, Wehrle,
Tomblin, Miller, Holliday, Yoder and Sharpe)

[Passed March 15, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended by adding thereto two new sections, designated
sections four and five; and to amend chapter forty-nine
of said code by adding thereto a new article, designated
article five-d, all relating to prosecuting advisory
council; responsibilities of council; election of chairman;
victim advocates; requiring cooperation from other state
and local government units; participation in multidisci­
plinary planning process, multidisciplinary treatment
teams; purposes of teams; additional cases and teams;
establishment of investigative teams; procedures;
coordination between agencies; multidisciplinary treat­
ment planning process; and report of teams.

Be it enacted by the Legislature of West Virginia:

That article four, chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, be
amended by adding thereto two new sections, designated
sections four and five; and that chapter forty-nine of said code
be amended by adding thereto a new article, designated article
five-d, all to read as follows:

Chapter
  7. County Commissions and Officers.
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.
§7-4-5. Multidisciplinary investigative teams.

§7-4-4. Prosecutor's advisory council; victim advocates; participation in multidisciplinary planning process.

There is hereby created the prosecutor's advisory council composed of elected prosecuting attorneys of each county of the state or a designated member of their staff. The prosecutor's advisory council shall conduct an initial meeting of all members not later than the first day of September, one thousand nine hundred ninety-four, and shall meet not less than one time each year. At the initial meeting and annually thereafter, the council shall elect from among its membership a chairman of the council who shall set the agenda for the council's meetings and shall appoint necessary committees and direct the work of the council in carrying out its duties under the provisions of this section.

The council shall provide advice, assistance, training and leadership to the offices of the various county prosecuting attorneys of this state in criminal and civil cases which involve child abuse or neglect or sexual assault or sexual abuse of children. The council shall also provide advice and assistance to the secretary of the department of health and human resources in the implementation of a multidisciplinary planning process as set forth in article five-d, chapter forty-nine of this code.

The council may seek funds and programs to provide each prosecuting attorney's office with a staff person to assist children who are crime victims to obtain services and assistance from other agencies and programs in the community. Prosecuting attorneys shall be reimbursed by their respective county commissions for necessary expenses actually incurred when attending meetings of
§7-4-5. Multidisciplinary investigative teams.

On or before the first day of January, one thousand nine hundred ninety-five, the prosecuting attorney of each county in the state shall establish a multidisciplinary investigative team, in accordance with the provisions of section three, article five-d, chapter forty-nine of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-1. Purpose; additional cases and teams.

(a) The purpose of this article is to provide a system for evaluation of and coordinated service delivery for children who may be victims of abuse, neglect, sexual assault or sexual abuse, multineed children and children undergoing delinquency proceedings. It is the further purpose of this article to establish, as a complement to other programs of the department of health and human resources, a multidisciplinary screening, advisory and planning system to assist courts in facilitating permanency planning, to recommend alternatives and to coordinate evaluations and in-community services. It is the further purpose of this article to ensure that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.

(b) Nothing in this article precludes any multidisciplinary team from considering any case upon the
§49-5D-2. Multidisciplinary investigative teams; establishment; procedures; coordination between agencies.

(a) The prosecuting attorney shall establish a multidisciplinary investigative team in each county. The multidisciplinary team shall be headed and directed by the prosecuting attorney and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective services caseworker from the department of health and human resources and a local law-enforcement officer employed by a law-enforcement agency in the county. The department of health and human resources and any local law-enforcement agency or agencies selected by the prosecuting attorney shall appoint their representatives to the team by submitting a written designation of the team to the prosecuting attorney of each county within thirty days of the prosecutor's request that the appointment be made. Within fifteen days of the appointment, the prosecuting attorney shall notify the chief judge of each circuit within which the county is situated of the names of the representatives so appointed. Any other person or any other appointee of an agency who may contribute to the team's efforts to assist a minor child as may be determined by the permanent members of the team may also be appointed as a member of the team by the prosecutor with notification to the chief judge.

(b) Any permanent member of the multidisciplinary investigative team shall refer all cases of accidental death of any child reported to their agency and all cases when a child dies while in the custody of the state for investigation and review by the team. The multidisciplinary investigative team shall meet at regular intervals at least once every calendar month.

(c) The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect, and shall make
§49-5D-3. Multidisciplinary treatment planning process.

(a) On or before the first day of January, one thousand nine hundred ninety-five, a multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county by the secretary of the department of health and human resources, with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code.

Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse, neglect, sexual assault or sexual abuse, multineed children and their families and for children and their families involved in delinquency proceedings.

(b) Each treatment team shall be convened and directed by the child's or family's case manager. The treatment team shall consist of the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child if assigned by a judge of the circuit court, the child, if the child is over the age of twelve, and if the child's participation is otherwise appropriate, the child, if under the age of twelve when the team determines that the child's participation is appropriate, the
guardian ad litem, the prosecuting attorney or his or her
designee, and any other agency, person or professional
who may contribute to the team's efforts to assist the
child and family.

(c) The treatment team shall coordinate their activ-
ities and membership with local family resource
networks, and coordinate with other local and regional
child and family service planning committees to assure
the efficient planning and delivery of child and family
services on a local and regional level.

(d) State, county and local agencies shall provide the
multidisciplinary treatment teams with any information
requested in writing by the team as allowable by law
or upon receipt of a certified copy of the circuit court's
order directing said agencies to release information in
its possession relating to the child. The team shall assure
that all information received and developed in connec-
tion with the provisions of this article remain confiden-
tial. For purposes of this section, the term "confidential"
shall be construed in accordance with the provisions of
section one, article seven of this chapter.


All persons directing any team created pursuant to
this article shall maintain records of each meeting
indicating the name and position of persons attending
each meeting and the number of cases discussed at the
meeting, including a designation of whether or not that
case was previously discussed by any multidisciplinary
team. Further, all investigative teams shall maintain a
log of all cases to indicate the number of referrals to that
team, whether or not a police report was filed with the
prosecuting attorney's office, whether or not a petition
was sought pursuant to section one, article six of this
chapter, or whether or not a criminal complaint was
issued and a case was criminally prosecuted. All
treatment teams shall maintain a log of all cases to
indicate the basis for failure to review a case for a
period in excess of six months.
AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article two of said chapter, all relating to children in foster care; defining "siblings"; creating guidelines by which siblings who have been separated may be united or reunited in foster homes or adoptive homes; removal of foster children; procedures; judicial review; and rights of foster parents, adoptive parents, foster children and adopted children.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. PURPOSES; DEFINITIONS.

*§49-1-3. Definitions relating to abuse and neglect.

1. (a) “Abused child” means a child whose health or welfare is harmed or threatened by:

2. (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury upon the child or another child in the home; or

3. (2) Sexual abuse or sexual exploitation; or

4. (3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

*Clerk's Note: This section was also amended by S. B. 1020 (Chapter 23), which passed subsequent to this act.
In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

c) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

d) "Child abuse and neglect services" means social services which are directed toward:

(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to restore such children to their families;

(5) Placing children in suitable adoptive homes when restoring the children to their families is not possible or appropriate; and

(6) Assuring the adequate care of children away from their families when the children have been placed in the custody of the department or third parties.

e) "Imminent danger to the physical well-being of the
child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker; or

(2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

(3) Nutritional deprivation; or

(4) Abandonment by the parent, guardian or custodian; or

(5) Inadequate treatment of serious illness or disease; or

(6) Mental or emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(f) “Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. “Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.
(g) (1) “Neglected child” means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian;

(2) “Neglected child” does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(h) “Parenting skills” means a parent’s competencies in providing physical care, protection, supervision and psychological support appropriate to a child’s age and state of development.

(i) “Sexual abuse” means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with
such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(j) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(k) “Sexual exploitation” means an act whereby:

(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.

(l) “Sexual intercourse” means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(m) “Sexual intrusion” means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.
(n) “Parental rights” means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(o) “Placement” means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(p) “Siblings” means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

ARTICLE 2. STATE RESPONSIBILITIES FOR THE PROTECTION AND CARE OF CHILDREN.


(a) The state department may temporarily remove a child from a foster home based on an allegation of abuse or neglect, including sexual abuse, that occurred while the child resided in the home. If the department determines that reasonable cause exists to support the allegation, the department shall remove all foster children from the arrangement and preclude contact between the children and the foster parents. If, after investigation, the allegation is determined to be true by the department or after a judicial proceeding a court finds the allegation to be true or if the foster parents fail to contest the allegation in writing within twenty calendar days of receiving written notice of said allegations, the department shall permanently terminate all foster care arrangements with said foster parents: Provided. That if the state department determines that the abuse occurred due to no act or failure to act on the part of the foster parents, and that continuation of the foster care arrangement is in the best interests of the child, the department may, in its discretion, elect not to terminate the foster care arrangement or arrangements.

(b) When a child has been placed in a foster care
arrangement for a period in excess of eighteen consecutive months and the state department determines that the placement is a fit and proper place for the child to reside, the foster care arrangement may not be terminated unless such termination is in the best interest of the child and:

(1) The foster care arrangement is terminated pursuant to subsection (a) of this section;

(2) The foster care arrangement is terminated due to the child being returned to his or her parent or parents;

(3) The foster care arrangement is terminated due to the child being united or reunited with a sibling or siblings;

(4) The foster parent or parents agree to the termination in writing;

(5) The foster care arrangement is terminated at the written request of a foster child who has attained the age of fourteen; or

(6) A circuit court orders the termination upon a finding that the state department has developed a more suitable long-term placement for the child upon hearing evidence in a proceeding brought by the department seeking removal and transfer.

(c) When a child has been residing in a foster home for a period in excess of six consecutive months in total and for a period in excess of thirty days after the parental rights of the child's biological parents have been terminated and the foster parents have not made an application to the department to establish an intent to adopt the child, the state department may terminate the foster care arrangement if another, more beneficial, long-term placement of the child is developed: Provided, That if the child is twelve years of age or older, the child shall be provided the option of remaining in the existing foster care arrangement if the child so desires and if continuation of the existing arrangement is in the best interest of the child.

(d) When a child is placed into foster care or becomes
eligible for adoption and a sibling or siblings have
previously been placed in foster care or have been
adopted, the department shall notify the foster parents
or adoptive parents of the previously placed or adopted
sibling or siblings of the child's availability for foster
care placement or adoption to determine if the foster
parents or adoptive parents are desirous of seeking a
foster care arrangement or adoption of the child. Where
a sibling or siblings have previously been adopted, the
department shall also notify the adoptive parents of a
sibling of the child's availability for foster care place-
ment in that home and a foster care arrangement
entered into to place the child in the home if the
adoptive parents of the sibling are otherwise qualified
or can become qualified to enter into a foster care
arrangement with the department and if such arrange-
ment is in the best interests of the child.

(e) When a child is in a foster care arrangement and
is residing separately from a sibling or siblings who are
in another foster home or who have been adopted by
another family and the parents with whom the placed
or adopted sibling or siblings reside have made appli-
cation to the department to establish an intent to adopt
or to enter into a foster care arrangement regarding a
child so that said child may be united or reunited with
a sibling or siblings, the state department shall upon a
determination of the fitness of the persons and household
seeking to enter into a foster care arrangement or seek
an adoption which would unite or reunite siblings, and
if termination and new placement are in the best
interests of the children, terminate the foster care
arrangement and place the child in the household with
the sibling or siblings: Provided, That if the department
is of the opinion based upon available evidence that
residing in the same home would have a harmful
physical, mental or psychological effect on one or more
of the sibling children or if the child has a physical or
mental disability which the existing foster home can
better accommodate, or if the department can document
that the reunification of the siblings would not be in the
best interest of one or all of the children, the state
department may petition the circuit court for an order
allowing the separation of the siblings to continue:
Provided, however, That if the child is twelve years of age or older, the state department shall provide the child the option of remaining in the existing foster care arrangement if remaining is in the best interests of the child. In any proceeding brought by the department to maintain separation of siblings, such separation may be ordered only if the court determines that clear and convincing evidence supports the department's determination. In any proceeding brought by the department seeking to maintain separation of siblings, notice shall be afforded, in addition to any other persons required by any provision of this code to receive notice, to the persons seeking to adopt a sibling or siblings of a previously placed or adopted child and said persons may be parties to any such action.

(f) Where two or more siblings have been placed in separate foster care arrangements and the foster parents of the siblings have made application to the department to enter into a foster care arrangement regarding the sibling or siblings not in their home or where two or more adoptive parents seek to adopt a sibling or siblings of a child they have previously adopted, the department's determination as to placing the child in a foster care arrangement or in an adoptive home shall be based solely upon the best interests of the siblings.

CHAPTER 18

(S. B. 1007—By Senators Jones, Plymale, Burdette, Mr. President, Chernenko, Anderson, Bailey, Humphreys, Dittmar, Blatnik, Walker, Tomblin, Wehrle, Miller, Minard, Dalton, Wagner, Whitlow, Wooton, Manchin, Grubb, Holliday, Yoder, Craigo, Boley, Lucht, Schoonover, Ross, Withers, Helmick and Sharpe)

[Passed March 18, 1994; in effect ninety days from passage. Approved by the Governor.]
section one-a; to amend and reenact section nine, article six-a of said chapter; to amend and reenact section twenty-four, article seven of said chapter; to amend and reenact section three, article eleven-a, chapter sixty-one of said code; and to amend and reenact sections seven and seven-a, article twelve, chapter sixty-two of said code, all relating to establishing a plan for achieving national caseload standards for child protective service workers by the year one thousand nine hundred ninety-five; prohibiting restrictions on investigations and available services; required face-to-face interviews of certain abused minors; referrals from circuit courts and family law masters; promulgation of rules and protocol for law enforcement in child abuse cases; promulgation of legislative rules; allowing statement of certain therapists in presentence reports; and providing for presentence diagnosis and treatment of certain offenders.

Be it enacted by the Legislature of West Virginia:

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

Chapter
61. Crimes and Their Punishment.

CHAPTER 49. CHILD WELFARE.

Article
6. Procedure in Cases of Child Neglect or Abuse.
6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.
§49-6-1a. Minimum staffing complement for child protective services.

1 For the sole purpose of increasing the number of full time front line child protective service case workers and investigators, the secretary of the department of health and human resources shall have the authority to transfer funds between all general revenue accounts under the secretary's authority and/or between personnel and nonpersonnel lines within each account under the secretary's authority: Provided, That nothing in this section shall be construed to require the department to hire additional child protective service workers at any time if the department determines that funds are not available for such workers. Additionally, the secretary shall prepare a plan to allow the department to progressively reduce caseload standards in West Virginia for child protective services workers, which if adopted by the Legislature during the regular session of the year one thousand nine hundred ninety-five, shall require implementation no later than the first day of July, one thousand nine hundred ninety-six, with said plan to be submitted to the joint committee on government and finance by the thirtieth day of September, one thousand nine hundred ninety-four, and a final report to be submitted to the Legislature by the first day of January, one thousand nine hundred ninety-five.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.

1 (a) The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective service shall investigate all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child
protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

Each local child protective service office shall:

1. Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a twenty-four hour, seven-day-a-week basis and cross-file all such reports under the names of the children, the family, any person substantiated as being an abuser or neglecter by investigation of the department of human services, with use of such cross-filing of such person's name limited to the internal use of the department;

2. Provide or arrange for emergency children's services to be available at all times;

3. Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days, there shall be: A face-to-face interview with the child or children, and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the court;

4. Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours, there shall be: A face-to-face interview with the child or children; and the development of a protection plan which may involve law-
(5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective service for investigation of the allegations as defined by this chapter and require the local child protective service to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.

(c) In those cases in which the local child protective service determines that the best interests of the child require court action, the local child protective service shall initiate the appropriate legal proceeding.

(d) The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

(e) To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective service plan shall, upon request, provide to the local child protective service such assistance and information as will enable it to fulfill its responsibilities.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-24. Rules and regulations under chapter.

1 The secretary of the department of health and human resources shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this chapter.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

§61-11A-3. Victim impact statement; when required; contents; use; right of defendant to review and present evidence.

(a) In every case in which a presentence report is ordered by the court, such presentence report shall contain a victim impact statement unless the court orders otherwise, if the defendant, in committing a felony or misdemeanor, caused physical, psychological or economic injury or death of the victim.

(b) The victim impact statement shall be prepared by the probation officer and shall include the identity of the victim, an itemization of any economic loss suffered by the victim as a result of the offense, a description of the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, the details of any change in the victim’s personal welfare, lifestyle or family relationships as a result of the offense, whether there has been any request for psychological or medical services initiated by the victim or the victim’s family as a result of the offense and such other information related to the impact of the offense upon the victim as may be required by the court.

(c) If the court does not order a presentence investigation and report, the prosecuting attorney may request that the probation officer prepare a victim impact statement. The victim impact statement shall be considered by the court as a factor in determining the appropriate sentence. Additionally, the statement may be utilized for the determination of claims by victims of crimes pursuant to the provisions of article two-a, chapter fourteen of this code.

(d) In cases that involve child victims of offenses defined in section twelve, article eight of this chapter or article eight-b or eight-d of this chapter, any victim impact statement in a presentence report may include a statement from a therapist, psychologist or physician who is providing treatment to the child as to the recommendations regarding the effect that possible disposition may have on the child.

(e) A victim impact statement prepared in accordance
with the provisions of this section, other than for claims
by victims of crimes pursuant to the provisions of article
two-a, chapter fourteen of this code, shall be made
available to the defendant, and his counsel if he is so
represented, at least ten days prior to the date set for
pronouncement of his sentence. The court shall, upon
motion by or on behalf of the defendant, grant the
defendant a hearing, whereby he may introduce testi-
mony or other information related to any alleged factual
inaccuracies in the statement.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.


§62-12-7a. Presentence diagnosis and classification; power of court; custody
of convicted person; provision for presentence reports; penalty
for escape.


When directed by the court, the probation officer shall
make a careful investigation of, and a written report
with recommendations concerning, any prospective
probationer. Insofar as practicable this report shall
include information concerning the offender's court and
criminal record, occupation, family background, educa-
tion, habits and associations, mental and physical
condition, the names, relationship, ages and condition of
those dependent upon him for support and such other
facts as may aid the court in determining the propriety
and conditions of his release on probation. No person
convicted of a felony or of any offense described in
article eight-b or eight-d, chapter sixty-one of this code
against a minor child may be released on probation until
this report shall have been presented to and considered
by the court. The court may in its discretion request
such a report concerning any person convicted of a
misdemeanor. The presentence report of any person
convicted of an offense, described in said articles or
section twelve, article eight of said chapter, may include
a statement from a therapist, psychologist or physician
who is providing treatment to the child. A copy of all reports shall be filed with the board of probation and parole.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

Notwithstanding any other provision of law, when any person has been found guilty of, or pleads guilty to, a felony, or any offense described in article eight-d or eight-b, chapter sixty-one of this code, against a minor child, the court may, prior to pronouncing of sentence, direct that the person be delivered into the custody of the commissioner of corrections, for the purpose of diagnosis and classification for a period not to exceed sixty days: Provided, That the court shall require that a presentence report be completed by the probation officer assigned to that person and be made available to the commissioner of corrections prior to delivery of the person to a statutorily approved diagnosis and classification unit of the division of corrections. While at the diagnosis and classification unit the person shall undergo examination, diagnosis and classification and shall then be remanded and delivered to the custody of the sheriff of the county wherein he or she was found guilty or entered such plea. Within ten days following the termination of the examination, diagnosis and classification, the commissioner of corrections shall make or cause to be made a report to the court wherein the person was found guilty, or entered a plea of guilty, containing the results, findings, conclusions and recommendations of the commissioner with respect to such person.

Whenever a person is remanded into the custody of the commissioner of corrections pursuant to this section, the person shall be given credit on any sentence subsequently imposed by the court equal to the time spent in such custody.
CHAPTER 19
(H. B. 5013—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]
[Passed March 15, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to the establishment of a boot camp program by the commissioner of corrections; eligibility; parole supervision; reporting requirements; sunset provisions; and performance audit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. BOOT CAMP.

§25-6-1. Purpose of article.
§25-6-2. Authorization to establish boot camp program.
§25-6-3. Definitions.
§25-6-4. Eligibility.
§25-6-5. Internal policy development.
§25-6-6. Reporting requirements; sunset provisions; performance audit.
§25-6-7. Construction and applicability of other acts.

§25-6-1. Purpose of article.

The purpose of this article is to establish a program of boot camps that will encourage boot camp inmates to become responsible, productive citizens by providing academic education, social skills, education, physical wellness program, self-discipline programs, substance abuse treatment and vocational education and counseling: It is the aim of the Legislature that such a program will create a more positive environment for both inmates and correctional employees who operate the boot camp; and that will reduce the recidivism rate of persons so incarcerated.

§25-6-2. Authorization to establish boot camp program.
The commissioner of the division of corrections is hereby authorized to establish a program of boot camps that may be used for eligible offenders who are sentenced to serve a term of imprisonment under the custody of the commissioner of corrections and whom the commissioner or the circuit court may permit to serve his or her sentence as a sentence to boot camp in accordance with this article.

§25-6-3. Definitions.

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

(a) "Commissioner" means the commissioner of the division of corrections;

(b) "Division" means division of corrections; and

(c) "Eligible offender" means eligible offender as defined in section four of this article.

§25-6-4. Eligibility.

(a) Appropriate inmates may participate in the boot camp program in accordance with the following criteria:

(1) One who is not less than eighteen years of age nor more than twenty-eight years of age;

(2) One who is medically, physically and psychologically fit to participate in the program;

(3) One who volunteers for the program;

(4) One who has been convicted of a felony and has been sentenced to the custody of the commissioner of corrections for a period of incarceration of not less than one year;

(5) One who was not convicted of murder in the first degree or murder in the second degree;

(6) One who was not convicted of kidnapping;

(7) One who was not convicted of first or second degree sexual assault;

(8) One who was not convicted of any offense pursuant
to article eight-d, chapter sixty-one of this code;

(9) One who was not convicted of incest;

(10) One who has not been previously convicted of a felony; and

(11) Such other criteria as the commissioner of the division of corrections may promulgate pursuant to chapter twenty-nine-a of this code.

(b) The circuit court of conviction may direct that a person be admitted or excluded from participation in the state boot camp program. The commissioner, pursuant to operational policies and procedures, may in his discretion, direct placement of an inmate in a boot camp program.

(c) Any placement in the boot camp shall be subject to the extent funding is available or appropriated and subject to the availability of space in the boot camp: Provided, That nothing in this section shall give any court the power to hold the division of corrections or any officer or employee of the division in contempt of court for failure to adhere to a circuit court directive that a person be placed in the state boot camp program if space or funding is unavailable.

§25-6-5. Internal policy development.

(a) The division of corrections shall promulgate operational procedures and policies for the program which shall require that the pilot program be established at one site, which site shall then be under the control and authority of the division of corrections. The program shall consist of all of the following for each eligible offender whom the division permits to serve his or her sentence as a sentence to boot camp:

(1) A period of imprisonment at the boot camp of not more than twelve months which period of imprisonment shall consist of a military style combination of discipline, physical training and physical labor, substance abuse education, employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the commissioner shall establish an
education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalence.

(2) Upon successful completion of the boot camp program, and notwithstanding any other provisions for determining parole eligibility, an inmate shall be released on parole in accordance with this article. Except as otherwise provided in this article, a release on parole under this section shall require that the eligible offender be under intensive supervision by the adult parole authority and may provide for supervision of the offender by the adult parole authority subsequent to the expiration of his or her period of boot camp incarceration under any terms and for any period of time prescribed by the provisions of article twelve, chapter sixty-two of this code.

(b) The policies and procedures for the boot camp program also shall include, but are not limited to, all of the following:

(1) Policies and procedures identifying the facilities under the control and authority of the division of corrections designated by the commissioner of corrections that will be used for prisoners serving a sentence to boot camp;

(2) Policies and procedures governing academic education, or psychological testing and evaluation, discipline, physical training and labor for eligible offenders serving a sentence to boot camp based upon the offender’s physical conditions and needs;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary to determine the eligibility of offenders to serve their sentence as a sentence to boot camp;

(4) Policies and procedures establishing a method of intensive supervision for an eligible offender who is released on parole of the type described in this section for the remainder of his or her parole sentence, and rules governing the supervision of the offender subsequent to the expiration of his or her parole sentence;
(5) Policies and procedures to effectuate notification to sentencing courts of the performance of eligible offenders serving their sentence of imprisonment as a sentence to boot camp;

(6) Any other policies and procedures that are necessary for the proper operation of the program.

(c) An eligible offender who does not satisfactorily complete the entire period of boot camp incarceration, he or she shall be removed from the program of boot camp and shall be required to serve the remainder of the original sentence of imprisonment which would have been available to the sentencing court had boot camp not been directed by the circuit court or allowed by the commissioner.

(d) If the circuit court directs or the division permits an eligible offender to serve his or her sentence of imprisonment as a sentence to boot camp, the eligible offender shall commence a period of parole of the type described in this article. If an eligible offender violates the conditions of parole, he or she may be declared a parole violator and his or her parole shall be subject to revocation pursuant to the provision of article twelve, chapter sixty-two of this code.

§25-6-6. Reporting requirements; sunset provisions; performance audit.

(a) The commissioner shall keep sentencing courts informed of the performance of eligible offenders serving their sentences of imprisonment as a sentence to boot camp, including, but not limited to, notice of eligible offenders who fail to satisfactorily complete their entire sentence to boot camp or who satisfactorily complete their entire sentence to boot camp.

(b) The boot camp program shall be subject to termination and sunset, after conduct of performance audit thereon, pursuant to the provisions of article ten, chapter four of this code, five years after the effective date of the creation thereof, together with allowance for subsequent periods applicable to the winding up of the affairs of such boot camp program. The performance
audit shall be filed with the president of the Senate and
the speaker of the House of Delegates. The performance
audit required by this section shall contain all of the
following:

(1) A summary of the program as initially established,
a summary of all changes in the program made during
the period covered by the audit and the reasons for the
changes, and a summary of the program as it exists on
the date of the preparation of the audit;

(2) A summary of the effectiveness of the program;

(3) An analysis of the total cost of the program, of its
cost per inmate who was permitted to serve a sentence
to boot camp and who served the entire sentence to boot
camp, and of its cost per inmate who was permitted to
serve a sentence to boot camp;

(4) A summary of the standards and criteria used by
the division of corrections in determining which eligible
offenders were permitted to serve their sentence of
imprisonment as a sentence to boot camp;

(5) A summary of the characteristics of the eligible
offenders who were permitted to serve their sentence of
imprisonment as a sentence to boot camp, which
summary shall include, but not be limited to, a listing
of every offense of which any such eligible offender was
convicted or to which any such eligible offender pleaded
guilty and in relation to which he or she served a
sentence to boot camp, and the total number of such
eligible offenders who were convicted of or pleaded
guilty to each such offense;

(6) A listing of the number of eligible offenders who
were permitted to serve a sentence to boot camp and
who did not serve the entire sentence to boot camp, and,
to the extent possible, a summary of the length of the
terms of imprisonment served by such eligible offenders
after they were removed from the program;

(7) A summary of the effect of the program on
overcrowding at correctional facilities under the control
and authority of the division of corrections;
(8) To the extent possible, an analysis of the rate of the recidivism of eligible offenders who were permitted to serve a sentence to boot camp and who served the entire sentence to boot camp;

(9) Recommendations as to legislative changes to the program that would assist in its operation or that could further alleviate overcrowding at correctional facilities, and recommendations as to whether the program should be expanded.

§25-6-7. Construction and applicability of other acts.

This article shall be liberally construed to accomplish the intent and purposes of the Legislature in adopting it and shall be the sole authority required for the accomplishment of the purposes set forth in this article.

CHAPTER 20

(S. B. 1003—By Senator Withers)

[Passed March 15, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, twelve and twelve-a, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes and their punishment; crimes against public justice; and criminal penalties for escape from jail or other confinement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.
§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

§61-5-12a. Escape from custody of the commissioner of corrections.

§61-5-10. Jail or private prison breaking by convicted or unconvicted prisoner; penalties.

(a) Any person confined in jail on conviction of a felony, who escapes therefrom by force, violence or by any subterfuge, device or deception, is guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for up to five years; and if he be confined in jail on conviction of a misdemeanor, he is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year.

(b) If any person be lawfully confined in jail or private prison and not sentenced on conviction of a criminal offense, escape therefrom by any means, such person shall: (i) If he be confined upon a charge of a felony, be guilty of an additional felony, and, upon conviction thereof, shall be confined in the penitentiary not more than five years; or (ii) if he be confined upon a charge of a misdemeanor, be guilty of an additional misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year.

(c) If any person is lawfully confined in a private prison and escapes therefrom by force, violence or by any subterfuge, device or deception, he or she shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned for not more than five years.

§61-5-12. Escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities; penalties.

Except where otherwise provided, whoever abducts any person who is an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the peniten-
Whoever persuades, induces or entices, or attempts to persuade, induce or entice, any person who is an inmate or patient of any such institution, private prison or facility to escape therefrom, or whoever conceals or harbors any such person, knowing him or her to have run away from any such institution, private prison or facility, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, and in addition thereto, in the discretion of the court, may be imprisoned in the county jail not more than six months.

Any fugitive from any state benevolent or correctional institution, private prison or mental health facility, may, on the order of the superintendent or other officer of such institution or facility, be arrested and returned to such institution or facility, or to any officer or agent thereof, by any sheriff, police officer or other person, and may also be arrested and returned by any officer or agent of such institution, private prison or facility.

Whoever trespasses, idles, lounges or loiters upon the grounds of any other state benevolent or correctional institution, private prison or mental health facility or communicates, or attempts to communicate, by signals, signs, writings or otherwise with any inmate or patient of such institution, private prison or facility, or conveys or assists in any way in establishing communication between an inmate or patient of such institution, private prison or facility and any person or persons outside thereof, except as authorized by the rules or regulations in force by the authority governing the same, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than five hundred dollars, or imprisoned not more than thirty days in the county jail, or both, in the discretion of the court or magistrate. Whoever, with intent to defraud, purchases, accepts as a gift, or secures by barter or trade, or in any other manner, any article of clothing from an inmate or patient of any state benevolent or correctional institution, private prison or mental health facility
issued to him or her, by any officer of such institution
or facility, or by any private correctional officer of such
private prison for his or her use, or, with such intent,
secures any other article or articles belonging to any
inmate or patient of such institution, private prison or
facility or to such institution, private prison or facility
from an inmate or patient thereof, is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined a sum not less than double the value of such
articles, except that in no case shall the fine be less than
one hundred dollars. Magistrates shall have jurisdiction
of all misdemeanors included in this paragraph,
concurrently with the circuit court.

§61-5-12a. Escape from custody of the commissioner of
corrections.

Any person who escapes from the custody of the
commissioner of corrections, regardless of where such
person is confined or where such escape occurs, is guilty
of a felony, and, upon conviction thereof, shall be
imprisoned in the penitentiary not more than five years.
A term of imprisonment imposed pursuant to the
provisions of this section shall be imposed as a consec-
utive sentence and shall not be served concurrently with
any imprisonment, confinement or detention imposed
under any prior sentence being served or otherwise
being discharged at the time such person commits an
offense under the provisions of this section. A person
charged with an offense under the provisions of this
section shall not be released from the custody of the
commissioner of corrections while the prosecution of the
alleged offense is pending: Provided, That time served
by such person after any other prior sentence has been
served or otherwise discharged shall be applied to any
sentence which may ultimately be imposed for an
offense under this section. Venue for the prosecution of
a violation of this section shall be in the county in which
the escape occurs.
AN ACT to amend article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to prohibiting conduct whereby a parent, guardian or custodian maliciously and intentionally inflicts, or knowingly allows another to so inflict, upon a child substantial physical pain, illness or any impairment of physical condition by other than accidental means, thereby causing the death of such child; providing that such conduct is a felony; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child abuse; criminal penalties.

1 (a) If any parent, guardian or custodian shall maliciously and intentionally inflict upon a child under his or her care, custody or control substantial physical pain, illness or any impairment of physical condition by other than accidental means, thereby causing the death of such child, then such parent, guardian or custodian shall be guilty of a felony.

8 (b) If any parent, guardian or custodian shall knowingly allow any other person to maliciously and inten-
tionally inflict upon a child under the care, custody or control of such parent, guardian or custodian substantial physical pain, illness or any impairment of physical condition by other than accidental means, which thereby causes the death of such child, then such other person and such parent, guardian or custodian shall each be guilty of a felony.

(c) Any person convicted of a felony described in subsection (a) or (b) of this section shall be punished by a definite term of imprisonment in the penitentiary which is not less than ten nor more than forty years. A person imprisoned pursuant to the provisions of this section is not eligible for parole prior to having served a minimum of ten years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(d) The provisions of this section shall not apply to any parent, guardian or custodian or other person who, without malice, fails or refuses, or allows another person to, without malice, fail or refuse, to supply a child under the care, custody or control of such parent, guardian or custodian with necessary medical care, when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which such parent, guardian or custodian is an adherent or member. The provisions of this section shall not apply to any health care provider who fails or refuses, or allows another person to fail or refuse, to supply a child with necessary medical care when such medical care conflicts with the tenets and practices of a recognized religious denomination or order of which the parent, guardian or custodian of the child is an adherent or member, or where such failure or refusal is pursuant to a properly executed do not resuscitate form.
AN ACT to amend and reenact section seventeen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for collection and disposition of fees from parolees and federal and foreign state probationers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-17. Conditions of release on parole.

1 Release and supervision on parole of any person, including the supervision by the division of corrections of any person paroled by any other state or by the federal government, shall be upon the following conditions:

6 (1) That the parolee may not, during the period of his or her parole, violate any criminal law of this or any other state or of the United States.

9 (2) That he or she may not, during the period of his or her parole, leave the state without the consent of the division.

12 (3) That he or she shall comply with the rules and regulations prescribed by the division for his or her supervision by the parole officer.

15 (4) That in every case wherein the parolee for a conviction is seeking parole from an offense against a child, defined in section twelve, article eight, chapter sixty-one of this code; or article eight-b or eight-d of said
chapter, or similar convictions from other jurisdictions where the parolee is returning or attempting to return to this state pursuant to the provisions of article six, chapter twenty-eight of this code, the parolee shall not live in the same residence as any minor child, nor exercise visitation with any minor child nor shall he or she have any contact with the victim of the offense.

(5) That the parolee, and all federal or foreign state probationers and parolees whose supervision may have been undertaken by this state, shall be required to pay a fee, based on his or her ability to pay, not to exceed twenty dollars per month to defray costs of supervision. The commissioner shall keep a record of all actions taken and account for moneys received. No provision of this section shall be construed to prohibit the division from collecting such fees and conducting such checks upon the effective date of this section. All moneys shall be deposited in a special account in the state treasury to be known as the "Parolee's Supervision Fee Fund." Expenditures from said fund shall be for the purposes of providing parole supervision required by the provisions of this code and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The division shall consider the following factors in determining whether a parolee or probationer is financially able to pay the fee:

(A) Current income prospects for the parolee or probationer, taking into account seasonal variations in income:
(B) Liquid assets of the parolee or probationer, assets of the parolee or probationer that may provide collateral to obtain funds and assets of the parolee or probationer that may be liquidated to provide funds to pay the fee;

(C) Fixed debts and obligations of the parolee or probationer, including federal, state and local taxes and medical expenses;

(D) Child care, transportation and other reasonably necessary expenses of the parolee or probationer related to employment;

(E) The reasonably foreseeable consequences for the parolee or probationer if a waiver of, or reduction in, the fee is denied.

In addition, the division may impose, subject to modification at any time, any other conditions which the division may deem advisable.

CHAPTER 23

(S. B. 1020—By Senators Wooton, Anderson, Macnaughtan, Plymale, Claypole, Holliday, Miller, Minard, Ross, Wagner, Wiedebusch and Dittmar)

[Passed March 18, 1994; in effect ninety days from passage. Approved by the Governor.]
nine, article eight-d of said chapter; to amend and reenact section seventeen-a, article one-c, chapter sixty-two of said code; to amend and reenact section one, article eleven-a of said chapter; and to amend and reenact section nine, article twelve of said chapter, all relating to domestic relations generally; making certain technical corrections to correct clerical errors and incorrect references; redefining certain terms relating to family violence; service of all protective orders by publication; continuance of hearings on temporary orders; prior reports of domestic violence to law-enforcement agencies; purging and sealing of files containing protective orders; filing of protective orders with law enforcement; civil and criminal penalties for violation of protective orders; correcting references to domestic violence records deemed confidential; defining serious physical abuse of a child and clarifying references thereto; defining sibling; deleting requirement that documentation of certain instances of abuse and neglect be provided within three days; referencing child abuse and neglect provisions for parents guilty of incest; further making technical corrections to section references; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

48. Domestic Relations.
61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

Article

2A. Prevention of Domestic Violence.
2C. Domestic Violence Act.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
§48-2A-5. Temporary orders of court; hearings; persons present.
§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.
§48-2A-10b. Violations of protective orders; criminal complaints.
§48-2A-10c. Arrest for violations of protective orders.
§48-2A-10d. Misdemeanor offense of violation of protective order.


1 As used in this article, unless the context clearly requires otherwise:
2 (a) "Family violence" or "abuse" means the occurrence
3 of one or more of the following acts between family or
4 household members:
5 1 Attempting to cause or intentionally, knowingly or
6 recklessly causing physical harm to another with or
7 without dangerous or deadly weapons;
8 2 Placing another in reasonable apprehension of
9 physical harm;
10 3 Creating fear of physical harm by harassment,
psychological abuse or threatening acts;
(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and
(5) Holding, confining, detaining or abducting another person against that person's will.
(b) "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together or a person with whom the victim has a child in common.
§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.
(a) Jurisdiction. — Circuit courts and magistrate courts, as constituted under chapter fifty of this code, shall have concurrent jurisdiction over proceedings under this article.
(b) Venue. — The action may be heard in the county in which the abuse occurred or in the county in which the respondent is living. If the parties are married, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by section eight, article two of this chapter.
(c) Petitioner's rights. — The petitioner's right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.
(d) Priority of petitions. — Any petition filed under the provisions of this article shall be given priority over any other civil action before the court except actions in which trial is in progress and shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment on a petition for the relief under this article shall be heard within ten working
(e) *Full faith and credit.* — Any temporary or final protective order issued pursuant to this article shall be effective throughout the state in every county. Any protective order issued by the court of another state shall be accorded full faith and credit and enforced as if it were an order of this state if its terms and conditions are substantially similar to those which may be imposed by a court of this state.

(f) *Service by publication.* — A protective order may be served on the respondent by means of a Class I legal advertisement published notice, with the publication area being the county in which the respondent resides, published in accordance with the provisions of section two, article three, chapter fifty-nine of this code if: (i) The petitioner files an affidavit with the court stating that an attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or registered mail to the respondent at the respondent’s last known residence and returned undelivered.

§48-2A-5. Temporary orders of court; hearings; persons present.

(a) Upon filing of a verified petition under this article, the court may enter such temporary orders as it may deem necessary to protect the petitioner or minor children from abuse and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for purposes of this section. If the respondent is not present at the proceeding, the petitioner or the petitioner’s legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be
admitted into evidence to the same extent as though the original thereof. The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. Following such proceeding, the court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any temporary order issued pursuant to the proceedings, notice setting forth the time and place of the full hearing and a statement of the right of the respondent to be present and to be represented by counsel. Copies of any order made under the provisions of this section shall also be issued to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office and local office of the state police within twenty-four hours of the entry of the order. Such initial protective order shall remain effective until such time as a hearing is held. The order shall be in full force and effect in every county in this state.

(b) Within five days following the issuance of the court's temporary order, a full hearing shall be held at which the petitioner must prove the allegation of abuse by a preponderance of the evidence or such petition shall be dismissed. If the respondent has not been served with notice of the temporary order, the hearing may be continued in order to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis upon whether the petition may be dismissed. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(d) If a hearing is continued, the court may make or

(a) At the conclusion of the hearing and if the petitioner has proven the allegations of abuse by a preponderance of the evidence, then the court shall issue a protective order which shall direct the respondent to refrain from abusing the petitioner and/or the minor children. The terms of a protective order may include:

(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children;

(3) Establishing terms of temporary visitation with regard to the minor children including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary support and maintenance of the petitioner and children, if any;

(5) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(6) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order;

(7) Directing the respondent to participate in counseling; or

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner in any public place.

(b) Any final protective order shall be for a fixed period of time not to exceed ninety days except as otherwise provided by subsection (d), section three-a of
The court may amend its order at any time upon subsequent petition filed by either party. If the court enters an initial order for a period of less than ninety days, it shall, after notice and hearing, extend its initial order for the full ninety-day period if it finds the petitioner or the minor child or children continue to need protection from abuse. The order shall be in full force and effect in every county in this state. The order shall state that it is in full force and effect in every county in this state.

(c) No order under this article shall in any manner affect title to any real property.

(d) Certified copies of any order made under the provisions of this section shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction to enforce the order, including the city police, the county sheriff's office or local office of the division of public safety within twenty-four hours of the entry of the order.

(e) No mutual protective orders shall be granted unless both parties have filed a petition under section four of this article and have proven the allegations of abuse by a preponderance of the evidence.


(a) Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.

(b) Any law-enforcement officer responding to an alleged incident of family violence shall inform the parties thereto of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of family violence shall advise the person subject to abuse of the availability of the family protection shelter to
which such person may be admitted.

(c) Any law-enforcement officer responding to an alleged incident of abuse shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim or victims, upon the request of such victim or victims, to a shelter or the appropriate court where there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.

(d) Each law-enforcement agency shall maintain records on all incidents of family or household abuse reported to it and shall monthly make and deliver to the department of public safety a report on a form prescribed by the department, listing all such incidents of family or household abuse. Such reports shall include:

1. The age and sex of the abused and abusing parties;
2. The relationship between the parties;
3. The type and extent of abuse;
4. The number and type of weapons involved;
5. Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency's action and the abused's request for assistance;
6. Whether any prior reports have been made, received or filed regarding family or household abuse on any prior occasion and if so, the number of such prior reports; and
7. The effective dates and terms of any protective order issued prior to or following the incident to protect the abused party: Provided, That no information which will permit the identification of the parties involved in any incident of abuse shall be included in such report.

(e) The department of public safety shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in the
department's annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

(1) The number of family violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;

(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of protective orders.

(f) As used in this section, the terms "abuse", "family violence" and "family or household members" shall have the meanings given them in section two of this article; and the term "law-enforcement agency" shall include the West Virginia department of health and human resources in those instances of child abuse reported to the department which are not otherwise reported to any other law-enforcement agency.

(g) The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a
meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article two-c of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.

(h) Nothing in this section shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code: Provided, That nothing in this section shall prohibit the division of public safety from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

(i) All law-enforcement officers shall receive training relating to response to calls involving family violence by the first day of October, one thousand nine hundred ninety-three.

(j) Two years after the entry of a final protective order, the circuit court, may, upon motion, order that the protective order and references to the order be purged from the file maintained by any law-enforcement agency and may further order that the file maintained by the court be sealed and not opened except upon order of the court when such is in the interest of justice.

Upon entry of an order pursuant to section five or six of this article, or an order entered pursuant to section thirteen, article two of this chapter granting relief provided for by this article, a copy of such order shall, no later than the close of the next business day, be transmitted by the court or the clerk of the court to a local office of the city police, the county sheriff and the West Virginia division of public safety, where it shall be placed in a confidential file, with access provided only to the law-enforcement agency and the respondent named on said order. A sworn affidavit may be executed by the party awarded exclusive possession of the residence or household, pursuant to an order entered under subsection (b), section six of this article, and delivered to such law-enforcement agency simultaneously with any such order, giving his or her consent for a law-enforcement officer to enter such residence or household, without a warrant, to enforce such protective order or temporary order. Orders shall be promptly served upon the respondent. Failure to serve shall not stay the effect of a valid order if the respondent has actual notice of the existence and contents of the order.

§48-2A-10a. Civil contempt; violation of protective orders; order to show cause.

(a) Any person authorized to file a petition under the provisions of section four of this article or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. Such petition shall be filed in a court in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the respondent.

(c) Upon a finding of contempt, the court may order the respondent to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with such order.
§48-2A-10b. Violations of protective orders; criminal complaints.

(a) When a respondent abuses the petitioner and/or minor children or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article, any person authorized to file a petition pursuant to the provisions of section four of this article or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section ten-a of this article.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.

§48-2A-10c. Arrest for violations of protective orders.

(a) When a law-enforcement officer observes any respondent abuse the petitioner and/or minor children or the respondent's physical presence at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article, he or she shall immediately arrest the respondent.

(b) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(c) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

§48-2A-10d. Misdemeanor offense of violation of protective order.
A respondent who abuses the petitioner and/or minor children or who is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars or more than two thousand dollars.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.


(a) No program or shelter receiving funds pursuant to this article shall disclose or be compelled to disclose, release or be compelled to release any written records created or maintained in providing services pursuant to this article except:

(1) Upon written consent of the person seeking or who has sought services from the program or the shelter;

(2) In any proceeding brought under sections four and five, article six, chapter nine of this code or article six, chapter forty-nine of this code;

(3) As mandated by article six-a, chapter forty-nine and article six, chapter nine of this code;

(4) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(5) To protect against a clear and substantial danger of imminent injury by a client to him or herself or another;

(6) For treatment or internal review purposes to the staff of any program or shelter if the client is also being cared for by other health professionals in the program or shelter.
(b) No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the client. Every person signing an authorization shall be given a copy.

CHAPTER 49. CHILD WELFARE.

Article
1. Purposes; Definitions.
6. Procedure in Cases of Child Neglect or Abuse.
6A. Reports of Children Suspected to be Abused or Neglected.

ARTICLE 1. PURPOSES; DEFINITIONS.

*§49-1-3. Definitions relating to abuse and neglect.

1. (a) "Abused child" means a child whose health or welfare is harmed or threatened by:
2. (1) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or
3. (2) Sexual abuse or sexual exploitation; or
4. (3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or

*Clerk's Note: This section was also amended by S. B. 1004 (Chapter 17), which passed prior to this act.
attempted sale or negligent treatment or maltreatment
of a child by a parent, guardian or custodian who is
responsible for the child's welfare, under circumstances
which harm or threaten the health and welfare of the
child.

(d) "Child abuse and neglect services" means social
services which are directed toward:

(1) Protecting and promoting the welfare of children
who are abused or neglected;

(2) Identifying, preventing and remedying conditions
which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children
from their families by identifying family problems and
assisting families in resolving problems which could
lead to a removal of children and a breakup of the
family;

(4) In cases where children have been removed from
their families, providing services to the children and the
families so as to restore such children to their families;

(5) Placing children in suitable adoptive homes when
restoring the children to their families is not possible or
appropriate; and

(6) Assuring the adequate care of children away from
their families when the children have been placed in the
custody of the department or third parties.

(e) "Imminent danger to the physical well-being of the
child" means an emergency situation in which the
welfare or the life of the child is threatened. Such
emergency situation exists when there is reasonable
cause to believe that any child in the home is or has been
sexually abused or sexually exploited, or reasonable
cause to believe that the following conditions threaten
the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent,
guardian, custodian, sibling or a babysitter or other
caretaker; or

(2) A combination of physical and other signs indicat-
ing a pattern of abuse which may be medically diagnosed as battered child syndrome; or

(3) Nutritional deprivation; or

(4) Abandonment by the parent, guardian or custodian; or

(5) Inadequate treatment of serious illness or disease; or

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(f) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(g) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because
of the disappearance or absence of the child's parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(h) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(i) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse; or

(ii) Sexual intrusion; or

(iii) Sexual contact; or

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs...
to a child, for the purpose of gratifying the sexual desire
of the parent, guardian or custodian, of the person
making such display, or of the child, or for the purpose
of affronting or alarming the child.

(j) "Sexual contact” means sexual contact as that term
is defined in section one, article eight-b, chapter sixty-
one of this code.

(k) “Sexual exploitation” means an act whereby:

(1) A parent, custodian or guardian, whether for
financial gain or not, persuades, induces, entices or
coerces a child to engage in sexually explicit conduct as
that term is defined in section one, article eight-c,
chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades,
induces, entices or coerces a child to display his or her
sex organs for the sexual gratification of the parent,
guardian, custodian or a third person, or to display his
or her sex organs under circumstances in which the
parent, guardian or custodian knows such display is
likely to be observed by others who would be affronted
or alarmed.

(l) “Sexual intercourse” means sexual intercourse as
that term is defined in section one, article eight-b,
chapter sixty-one of this code.

(m) “Sexual intrusion” means sexual intrusion as that
term is defined in section one, article eight-b, chapter
sixty-one of this code.

(n) “Parental rights” means any and all rights and
duties regarding a parent to a minor child, including,
but not limited to, custodial rights and visitational
rights and rights to participate in the decisions affecting
a minor child.

(o) “Placement” means any temporary or permanent
placement of a child who is in the custody of the state
in any foster home, group home or other facility or
residence.

(p) “Serious physical abuse” means bodily injury
which creates a substantial risk of death, which causes
serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(q) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-11. Conviction for offenses against children.

In any case where a person is convicted of an offense, described in section twelve, article eight, chapter sixty-one of this code; and articles eight-b and eight-d of said chapter; against any child and further has custodial, visitation or other parental rights to the child, at the time of sentencing, the court shall make a finding that the person is an abusing parent within the meaning of this article and the court shall take such further steps as are required by this article.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2. Persons mandated to report suspected abuse and neglect.

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, circuit court judge, family law master or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the state department of human services: Provided, That in any case where the reporter believes that the child suffered serious physical abuse
or sexual abuse or sexual assault, the reporter shall also
immediately report, or cause a report to be made to the
division of public safety and any law-enforcement
agency having jurisdiction to investigate the complaint:
Provided, however, That any person required to report
under this article who is a member of the staff of a
public or private institution, school, facility or agency
shall immediately notify the person in charge of such
institution, school, facility or agency or a designated
agent thereof, who shall report or cause a report to be
made. However, nothing in this article is intended to
prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically
required to report situations involving suspected abuse
or neglect of children, any other person may make a
report if such person has reasonable cause to suspect
that a child has been abused or neglected in a home or
institution or observes the child being subjected to
conditions or circumstances that would reasonably
result in abuse or neglect.

§49-6A-5. Reporting procedures.

Reports of child abuse and neglect pursuant to this
article shall be made immediately by telephone to the
local state department child protective service agency
and shall be followed by a written report within forty-
eight hours if so requested by the receiving agency. The
state department shall establish and maintain a twenty-
four hour, seven-day-a-week telephone number to
receive such calls reporting suspected or known child
abuse or neglect.

A copy of any report of serious physical abuse, sexual
abuse or assault shall be forwarded by the department
to the appropriate law-enforcement agency, the prose-
cuting attorney or the coroner or medical examiner's
office. All reports under this article shall be confidential
and unless there are pending proceedings with regard
thereo shall be destroyed six years following their
preparation. Reports of known or suspected institutional
child abuse or neglect shall be made and received as all
other reports made pursuant to this article.
CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
8. Crimes Against Chastity, Morality and Decency.
8B. Sexual Offenses.
8D. Child Abuse.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.
§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

(1) “Aunt” means the sister of a person’s mother or father;

(2) “Brother” means the son of a person’s mother or father;

(3) “Daughter” means a person’s natural daughter, adoptive daughter or the daughter of a person’s husband or wife;

(4) “Father” means a person’s natural father, adoptive father or the husband of a person’s mother;

(5) “Granddaughter” means the daughter of a person’s son or daughter;

(6) “Grandfather” means the father of a person’s father or mother;

(7) “Grandmother” means the mother of a person’s father or mother;

(8) “Grandson” means the son of a person’s son or daughter;

(9) “Mother” means a person’s natural mother, adoptive mother or the wife of a person’s father;

(10) “Niece” means the daughter of a person’s brother or sister;

(11) “Nephew” means the son of a person’s brother or sister;
(12) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;

(13) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;

(14) "Sister" means the daughter of a person's father or mother;

(15) "Son" means a person's natural son, adoptive son or the son of a person's husband or wife; and

(16) "Uncle" means the brother of a person's father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than five hundred dollars nor more than five thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this section where the victim is a minor to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.
(e) In any case where a person is convicted of an offense described herein against a child and further has or may have custodial, visitation or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code, and shall take such further action in accord with the provisions of said article.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law-enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

(c) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of
the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

ARTICLE 8B. SEXUAL OFFENSES.


In any case where a person is convicted of an offense described in this article against a child and further has or may have custodial, visitation or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code, and shall take such further action in accord with the provisions of said article.

ARTICLE 8D. CHILD ABUSE.


In any case where a person is convicted of an offense described in this article against a child and further has or may have custodial, visitation or other parental rights to the child, the court shall find that such person is an abusing parent within the meaning of article six, chapter forty-nine of this code and shall take such further action in accord with the provisions of said article.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
1C. Bail.
11A. Release for Work and Other Purposes.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

(a) When the offense charged is an offense defined in article eight-d, chapter sixty-one of this code, it shall be
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3 a condition of bond that the defendant shall not live in
4 the same residence as and shall have no contact with the
5 victim of the alleged offense and the court may make
6 such other conditions of bond with respect to contact
7 with the victim as it deems necessary under the
8 circumstances to protect the child: Provided, That the
9 requirement of no contact with the victim of the alleged
10 offense and all other conditions of bond may be reviewed
11 by summary petition from the magistrate court to the
12 circuit court or from the circuit court to the supreme
13 court of appeals or any justice thereof.

14 (b) In cases where the charge is a sexual offense, as
15 defined in chapter sixty-one of this code, against any
16 person, the court, upon a showing of cause, may make
17 such conditions of bond on the defendant or on any
18 witness bond issued under section fifteen of this article
19 as it deems necessary with respect to contact with the
20 victim.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1. Release for work and other purposes by
courts of record with criminal juris-
diction.

1 (1) When a defendant is sentenced or committed for
2 a term of one year or less by a court of record having
3 criminal jurisdiction, such court may in its order grant
4 to such defendant the privilege of leaving the jail during
5 necessary and reasonable hours for any of the following
6 purposes:

7 (a) To work at his employment;
8 (b) To seek employment;
9 (c) To conduct his own business or to engage in other
10 self-employment, including, in the case of a woman,
11 housekeeping and attending to the needs of her family;
12 (d) To attend an educational institution;
13 (e) To obtain medical treatment;
14 (f) To devote time to any other purpose approved of
15 or ordered by the court, including participation in the
litter control program of the county unless the court specifically finds that this alternative service would be inappropriate.

(2) Whenever an inmate who has been granted the privilege of leaving the jail under this section is not engaged in the activity for which such leave is granted, he shall be confined in jail.

(3) An inmate sentenced to ordinary confinement may petition the court at any time after sentence for the privilege of leaving jail under this section and may renew his petition in the discretion of the court. The court may withdraw the privilege at any time by order entered with or without notice.

(4) If the inmate has been granted permission to leave the jail to seek or take employment, the court's probation officers, or if none, the state's division of corrections shall assist him in obtaining suitable employment and in making certain that employment already obtained is suitable. Employment shall not be deemed suitable if the wages or working conditions or other circumstances present a danger of exploitation or of interference in a labor dispute in the establishment in which the inmate would be employed.

(5) If an inmate is employed for wages or salary, the clerk of the court shall collect the same or shall require the inmate to turn over his wages or salary in full when received, and shall deposit the same in a trust account and shall keep a ledger showing the status of the account of each inmate. Earnings levied upon pursuant to writ of attachment or execution or in other lawful manner shall be collected from the employer and shall not be collected hereunder, but when the clerk has requested transmittal of earnings prior to levy, such request shall have priority. When an employer transmits such earnings to the clerk pursuant to this subsection he shall have no liability to the inmate for such earnings. From such earnings the clerk shall pay the inmate's board and personal expenses both inside and outside the jail and shall deduct installments on fines, if any, and, to the extent directed by the court, shall pay the support of the
56 inmate's dependents: Provided, That at least twenty-five percent of the earnings collected by the clerk on behalf of an inmate shall be paid for the support of such inmate's dependents, if any. If sufficient funds are available after making the foregoing payments, the clerk may, with the consent of the inmate, pay, in whole or in part, any unpaid debts of the inmate. Any balance shall be retained and shall be paid to the inmate at the time of his discharge.

65 (6) An inmate who is serving his sentence pursuant to this section shall be eligible for a reduction of his term for good behavior and faithful performance of duties in the same manner as if he had served his term in ordinary confinement.

70 (7) The court shall not make an order granting the privilege of leaving the institution under this section unless it is satisfied that there are adequate facilities for the administration of such privilege in the jail or other institution in which the defendant will be confined.

75 (8) In every case wherein the defendant has been convicted of an offense, defined in section twelve, article eight, chapter sixty-one, or in article eight-b or eight-d of said chapter against a child, the defendant shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the defendant may petition the court of the circuit wherein he was so convicted for a modification of this term and condition of this probation and the burden shall rest upon the defendant to demonstrate that a modification is in the best interest of the child.

ARTICLE 12. PROBATION AND PAROLE.


1 (a) Release on probation shall be upon the following conditions:

3 (1) That the probationer shall not, during the term of his probation, violate any criminal law of this or any other state or of the United States.
(2) That he shall not, during the term of his probation, leave the state without the consent of the court which placed him on probation.

(3) That he shall comply with the rules and regulations prescribed by the court or by the board of probation and parole, as the case may be, for his supervision by the probation officer.

(4) That in every case wherein the probationer has been convicted of an offense defined in section twelve, article eight, chapter sixty-one of this code or article eight-b or eight-d of said chapter, against a child, the probationer shall not live in the same residence as any minor child, nor exercise visitation with any minor child and shall have no contact with the victim of the offense: Provided, That the probationer may petition the court of the circuit wherein he was so convicted for a modification of this term and condition of his probation and the burden shall rest upon the probationer to demonstrate that a modification is in the best interest of the child.

(5) That the probationer be required to pay a fee, based upon his or her ability to pay, not to exceed twenty dollars per month to defray costs of supervision. All moneys collected as fees from probationers shall be deposited with the circuit clerk who shall, on a monthly basis, remit said moneys collected to the state treasurer for deposit in the state general revenue fund.

(b) In addition the court may impose, subject to modification at any time, any other conditions which it may deem advisable, including, but not limited to, any of the following:

(1) That he shall make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he has been convicted.

(2) That he shall pay any fine assessed and the costs of the proceeding in such installments as the court may direct.

(3) That he shall make contribution from his earnings,
(4) That he shall, in the discretion of the court, be required to serve a period of confinement in the county jail of the county in which he was convicted for a period not to exceed one third of the minimum sentence established by law or one third of the least possible period of confinement in an indeterminate sentence, but in no case shall such period of confinement exceed six consecutive months. The court shall have authority to sentence the defendant within such six-month period to intermittent periods of confinement including, but not limited to, weekends or holidays and may grant unto the defendant intermittent periods of release in order that he may work at his employment or for such other reasons or purposes as the court may deem appropriate: Provided, That the provisions of article eleven-a of this chapter shall not apply to such intermittent periods of confinement and release except to the extent that the court may direct. If a period of confinement is required as a condition of probation, the court shall make special findings that other conditions of probation are inadequate and that a period of confinement is necessary.

CHAPTER 24
(S. B. 1000—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 20, 1994; 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 article two-d, chapter five-b of said code by adding thereto a new section, designated section eight; to amend and reenact sections seven and twenty-six, article two, chapter eighteen of said code; to further amend said article by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; to further amend said chapter by adding thereto a new
article, designated article two-h; to amend and reenact sections fifteen and eighteen, article five of said chapter; to further amend said article by adding thereto a new section, designated section twenty-two-a; to amend and reenact section five, article five-a of said chapter; to amend article seven-a of said chapter by adding thereto a new section, designated section twenty-six-m; to amend and reenact section ten, article seven-b of said chapter; to amend and reenact sections two, four and eleven, article eight of said chapter; to amend and reenact sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section six-b; to amend and reenact sections three and five, article twenty of said chapter; to further amend said article by adding thereto a new section, designated section one-c; to amend chapter eighteen-a of said code by adding thereto a new article, designated article three-b; to amend and reenact section five, article four of said chapter; to further amend said article by adding thereto a new section, designated section nineteen; and to amend and reenact section one-a, article five of said chapter, all relating to education, school aid formula; changes in public employees insurance agency payments by county boards of education; governor's workforce development council created; makeup of council; reports to Legislature; termination date; accepting American sign language as a credited course of study in foreign language; requiring the state board of education to prescribe programs in drug prevention, violence reduction and firearm safety; requiring the state board of education to conduct a study of staff fluctuations in schools with a high percentage of at-risk students; allowing a county board of education a waiver in implementation of uniform integrated regional computer information system under certain terms and conditions; requiring public notice and hearings prior to state-mandated educational reform; extending the instructional term limit; changing requirement for criterion referenced test for the current school year; deleting certain language relating to excess levy inequities; deleting full-day kindergarten programs
for the school year one thousand nine hundred ninety-five; requiring county boards of education to develop a policy for administering medications; requiring certain employees to administer medications and exempting others; requiring faculty senates to develop a strategic plan to manage integration of special needs students; outlining basic elements of the strategic plan; providing supplemental retirement benefits for certain teachers; recalculating employer contributions for the teachers' defined contribution retirement system; compulsory school attendance for children under eighteen; establishing misdemeanor offense for person causing a minor to miss school without just cause; penalties; establishing misdemeanor offense for person eighteen years of age or older who fails to attend school without just cause; penalties; requiring attendance director to serve notice for school absences; allowing the attendance director to make home visits; requiring attendance director to notify the division of motor vehicles of a school withdrawal within five days; changing total state basic foundation program for the year one thousand nine hundred ninety-four—one thousand nine hundred ninety-five only; changing formula for deriving workers' compensation contribution for certain personnel by county boards; providing for unfunded liability allowance for the teachers' retirement fund allowance; allocation of growth of local share; transportation allowance for the use of alternative fuel; promulgation of rules; foundation allowance for regional education service agencies; change in distribution of foundation allowance share for faculty senates; changes in foundation allowance to improve instructional programs; providing foundation allowance for public employees insurance for state-funded employees; providing for insurance payments for other education employees; providing guidelines for the integration of special needs students into regular classroom; training for regular classroom teachers; individualized education program for special needs students; providing that special education aides cannot be reassigned without their consent; county reports on integrated classrooms; requiring state superintendent to submit a state plan on integrated classrooms; establish-
ing an educators' professional standards board; composition of the board; powers and duties of the board; salary equity funding calculations for nonfiscal agency counties in counties which jointly support a multicounty vocational school; alteration of contract for certain professional and school service personnel under certain circumstances not new positions requiring posting; and extending suspension time to ten school days.

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 article two-d, chapter five-b of said code be amended by adding thereto a new section, designated section eight; that sections seven and twenty-six, article two, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections seven-b, eight-a and seventeen; that said chapter be further amended by adding thereto a new article, designated article two-h; that sections fifteen and eighteen, article five of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-two-a; that section five, article five-a of said chapter be amended and reenacted; that article seven-a of said chapter be amended by adding thereto a new section, designated section twenty-six-m; that section ten, article seven-b of said chapter be amended and reenacted; that sections two, four and eleven, article eight of said chapter be amended and reenacted; that sections three-a, six, six-a, seven, eight-a, nine, ten and twenty-four, article nine-a of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-b; that sections three and five, article twenty of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-c; that chapter eighteen-a of said code be amended by adding thereto a new article, designated article three-b; that section five, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nineteen; and that section one-a, article five of said chapter be amended and reenacted, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

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 “PEIA”, 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.

18 If the general revenue appropriation for any employer, excluding county boards of education beginning the first day of July, one thousand nine hundred ninety-five, and thereafter, 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. Beginning the first day of July, one thousand nine hundred ninety-five, and thereafter, the amount of such payments for county boards of education shall be determined by the method set forth in section twenty-four, article nine-a, chapter eighteen of this code: 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 amount shall not exceed four million dollars during fiscal year one thousand nine hundred ninety-five.

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 insu-
rance 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 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.

ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE
PROGRAM.

§5B-2D-8. Governor's work force development council
created; quarterly reports; conclusion of
work and termination date.

The governor's work force development council is
hereby created to develop and implement a plan of
action to coordinate existing and new jobs training
programs in various agencies of state government,
including the statewide school-to-work opportunity
system, consistent with the needs of local communities,
school systems and businesses.

The governor's work force development council shall
be composed of the governor, who shall be the chair of
the council, or the governor's chief of staff serving as the governor's designee; the commissioner of the bureau of employment programs; the director of the West Virginia development office; the secretary of education and the arts, or the assistant director for community colleges in the higher education central office serving as the secretary's designee; the secretary of health and human resources, or the director of the office of work and training serving as the secretary's designee; the state superintendent of schools, or the assistant superintendent for technical and adult education serving as the superintendent's designee; the chair of the council for community and economic development, or another private sector member of the council serving as the chair's designee; a labor representative who shall be a member of the joint apprenticeship and training council appointed by the governor; a small business representative who shall be from a firm with twenty-five or less employees appointed by the governor; a representative of a private proprietary school; an industry representative appointed by the governor; and the chair of the joint commission for vocational-technical-occupational education, or the executive director of the joint commission serving as the chair's designee. Staff of the joint commission on vocational-technical-occupational education shall serve as staff of the council: Provided, That the joint commission on vocational-technical-occupational education may not hire additional staff unless the Legislature expressly appropriates funds therefor: Provided, however, That the joint commission on vocational-technical-occupational education shall coordinate staff activities performed for the council with the office of the governor in order to draw upon resources presently existing in the various state agencies and programs represented on the council. Any vocational or jobs training program receiving state or federal funds for education shall provide data to the council upon request.

Beginning in the first quarter of the fiscal year, one thousand nine hundred ninety-five, the governor's work force development council shall make written quarterly reports to the legislative oversight commission on
education accountability at such time and in such form
as the commission shall direct. Such quarterly reports
shall include preliminary data, conclusions and recom-
mendations relating to the plan of action and may
include specific recommendations for administrative
and statutory change.

On or before the thirtieth day of November, one
thousand nine hundred ninety-five, the governor's work
force development council as created and composed
under the provisions of this article shall conclude its
work with the issuance of a final report summarizing
its plan of action and specific recommendations for
reallocating resources, modification of programs,
geographic distribution of services, proposals for
administrative change, and any proposals for legislation,
in the form of specific bills recommended to the
Legislature.

The governor's work force development council shall
terminate on the first day of July, one thousand nine
hundred ninety-six.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7. Courses of study; language of instruction.
§18-2-7b. Programs in drug prevention and violence reduction.
§18-2-8a. Course of study in firearms and firearm safety.
§18-2-17. Study on fluctuating staff in schools with a high percentage of at-
  risk students.
§18-2-26. Establishment of multicounty regional educational service
  agencies: purposes; authority to implement regional services.

§18-2-7. Courses of study; language of instruction.
The state board of education shall prescribe minimum standards in the courses of study to be offered in elementary schools, high schools, vocational schools and in all other kinds, grades and classes of schools or departments thereof, which may now or hereafter be maintained in the state, in whole or in part, from any state fund or funds: Provided, That the courses of study in the public schools in the state shall be prepared by the faculties, teachers or other constituted authority thereof, and shall, before going into effect, be submitted to the state board of education for its approval. The basic language of instruction in all schools, public, private and parochial, shall be the English language only. The state board shall not adopt any policies or rules which set out time requirements within the instructional day for instruction in kindergarten through fourth grade.

The state board of education shall accept American sign language as a credited course of study in a foreign language in elementary schools, high schools, vocational schools and in all other kinds, grades and classes of schools or departments thereof: Provided, That nothing in this section shall be construed to require the provision of instruction in American sign language that is not otherwise required by state or federal statute or regulation: Provided, however, That on or before the sixth day of January, one thousand nine hundred ninety-five, the state board shall provide to the governor and to the president of the Senate and the speaker of the House of Delegates a plan for teaching American sign language in public schools, which plan shall include the form and manner proposed by the state board for implementation of the teaching of American sign language in the schools, the time frame for implementation and the projected cost of the implementation.

§18-2-7b. Programs in drug prevention and violence reduction.

In order for the schools to become healthy learning environments and to provide a strong defense against drug use and violence, the state board of education shall prescribe programs within the existing health and
physical education program which teach resistance and life skills to counteract societal and peer pressure to use drugs, alcohol and tobacco, and shall include counselors, teachers and staff in full implementation of the program. The board shall also prescribe programs to coordinate violence reduction efforts in schools and between schools and their communities and to train students, teachers, counselors and staff in conflict resolution skills. The program shall be comprehensive, interdisciplinary and shall begin in elementary school. The state board shall report to the legislative oversight commission on education accountability on the status of the programs no later than the first day of July, one thousand nine hundred ninety-five.

§18-2-8a. Course of study in firearms and firearm safety. The state board of education may, with the advice of the state superintendent of schools and the director of the division of natural resources, prescribe an orientation program for use in the public schools of this state in the safety of firearms. The orientation program shall deal with the protection of lives and property against loss or damage as a result of improper use of firearms. The orientation program shall also include instruction about the proper use of firearms in hunting, sport competition and care and safety of firearms in the home and may utilize materials prepared by any national nonprofit membership organization which has as one of its purposes the training of people in marksmanship and the safe handling and use of firearms. The county superintendent may arrange for such orientation program in the safety of firearms and its use in each school in the county.

§18-2-17. Study on fluctuating staff in schools with a high percentage of at-risk students. The West Virginia board of education shall conduct a comprehensive study of staff fluctuations in schools with a high percentage of at-risk students. At-risk students are defined as students with the potential for academic failure, including, but not limited to, the risk of dropping out of school, involvement in delinquent
§18-2-26. Establishment of multicounty regional educational 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 tenth day of January, one thousand nine hundred ninety-five.

(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 by: (1) Acquiring necessary, compatible equipment to participate in the regional computer information system; or (2) following receipt of a waiver from the state superintendent, operating a comparable management information system at a lower cost which provides at least all uniform integrated regional computer information system software modules and allows on-line, interactive access for schools and the county board of education office onto the statewide communications network. All data formats shall be the same as for the uniform integrated regional information system and will reside at the regional computer. Any county
granted a waiver shall receive periodic notification of any incompatibility or deficiency in its system. Continued inability of any county to meet the above criteria shall, upon notification to the county no later than the first day of April, one thousand nine hundred ninety-five, require the county to use the uniform integrated regional computer information system no later than the first day of July, one thousand nine hundred ninety-five. 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, That nothing contained herein shall prevent the state superintendent from granting a one-year 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.

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.

A regional board shall be empowered to receive and disburse funds from the state and federal governments, member counties, gifts and grants.

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
(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 2H. PUBLIC NOTICE AND PARTICIPATION IN STATE-MANDATED EDUCATIONAL REFORM.

§18-2H-1. Legislative findings.

The Legislature hereby finds and declares that, while an educated and informed citizenry is essential to a democratic society, so also is the right, opportunity and guarantee that the citizenry have the right to notice and participation in any state-mandated educational reform which changes, or is intended to change, statewide data systems, statewide curriculum, or any state-mandated education reform which constitutes a significant change in the philosophy or goals of education in the public schools of West Virginia as that is defined by state board rule.

In order to ensure the right and opportunity of the citizenry to notice and participation in any proposed state-mandated educational reform, a procedure for notice to the citizenry and public hearings shall be developed.


Prior to the adoption or implementation of any state-mandated education reform which constitutes a significant change in the philosophy or goals of education in the public schools of West Virginia, the state board of education shall give notice and hold public hearings on the proposed education reform.

At least sixty days prior to the date set for hearings, the state board shall provide notification of the proposed education reform in the manner specified in section three of this article: Provided, That the provisions of this
section do not apply to emergency rules promulgated by the state board of education pursuant to section ten, article three-b, chapter twenty-nine-a of this code.

From the date of the public notice through the date of the last scheduled public hearing, the state board shall receive written comments to the intended state-mandated education reform constituting a significant change in the philosophy or goals of education in the public schools of West Virginia. After the minimum period of sixty days following the public notice of hearings, the state board, or the state department of education if so delegated by the state board, shall hold not less than four public hearings at various locations in the state, during which hearings the general public and affected citizenry shall have the opportunity to have questions and objections to the proposed education reform answered and to have their views made part of the public record.

If, after receipt of written comments and the public hearings, the state board makes any change in the proposed education reform, it shall make a public announcement of that change not less than thirty days prior to its vote on the reform. The affected citizenry may submit written comments on any such changes.


(a) Prior to the implementation of any state-mandated educational reform which constitutes a significant change in the philosophy or goals in the public schools of this state and the hearings required thereon, the state board shall provide notice by submitting a copy of the proposed reform and a press release to public and private television and radio stations, disseminating press releases to newspapers of general circulation, and notifying the parents of students in all schools which might be affected by sending notices home with the students, or by distribution to the parents in any other reasonable manner. The notice and plans shall be in such form and contain such information as the state board may require to fully inform the citizenry of the
15. nature and scope of the educational reform, including
the proposed educational reform and the date, time and
place of the public hearings.

18. (b) The state board shall provide timely written notice
to any person who has asked the state board to place the
person’s name on a mailing list maintained by the state
board.

22. (c) The state board shall maintain a verbatim record
of all hearings.

24. (d) The state board may not impose fees or other
charges for such a public hearing.


1 The extent of additional information received by the
state board from the general public and the affected
citizenry, with respect to the impact of the proposed
educational reform, may be cause for the state board to
change, alter, amend, implement or rescind the pro-
posed educational reform.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons
to whom schools are open.

§18-5-18. Kindergarten programs.

§18-5-22a. Policy for the administration of medications.

§18-5-15. School term; exception; levies; ages of persons
to whom schools are open.

1 (a) The board shall provide a school term for its
schools which shall be comprised of: (1) An employment
term for teachers; and (2) an instructional term for
pupils. Nothing in this section shall prohibit the
establishment of year-round schools in accordance with
rules to be established by the state board.

7 The employment term for teachers shall be no less
than ten months, a month to be defined as twenty
employment days exclusive of Saturdays and Sundays:
Provided, That the board may contract with all or part
of the personnel for a longer term. The employment
term shall be fixed within such beginning and closing
dates as established by the state board: Provided,
However, that the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the federal emergency management agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall commence no earlier than the twenty-sixth day of August and shall terminate no later than the eighth day of June: Provided, however, That the state board of education shall evaluate data which shall be submitted by each county by the first of June, one thousand nine hundred ninety-four, regarding the climate control conditions, such as air conditioning and related information at each school in the county, and how these conditions impact on the instructional term.

The criterion referenced test mandated in section two, article two-e of this chapter shall not be required to be given during school year one thousand nine hundred ninety-three—ninety-four.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board shall designate and schedule for teachers and service personnel six days to be used by the employee outside the school environment. However, no more than eight noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the
contrary, if the board has canceled instructional days
equal to the difference between the total instructional
days scheduled and one hundred seventy-eight, each
succeeding instructional day canceled shall be resche-
duled, utilizing only the remaining noninstructional
days, except holidays, following such cancellation, which
are available prior to the second day before the end of
the employment term established by such county board.

Where the employment term overlaps a teacher's or
service personnel's participation in a summer institute
or institution of higher education for the purpose of
advancement or professional growth, the teacher or
service personnel may substitute, with the approval of
the county superintendent, such participation for not
more than five of the noninstructional days of the
employment term.

The board may extend the instructional term beyond
one hundred eighty-five instructional days provided the
employment term is extended an equal number of days.
If the state revenues and regular levies, as provided by
law, are insufficient to enable the board of education to
provide for the school term, the board may at any
general or special election, if petitioned by at least five
percent of the qualified voters in the district, submit the
question of additional levies to the voters. If at the
election a majority of the qualified voters cast their
ballots in favor of the additional levy, the board shall
fix the term and lay a levy necessary to pay the cost of
the additional term. The additional levy fixed by the
election shall not continue longer than five years without
submission to the voters. The additional rate shall not
exceed by more than one hundred percent the maximum
school rate prescribed by article eight, chapter eleven
of the code, as amended.

(b) The public schools shall be open for the full
instructional term to all persons who have attained the
entrance age as stated in section five, article two and
section eighteen, article five, chapter eighteen of this
code: Provided, That any student suspended or expelled
from public or private school shall only be permitted to
enroll in public school upon the approval of the
superintendent of the county where the student seeks enrollment: *Provided, however,* That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student’s enrollment in his or her new school: *Provided further,* That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

Persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: *Provided,* That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

§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 the first day of September 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-six—ninety-seven, such programs shall be full-day everyday. Before the first day of November, one thousand nine hundred ninety-four, the state board shall review 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 estab-
ishment, operation and successful completion of kinder-
garten programs in accordance with the other provi-
sions of this section. Guidelines and criteria so estab-
lished 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 estab-
lished 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 kinder-
garten 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 demon-
stration centers in accordance with criteria and stand-
ards established by the West Virginia board of educa-
tion. Said regional centers shall be established to
provide exemplary and innovative kindergarten pro-
grams, 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.

§18-5-22a. Policy for the administration of medications.

All county boards of education shall develop a specific medication administration policy which establishes the procedure to be followed for the administration of medication at each school.

No school employee shall be required to administer medications: Provided, That nothing herein shall prevent any school employee to elect to administer medication after receiving training as provided herein: Provided, however, That any school employee in the field of special education whose employment commenced on or after the first day of July, one thousand nine hundred eighty-nine, may be required to administer medications after receiving training as provided herein.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which shall be comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators as used in this section means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a
chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed. Emergency meetings may be held at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting, and in the case of emergency meetings, as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which in the judgment of the teacher or librarian will assist him or her in providing instruction in his or her assigned academic subjects, or shall be returned to the faculty senate: Provided, That nothing contained herein shall prohibit such funds from being used for
programs and materials that, in the opinion of the teacher, enhance student behavior, increase academic achievement, improve self-esteem and address the problems of students at-risk. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, however, That the amount of county funds budgeted in a fiscal year, shall not be reduced throughout the year as a result of the faculty appropriations in the same fiscal year for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master
curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, that the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual's evaluations.

(12) Each faculty senate shall be provided by its local
board of education at least a two-hour per month block
of noninstructional time within the school day: Provided,
That any such designated day shall constitute a full
instructional day. This time may be utilized and
determined at the local school level and shall include,
but not be limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan
to manage the integration of special needs students into
the regular classroom at their respective schools and
submit said strategic plan to the superintendent of the
county board of education by the first day of March, one
thousand nine hundred ninety-five, and periodically
thereafter pursuant to guidelines developed by the state
department of education. Each faculty senate shall
encourage the participation of local school improvement
councils, parents and the community at large in the
development of the strategic plan for each school.

Each strategic plan developed by the faculty senate
shall include at least: (A) A mission statement; (B) goals;
(C) needs; (D) objectives and activities to implement
plans relating to each goal; (E) work in progress to
implement the strategic plan; (F) guidelines for the
placement of additional staff into integrated classrooms
to meet the needs of exceptional needs students without
diminishing the services rendered to the other students
in integrated classrooms; (G) guidelines for implement-
tation of collaborative planning and instruction; and (H)
training for all regular classroom teachers who serve
students with exceptional needs in integrated class-
rooms.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26m. Supplemental benefits for certain teachers.

(a) As an additional supplement to other retirement
allowances provided, each annuitant whose annuity was
approved by the retirement board prior to the first day
of January, one thousand nine hundred seventy-one, and
who is receiving a monthly pension of three hundred
dollars or less, shall receive a monthly amount equal to
one dollar multiplied by his or her total service credit.
(b) As an additional supplement to other retirement allowances provided, each annuitant whose annuity was approved on or after the first day of July, one thousand nine hundred eighty-two, and before the first day of July, one thousand nine hundred eighty-four, shall receive a monthly amount equal to two dollars multiplied by his or her total service credit.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation. 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-2. Offenses; penalties; cost of prosecution.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.
§18-8-2. Offenses; penalties; cost of prosecution.

Any person who, after receiving due notice, shall fail to cause a child or children under eighteen years of age in that person's legal or actual charge to attend school in violation of the provisions of this article or without just cause, shall be guilty of a misdemeanor, and shall, upon conviction of a first offense, be fined not less than fifty nor more than one hundred dollars together with the costs of prosecution, or required to accompany the child to school and remain through the school day for so long as the magistrate or judge may determine is appropriate. The magistrate or judge, upon conviction and pronouncing sentence, may delay the sentence for a period of sixty school days provided the child is in attendance everyday during said sixty-day period. Following the sixty-day period, if said child was present at school for every school day, the delayed sentence may be suspended and not enacted. Upon conviction of a second offense, a fine may be imposed of not less than fifty dollars nor more than one hundred dollars together with the costs of prosecution and the person may be required to accompany the child to school and remain throughout the school day until such time as the magistrate or judge may determine is appropriate or confined in jail not less than five nor more than twenty days. Every day a child is out of school contrary to the provisions of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the trial of offenses arising under this section.

Any person eighteen years of age or older who is enrolled in school who, after receiving due notice, fails to attend school in violation of the provisions of this article or without just cause, shall be guilty of a misdemeanor and shall, upon conviction of a first offense, be fined not less than fifty dollars nor more than one hundred dollars together with the costs of prosecution and required to attend school and remain throughout the school day. The magistrate or judge, upon conviction and pronouncing sentence, may delay the imposition of a fine for a period of sixty school days...
provided the person is in attendance every day during
said sixty-day period. Following the sixty-day period, if
said student was present at school everyday, the delayed
sentence may be suspended and not enacted. Upon
conviction of a second offense, a fine may be imposed
of not less than fifty dollars nor more than one hundred
dollars together with the costs of prosecution and the
person may be required to go to school and remain
throughout the school day until such time as the person
graduates or withdraws from school or confined in jail
not less than five nor more than twenty days. Every day
a student is out of school contrary to the provisions of
this article shall constitute a separate offense. Magis-
trates shall have concurrent jurisdiction with circuit
courts for the trial of offenses arising under this section.

Upon conviction of a third offense, any person
eighteen years of age or older who is enrolled in school
shall be withdrawn from school during the remainder
of that school year. Enrollment of that person in school
during the next school year or years thereafter shall be
conditional upon all absences being excused as defined
in law, state board policy and county board of education
policy. More than one unexcused absence of such a
student shall be grounds for the director of attendance
to authorize the school to withdraw the person for the
remainder of the school year. Magistrates shall have
concurrent jurisdiction with circuit courts for the trial
of offenses arising under this section.

§18-8-4. Duties of attendance director and assistant
directors; complaints, warrants and hear-
ings.

The county attendance director and the assistants
shall diligently promote regular school attendance. They
shall ascertain reasons for inexcusable absences from
school of pupils of compulsory school age as defined
under this article and shall take such steps as are, in
their discretion, best calculated to correct attitudes of
parents and pupils which results in absences from school
even though not clearly in violation of law.

In the case of five consecutive or ten total unexcused
absences of a child during a single semester, the attendance director or assistant shall serve written notice to the parent, guardian or custodian of such child that the attendance of such child at school is required and that within ten days of receipt of such notice the parent, guardian or custodian, accompanied by the child, shall report in person to the school the child attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the child; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against such parent, guardian or custodian before a magistrate of the county. The attendance director or assistant shall serve such notice for other absences from school found to be in violation of law. For any similar subsequent offense in any school year no notice shall be required. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a warrant for the arrest of the accused shall issue to any officer authorized by law to arrest persons charged with offenses against the state. More than one warrant may be issued on the same complaint. The warrant shall be executed within ten days of its issuance.

The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

When any doubt exists as to the age of a child absent from school, the attendance director shall have authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of such
child, stating age of such child. The county attendance
director or assistant shall, in the performance of his
duties, have authority to take without warrant any child
absent from school in violation of the provisions of this
article and to place such child in the school in which
such child is or should be enrolled.

The county attendance director shall devote such time
as is required by section three of this article to the duties
of attendance director in accordance with this section
during the instructional term and at such other times
as the duties of an attendance director are required. All
attendance directors hired for more than two hundred
days may be assigned other duties determined by the
superintendent during the period in excess of two
hundred days. The county attendance director shall be
responsible under direction of the county superintendent
for the efficient administration of school attendance in
the county.

In addition to those duties directly relating to the
administration of attendance, the county attendance
director and assistant directors shall also perform the
following duties:

(a) Assist in directing the taking of the school census
to see that it is taken at the time and in the manner
provided by law;

(b) Confer with principals and teachers on the
comparison of school census and enrollment for the
detection of possible nonenrollees;

(c) Cooperate with existing state and federal agencies
charged with enforcement of child labor laws;

(d) Prepare a report for submission by the county
superintendent to the state superintendent of schools on
school attendance, at such times and in such detail as
may be required; also, file with the county superintendent
and county board of education at the close of each
month a report showing activities of the school attendance
office and the status of attendance in the county
at the time;

(e) Promote attendance in the county by the compi-
(f) Participate in school teachers' conferences with parents and students;

(g) Assist in such other ways as the county superintendent may direct for improving school attendance;

(h) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal.

§18-8-11. School attendance as condition of licensing for privilege of operation of motor vehicle.

(a) In accordance with the provisions of sections three and five, article two, chapter seventeen-b of this code, the division of motor vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of eighteen who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general educational development certificate (GED) from a state approved institution or organization, or has obtained such certificate; (2) is enrolled in a secondary school of this state or any other state; or (3) is excused from such requirement due to circumstances beyond his or her control.

(b) The attendance director or chief administrator shall provide documentation of enrollment status on a form approved by the department of education to any student sixteen years of age or older upon request who is properly enrolled in a school under the jurisdiction of said official for presentation to the division of motor vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle. Whenever a student sixteen years of age or older
withdraws from school, except as provided in subsection
(d) of this section, the attendance director or chief
administrator shall notify the division of motor vehicles
of such withdrawal not later than five days from the
withdrawal date. Within five days of receipt of such
notice, the division of motor vehicles shall send notice
to the licensee that the license will be suspended under
the provisions of section three, article two, chapter
seventeen-b of this code on the thirtieth day following
the date the notice was sent unless documentation of
compliance with the provisions of this section is received
by the division of motor vehicles before such time.

(c) For the purposes of this section, withdrawal shall
be defined as more than ten consecutive or fifteen days
total unexcused absences during a single semester. For
the purposes of this section, suspension or expulsion
from school or imprisonment in a jail or a penitentiary
is not a circumstance beyond the control of such person.

(d) Whenever the withdrawal from school of such
student, or such student's failure to enroll in a course
leading to or to obtain a GED or high school diploma,
is beyond the control of such student, or is for the
purpose of transfer to another school as confirmed in
writing by the student's parent or guardian, no such
notice shall be sent to the division of motor vehicles to
suspend the student's motor vehicle operator's license,
and if the student is applying for a license, the
attendance director or chief administrator shall provide
the student with documentation to present to the
division of motor vehicles to excuse such student from
the provisions of this section. The school district
superintendent (or the appropriate school official of any
private secondary school) with the assistance of the
county attendance director and any other staff or school
personnel shall be the sole judge of whether such
withdrawal is due to circumstances beyond the control
of such person.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-3a. Total state basic foundation program for fiscal year one thousand
nine hundred ninety-four—ninety-five only.
§18-9A-6. Foundation allowance for fixed charges.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

§18-9A-6b. Allocation of growth of local share.


§18-9A-8a. Foundation allowance for regional educational service agencies.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

§18-9A-10. Foundation allowance to improve instructional programs.


§18-9A-3a. Total state basic foundation program for fiscal year one thousand nine hundred ninety-four—ninety-five only.

1 Notwithstanding any other provisions of this article to the contrary, the total basic foundation program for the state for the fiscal year one thousand nine hundred ninety-four—ninety-five shall be the sum of the amounts computed in accordance with this section, less the county's local share:

2 (1) Allowance for professional educators as determined in accordance with sections four and five-a of this article;

3 (2) Allowance for service personnel as determined in accordance with sections five and five-a of this article;

4 (3) Allowance for fixed charges as determined in accordance with the provisions of sections six and six-a of this article;

5 (4) Allowance for transportation cost in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-three—ninety-four;

6 (5) Allowance for administrative cost in accordance with the provisions of sections eight and eight-a of this article;

7 (6) Allowance for other current expense and substitute employees in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-three—ninety-four: Provided, That the allocation of such funds for expenditure by faculty senates shall be in accordance with the
provisions of section nine of this article;

(7) Allowance to improve instructional programs in an amount at least equal to the appropriation for such allowance in the fiscal year one thousand nine hundred ninety-three—ninety-four.

§18-9A-6. Foundation allowance for fixed charges.

The total allowance for fixed charges shall be the sum of the following:

(1) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by the current social security rate of contribution; plus

(2) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by four hundredths of one percent as an allowance for unemployment compensation contribution; plus

(3) The sum of the foundation allowance for professional educators and the foundation allowance for other personnel, as determined in sections four and five above, multiplied by the rate which is derived by dividing the total estimated contributions for workers' compensation for all county boards by the sum of the foundation allowance for professional educators and other personnel, as determined in sections four and five above. The total estimated contribution for workers' compensation is determined by multiplying each county board's allowance for professional educators and other personnel, as determined by sections four and five above, by the county's actual contribution rate by using data of the most recent year for which it is available; plus

(4) The teachers retirement fund allowance as determined in section six-a of this article.

§18-9A-6a. Teachers retirement fund allowance; unfunded liability allowance.

(a) The total teachers retirement fund allowance shall
be the sum of the basic foundation allowance for professional educators and the basic foundation allowance for service personnel, as provided in sections four and five of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties pursuant to sections five-a and five-b of said article to the extent such county salary supplements are equal to the amount distributed for salary equity among the counties, multiplied by fifteen percent.

(b) The teachers retirement fund allowance amounts provided for in subsection (a) of this section shall be accumulated in the employers accumulation fund of the state teachers retirement system pursuant to section eighteen, article seven-a of this chapter, and shall be in lieu of the contribution required of employers pursuant to subsection (b) of said section as to all personnel included in the allowance for state aid in accordance with sections four and five of this article.

(c) In addition to the teachers retirement fund allowance provided for in subsection (a) of this section, there shall be an allowance for the reduction of any unfunded liability of the teachers retirement fund in accordance with the following provisions of this subsection. On or before the thirty-first day of December of each year, the actuary or actuarial firm employed in accordance with the provisions of section four, article ten-d, chapter five of this code shall submit a report to the president of the Senate and the speaker of the House of Delegates which sets forth an actuarial valuation of the teachers retirement fund as of the preceding thirtieth day of June. Each annual report shall recommend the actuary's best estimate, at that time, of the funding necessary to both eliminate the unfunded liability over a forty-year period beginning on the first day of July, one thousand nine hundred ninety-four, and to meet the cash flow requirements of the fund in fulfilling its future anticipated obligations to its members. In determining the amount of funding required, the actuary shall take into consideration all funding otherwise available to the fund for that year.
from any source: Provided, That the appropriation and allocation to the teachers’ retirement fund made pursuant to the provisions of sections six-b of this article shall not be included in the determination of the requisite funding amount. In any year in which the actuary determines that the teachers retirement fund is not being funded in such a manner, the allowance made for the unfunded liability for the next fiscal year shall be not less than the amount of the actuary’s best estimate of the amount necessary to conform to the funding requirements set forth in this subsection.

§18-9A-6b. Allocation of growth of local share.

Beginning with the first day of July, one thousand nine hundred ninety-five, and thereafter, an appropriation and allocation due to the increase in local share not to exceed seven million dollars above that computed for the previous year, which increase may be attributable to any increase in the tax rate as enacted by the Legislature in accordance with the provisions of subsection (b), section six-f, article eight, chapter eleven of this code, shall be allocated to the state teachers’ retirement system, which appropriation and allocation shall be in addition to the amounts required by section six-a of this article or any other retirement contributions as may be required to the state teachers retirement system set forth in article seven-a of this chapter and which shall be accumulated in the employers accumulation fund created in section eighteen of said article seven-a.


The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:

(1) Eighty percent of the transportation cost within each county for maintenance, operation and related costs, exclusive of all salaries: Provided, That for the school year beginning the first day of July, one thousand nine hundred ninety-four, and thereafter, in the event a county uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the
operation of all or any portion of its school bus system, then the allowance in the foundation school program for each such county for that portion of its school bus system shall be ninety percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses: Provided further, That the state board shall distribute the additional allowance to qualifying counties only until such time as the state board has distributed in the then current fiscal year one hundred thousand dollars of transportation allowance, in the statewide aggregate, above the eighty percent to qualifying counties, after which the additional ten percent shall no longer be available to any county;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That such premiums were procured through competitive bidding;

(3) For the school year beginning the first day of July, one thousand nine hundred eighty-nine, and thereafter, an amount equal to ten percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. Furthermore, large, sparsely populated counties may also apply to the state superintendent for funding for additional mini-buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs or, in the case of a large, sparsely populated county, the population of the county: Provided, That the superintendent shall not consider any application which fails to
document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Eighty percent of the cost of contracted transportation services and public utility transportation with each county;

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving such aid within each county; and

(6) Ninety percent of the total cost of transportation operations and related expenses, excluding salaries and maintenance for transporting students to and from classes at a multicounty vocational center.

The total state share for this purpose shall be the sum of the county shares and shall be distributed in accordance with rules to be promulgated by the state board: Provided, That no county shall receive an allowance which is greater than one third above the computed state average allowance per mile multiplied by the total mileage in the county.

§18-9A-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-four 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
16 regional educational service agencies shall be excluded
17 from the computation of total basic state aid as provided
18 for in section twelve of this article.

§18-9A-9. Foundation allowance for other current ex-
1 pense and substitute employees.

The total allowance for other current expense and
2 substitute employees shall be the sum of the following:

Provided, That each of the three amounts set forth in
3 subdivisions (1), (2) and (3) of this section shall not
4 exceed the preceding year's allowance by more than four
5 percent:

(1) For current expense, for the year one thousand
6 nine hundred ninety—ninety-one and thereafter, ten
7 percent of the sum of the computed state allocation for
8 professional educators and service personnel as deter-
9 mined in sections four and five of this article. Distribu-
10 tion to the counties shall be made proportional to the
11 average of each county's average daily attendance for
12 the preceding year and the county's second month net
13 enrollment; plus

(2) For professional educator substitutes or current
14 expense, two and five-tenths percent of the computed
15 state allocation for professional educators as determined
16 in section four of this article. Distribution to the counties
17 shall be made proportional to the number of professional
18 educators authorized for the county in compliance with
19 sections four and five-a of this article; plus

(3) For service personnel substitutes or current
20 expense, two and five-tenths percent of the computed
21 state allocation for service personnel as determined in
22 section five of this article. Distribution to the counties
23 shall be made proportional to the number of service
24 personnel authorized for the county in compliance with
25 sections five and five-a of this article; plus

(4) For academic materials, supplies and equipment
26 for use in instructional programs, two hundred dollars
27 multiplied by the number of professional instructional
28 personnel employed in the schools of the county.
29 Distribution shall be made to each county for allocation
to the faculty senate of each school in the county on the basis of two hundred dollars per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds shall be made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a and shall not be used to supplant the current expense expenditures of the county. Beginning on the first day of September, one thousand nine hundred ninety-four, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

§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-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 balances in the general school fund, or from appropriations for such purposes:

1. One hundred fifty thousand dollars shall be allocated to each county;

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; and

(3) 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 for the next fiscal year by the first day of May of each year. 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, 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, however, 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, an amount not less than the amount required to
meet debt service requirements on any revenue bonds
issued prior to the first day of January, one thousand
nine hundred ninety-four, and the debt service require-
ments on any revenue bonds issued for the purpose of
refunding revenue bonds issued prior to the first day of
January, one thousand nine hundred ninety-four, 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. The school building capital improvements fund
shall not be utilized to meet the debt services require-
ment on any revenue bonds or revenue refunding bonds
for which moneys contained within the school building
debt service fund have been pledged for repayment
pursuant to said section.

§18-9A-24. Foundation allowance for public employees
insurance fund.

(a) Beginning the first day of July, one thousand nine
hundred ninety-five, and every year thereafter, the
allowance to the public employees insurance agency for
school employees shall be made in accordance with the
following: The number of individuals employed by
county boards of education as professional educators
pursuant to section four or five-a of this article,
whichever is less, plus the number of individuals
employed by county boards of education as service
personnel pursuant to section five or five-a of this
article, whichever is less, multiplied by the average
premium rate for all county board of education em-
ployees established by the public employees insurance
agency finance board. The average premium rate for all
county board of education employees shall be incorpo-
rated into each financial plan developed by the finance
board in accordance with section five, article sixteen,
chapter five of this code. Such premiums shall include
any proportionate share of retirees subsidy established
by the finance board and the difference, if any, between
the previous year's actual premium costs and the
previous year's appropriation, if the actual cost was
greater than the appropriation.
(b) County boards of education shall be responsible for payments to the public employees insurance agency for individuals who are employed as professional employees above and beyond those authorized by section four or five-a, whichever is less, and individuals who are employed as service personnel above and beyond those authorized by section five and five-a whichever is less. For each such employee, the county board of education shall forward to the public employees insurance agency an amount equal to the average premium rate established by the finance board in accordance with subsection (a) of this section: Provided, That the county board shall pay the actual employer premium costs for any county board employee paid from special revenues, federal or state grants, or sources other than state general revenue or county funds.

(c) Prior to the first day of July, one thousand nine hundred ninety-five, nothing in this article shall be construed to limit the ability of county boards of education to use funds appropriated to county boards of education pursuant to this article to pay employer premiums to the public employees insurance agency for employees whose positions are funded pursuant to this article. Funds appropriated to county boards of education pursuant to this article shall not be used to pay employer premiums for employees of such boards whose positions are not, or will not be within twenty months, funded by funds appropriated pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher.

§18-20-3. County reports.

§18-20-5. Powers and duties of state superintendent.

§18-20-1c. Integrated classrooms serving students with exceptional needs; and requirements as to the assistance, training and information to be provided to the affected classroom teacher.

The regular classroom teacher shall be entitled to the following when placing a student with exceptional needs
into an integrated classroom when the student's individualized education program requires an adjustment in either the curriculum, instruction or service to be provided by the regular classroom teacher:

(1) Training provided pursuant to the integrated classroom program and additional individualized training, pursuant to the rules developed by the state board of education, if requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs of individual students. Whenever possible, such training shall be provided prior to such placement. Where prior training is not possible, such training shall be commenced no later than ten days following the placement of said student into the regular classroom. Unavoidable delays in the provision of training shall not result in the exclusion of a special needs student from any class in the event said training cannot be provided in said ten days;

(2) A signed copy of the individualized education program for the special needs student prior to or at the time of the placement of the student into the regular classroom. The receiving and referring teachers shall participate in the development of that student’s individualized education plan and shall also sign the individualized education plan as developed. In all cases the teacher shall receive a copy of the individualized education plan for the special needs student prior to or at the time of the placement of the student into the regular classroom. Any teacher disagreeing with the individualized education plan committee's recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by both receiving and referring teachers, upon the receiving teacher being identified, in all eligibility committees and individualized education program committees which involve possible placement of an exceptional student in an integrated classroom;

(4) Opportunity to reconvene the committee responsible for the individualized education program of the student with special needs assigned to the regular
classroom teacher. The meeting shall include all persons involved in a student's individualized education program and shall be held within twenty-one days of the time the request is made;

(5) Assistance from persons trained or certified to deal with a student's exceptional needs whenever such assistance is part of the student's individualized education program as necessary to ensure the student's exceptional needs can be met: Provided, That aides in the area of special education cannot be reassigned to more than one school without the employee's consent.

§18-20-3. County reports.

Counties maintaining special schools, classes, regular class programs, integrated classroom strategic plans and training related to integrated education, basic and specialized health care procedures including the administration of medications, home-teaching or visiting services and receiving or requesting reimbursement from state appropriated funds shall file with the state superintendent of schools on forms supplied by his office, applications, annual reports and such other reports as he may require.

§18-20-5. Powers and duties of state superintendent.

The state superintendent of schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards of education in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) Preparing the necessary rules, regulations, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the
employment, certification and approval of qualified teachers and therapists subject to approval by the state board of education.

(4) Receiving from county boards of education their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools, and correctional facilities as provided in section thirteen-f, article two of this chapter, receive an education in accordance with state and federal laws: Provided, That the state superintendent shall also assure that adults in correctional facilities shall receive an education to the extent funds are provided therefor.

(6) Performing such other duties and assuming such other responsibilities in connection with this program as may be needed.

(7) Receive the county plan for integrated classroom submitted by the county boards of education, and submit a state plan, approved by the state board of education, to the legislative oversight commission on education accountability no later than the thirtieth day of November, one thousand nine hundred ninety-four.

Nothing herein contained shall be construed to prevent any county board of education from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

3B. Educators' Professional Standards Board.

4. Salaries, Wages and Other Benefits.

5. Authority; Rights; Responsibility.

ARTICLE 3B. EDUCATORS' PROFESSIONAL STANDARDS BOARD.
§18A-3B-1. Establishment of educators; professional standards board.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.


§18A-3B-1. Establishment of educators' professional standards board.

The Legislature hereby finds and declares that in order to more fully provide for a thorough and efficient system of free schools within the state it is necessary to establish an educators' professional standards board. The board will be responsible for governing the education profession, including the establishment of standards for entering the education profession, and remaining a member of the education profession. The board shall also establish standards for institutions of higher education engaged in teacher preparation programs.

§18A-3B-2. Educators' professional standards board; composition; appointment; terms of members.

(a) There is created an educators' professional standards board consisting of nine members appointed by the governor, with the advice and consent of the Senate.

(b) The term of office for each member is three years except that the original term of three members, including not more than one teacher, shall be for one year, and the original term of three members, including not more than two teachers, shall be for two years.

(c) Any member who, through change of employment standing or other circumstances, no longer meets the criteria for the position to which the member was appointed shall no longer be eligible to serve in that position, and the position on the commission shall become vacant sixty days following the member's change in circumstances.

(d) The membership of the educators' professional standards board shall consist of: One classroom teacher currently employed by a county board of education
teaching vocational education; one classroom teacher currently employed by a county board of education teaching in an elementary school; one classroom teacher currently employed by a county board of education teaching in a middle school; one classroom teacher currently employed by a county board of education teaching in a secondary school; one classroom teacher currently employed by a county board of education teaching special education; the state superintendent of schools or his or her designee; one elementary school or secondary school principal currently employed by a county board of education; one county superintendent of schools currently employed by a county board of education; and one administrator or faculty member representing a public college or university in West Virginia.

No more than five members of the board may belong to the same political party nor reside in the same congressional district. Members of the board must have been actively engaged in teaching, supervising or administering in the public schools or in approved teacher education institutions in West Virginia for the period of five years immediately preceding appointment. In addition, members appointed to represent classroom teachers under this section must hold valid West Virginia teaching certificates other than permits.

(e) A member of the board shall receive no compensation for his or her services as a member, but subject to any other applicable law regulating travel and other expenses for state officer, he or she shall receive his or her actual and necessary travel and other expenses incurred in the performance of his or her official duties: Provided, That any member who is an employee of a county board of education shall be released by his or her employer to attend board meetings without loss of salary or personal leave.


Prior to the first day of January, one thousand nine hundred ninety-five, the professional standards board shall develop a plan and propose legislation which w
expand the powers and duties of the professional
standards board to include the following: (1) Establish
and maintain standards and requirements for obtaining
and maintaining a license for teaching; (2) issue, renew,
suspend, and revoke teaching licenses; (3) hear appeals
regarding application, renewal, suspension or revocation
of licenses; (4) enter into reciprocity agreements to
provide for licensing of applicants from other states or
countries; (5) set standards, approve, and evaluate teacher
preparation programs; (6) adopt standards for examina-
tions and assessments to assure eligibility for licenses to
enter the profession of teaching; (7) create other actions
that relate to the improvement of instruction through
teacher education and professional development and to
attract qualified candidates for teacher training from
among the citizens of West Virginia; and (8) perform
other actions that relate to the improvement of instruc-
tion through teacher education and professional devel-
opment and to attract qualified candidates for teacher
training from among the citizens of West Virginia.

On or before the first day of January, one thousand
nine hundred ninety-five, the board shall submit copies
of the proposed legislation to the governor, president of
the Senate, speaker of the House of Delegates and the
legislative oversight commission on education accounta-
bility.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-5. Salary equity among the counties; state salary supplement.

§18A-4-19. Alteration of contract.

§18A-4-5. Salary equity among the counties; state salary
supplement.

(a) For the purposes of this section, salary equity
among the counties means that the salary potential of
school employees employed by the various districts
throughout the state does not differ by greater than ten
percent between those offering the highest salaries and
those offering the lowest salaries. In the case of
professional educators, the difference shall be calculated
utilizing the average of the professional educator salary
schedules, degree classifications B.A. through doctorate
and years of experience zero through twenty, in effect in the five counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades "A" through "H" and years of experience zero through thirty, in effect in the five counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty-five counties.

For the school year beginning the first day of July, one thousand nine hundred ninety-four, and thereafter, in the counties that jointly support a multicounty vocational school, salary equity funding shall be distributed to nonfiscal agent counties based on: (1) Calculating the amount of salary equity funding each nonfiscal agent county would receive for the employees for which it is charged in the public school support program, as provided in section four, article nine-a, chapter eighteen of this code, if this salary equity funding were distributed to nonfiscal agent counties; and (2) deducting the salary equity funding to be received by the fiscal agent county in the public school support program for those employees for which the nonfiscal agent county is charged in the public school support program.

(b) To assist the state in meeting its objective of salary equity among the counties, as defined in subsection (a) of this section, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the
professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making this division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in article nine-a, chapter eighteen of this code.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections five-a and five-b of this article, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation is distributed: Provided, That the amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after the first day of January, one thousand nine hundred eighty-four, until the objective of salary equity is reached: Provided, however, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose.

No county may reduce any salary supplement that was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§18A-4-19. Alteration of contract.

(a) Notwithstanding the provisions of section seven-a of this article relating to professional personnel or any other section of this code to the contrary, any alteration of an employment contract of a professional educator who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section seven-a of
this article relating to professional personnel or any other section of this code to the contrary, any alteration of an employment contract of a professional educator which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-a of this article, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

(b) Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee who is employed for more than two hundred days, which alteration changes the number of days in the employment term, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

Notwithstanding the provisions of section eight-b of this article relating to school service personnel or any other section of this code to the contrary, any alteration of an employment contract of a service personnel employee which reduces or eliminates the local salary supplement or the benefits provided to such employee due to a defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction or elimination in accordance with section five-b of this article, shall not be deemed a creation of a new position, nor shall such alteration require the posting of the position.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1a. Assaults by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; expulsion; exception.
(a) Any pupil who threatens to cause, attempts to cause, or causes a bodily injury to a school employee may be suspended or expelled from school in accordance with the provisions of this section.

(b) The actions of any pupil which may be grounds for his suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which such pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he shall conduct an informal hearing for the pupil as soon as practicable after the alleged actions have occurred. The hearing shall be held before the pupil is suspended unless the principal believes that the continued presence of the pupil in the school poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil may be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his parent or parents or custodial guardian, as the case may be, shall be given written notice by certified mail, return receipt requested, of this informal hearing, which notice shall briefly state the grounds for suspension.

At the commencement of the informal hearing, the principal shall inquire of the pupil as to whether he admits or denies the charges. If the pupil does not admit the charges, he shall be given an explanation of the evidence possessed by the principal and an opportunity to present his version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed persons to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to such hearing, if any, for which the pupil has been excluded from school. If the principal believes a longer suspension or expulsion of the pupil is warranted in addition to a ten-day suspension, he shall so advise the parents and pupil, if present, and recommend such action to the superintendent of schools of the county in which the school where the pupil is enrolled is located.
(c) Any suspension shall be reported by the principal the same day it has been decided upon, in writing, to the county superintendent of schools of the county in which the school where the pupil is enrolled is located.

(d) If the principal recommends and the superintendent agrees that the suspension should be extended for beyond ten school days or that the pupil should be expelled from school, the superintendent shall immediately notify the county board of education of this recommendation. Upon receipt of such recommendation, the county board of education shall cause a written notice, which states the charges and the recommended disposition, to be served upon the pupil and his parent or parents or custodial guardian, as the case may be, advising such persons that unless a timely request is made for hearing, the recommended disposition shall become final. Such notice shall set forth a date and time at which such hearing, if requested, shall be held, which date shall be within the ten-day period of suspension imposed by the principal. The notice shall further advise the persons to be noticed thereby that a request for hearing will not be granted unless received by the board more than twenty-four hours before the time proposed for hearing in the notice.

Upon timely receipt of a hearing request, the board of education shall hold the scheduled hearing to determine if the pupil should be reinstated or should have his suspension extended or should be expelled from school. At this hearing, the pupil may be represented by counsel, may call his own witnesses to verify his version of the incident and may confront and cross-examine witnesses supporting the charge against him. The hearing may be postponed for good cause shown by the pupil but he shall remain under suspension until after the hearing. The state board of education may adopt other supplementary rules of procedure to be followed in these hearings. At the conclusion of the hearing the county board of education either shall order the pupil reinstated immediately or at the end of his initial suspension or shall suspend the pupil for a further designated number of days or shall expel the pupil from the public schools of such county for a period of time
(e) Notwithstanding the preceding provisions of this section, if a pupil has prior to the actions complained of being classified as or is eligible to be classified as an exceptional child, other than gifted, under the provisions of section one, article twenty, chapter eighteen of this code, special consideration shall be given to such pupil as hereinafter provided.

In any hearing held pursuant to this section, a pupil, his parent or custodial guardian may show an explanation of the actions complained of that such actions were the proximate result of a condition which has qualified or would qualify the pupil for a special educational program other than gifted. If the principal or board finds that such actions were the proximate result of such a condition, the pupil shall not be suspended or expelled pursuant to this section but the pupil shall be forthwith referred to the appropriate personnel within the county school system for development of an individual learning program: Provided, That such pupil may be temporarily removed from school according to procedures employed by the school system for special education pupils if, in the opinion of the principal, such removal is necessary for his or her own protection or the protection of other pupils, teachers, school personnel or school property during all or some part of the time required to prepare such individual learning program.

(f) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(g) For the purpose of this section, "school employee" means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise if, at the time of the commission of an act which would be grounds for suspension or expulsion under this section, such person is engaged in the performance of his duties or is commuting to or from his place of employment. For the purposes of this section, a "school employee" shall be deemed to include a student teacher.

(h) The remedies provided for in this section are cumulative.
CHAPTER 25

(S. B. 1008—By Senators Lucht and Burdette, Mr. President)

[Passed March 18, 1994: in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty-a, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter five-g of said code; to amend and reenact section thirty, article fifteen, chapter eleven of said code; to amend and reenact sections two, three, four, six, eight, fifteen and sixteen, article nine-d, chapter eighteen of said code; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code, all relating to dedicating lottery net profits for debt service on bonds issued by the school building authority; dedicating consumers sales tax proceeds and authorizing appropriations by the Legislature of lottery revenues for school construction projects; creating the school building debt service fund for the deposit of dedicated lottery revenues; creating the school construction fund and the school major improvement fund for the deposit of dedicated consumers sales tax and appropriated lottery revenues; providing for the transfer of funds to the school building authority custodial account from specified funds in the state treasury; and limiting the permissible expenditures from the school building capital improvements fund, the school building debt service fund, the school construction fund and the school major improvement fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5G. Procurement of Architect-Engineer Services By State and Its Subdivisions.

11. Taxation.
18. Education.
29. Miscellaneous Boards and Officers.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

In the procurement of architectural and engineering services for projects estimated to cost two hundred fifty thousand dollars or more, the director of purchasing shall encourage such firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All such jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, that on projects funded wholly or in part by school building authority moneys, in accordance with sections fifteen and sixteen, article nine-d, chapter eighteen of this code, two of said three firms shall have had offices
within this state for a period of at least one year prior
to submitting an expression of interest regarding a
project funded by school building authority moneys.
Interviews with each firm selected shall be conducted
and the committee shall conduct discussions regarding
anticipated concepts and proposed methods of approach
to the assignment. The committee shall then rank, in
order of preference, no less than three professional firms
deemed to be the most highly qualified to provide the
services required, and shall commence scope of service
and price negotiations with the highest qualified
professional firm for architectural or engineering
services or both. Should the agency be unable to
negotiate a satisfactory contract with the professional
firm considered to be the most qualified, at a fee
determined to be fair and reasonable, price negotiations
with the firm of second choice shall commence. Failing
accord with the second most qualified professional firm,
the committee shall undertake price negotiations with
the third most qualified professional firm. Should the
agency be unable to negotiate a satisfactory contract
with any of the selected professional firms, it shall select
additional professional firms in order of their compe-
tence and qualifications and it shall continue negotia-
tions in accordance with this section until an agreement
is reached: Provided, however, That county boards of
education may either elect to start the selection process
over in the original order of preference or it may select
additional professional firms in order of their compe-
tence and qualifications and it shall continue negotia-
tions in accordance with this section until an agreement
is reached.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-30. Proceeds of tax; appropriation of certain
revenues.

(a) The proceeds of the tax imposed by this article
shall be deposited in the general revenue fund of the
state beginning the first day of July, one thousand nine
hundred ninety-four, except as otherwise expressly
provided in this article. Prior to the said first day of July, the proceeds of this tax shall, except as otherwise expressly provided in this article, be deposited as provided in chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety-three, and, for such purpose, such prior law is fully preserved. On the said first day of July, the balance in “WVFIMS” account number fund 6676, fiscal year one thousand nine hundred ninety-four, organization 0615, shall be transferred to the general revenue fund. On the said first day of July, the balance in “WVFIMS” account number fund 3962, fiscal year one thousand nine hundred ninety-four, organization 0402, shall be transferred to the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(b) **School major improvement fund.** —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article:

(1) On the first day of July, one thousand nine hundred ninety-four, there shall be dedicated from the collections of this tax, an amount appropriated by the Legislature to this fund in the general revenue budget for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-four, and the amount dedicated shall be deposited into the school major improvement fund created pursuant to section six, article nine-d, chapter eighteen of this code, as soon as such amount has been accumulated from the collections of this tax.

(2) Beginning on the first day of July, one thousand nine hundred ninety-five, and continuing on the first day of each succeeding month thereafter through the thirtieth day of June, two thousand five, there shall be dedicated monthly from the collections of this tax, the amount of four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited on a monthly basis into the school major improvement fund created pursuant to section six,
article nine-d, chapter eighteen of this code.

(c) School construction fund. —

After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in sections sixteen and eighteen of this article:

(1) Beginning the first day of July, one thousand nine hundred ninety-five, and continuing on the first day of each succeeding month thereafter through the last day of June, one thousand nine hundred ninety-six, there shall be dedicated monthly from the collections of this tax, the amount of five hundred eighty-three thousand three hundred thirty-three dollars and the amount dedicated shall be deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

(2) Beginning the first day of July, one thousand nine hundred ninety-six, and continuing on the first day of each succeeding month thereafter through the thirtieth day of June, two thousand five, there shall be dedicated monthly from the collections of this tax, the amount of one million four hundred sixteen thousand six hundred sixty-seven dollars and the amount dedicated shall be deposited into the school construction fund created pursuant to section six, article nine-d, chapter eighteen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4. School building authority authorized to issue refunding revenue bonds and/or general obligation bonds for school building capital improvement projects.
§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority of finance projects on a cash basis.
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.
§18-9D-15. Legislative intent; distribution of money.
§18-9D-16. Facilities and major improvement plans generally; need-based eligibility.

1 The following terms, wherever used or referred to in this article, have the following meanings, unless a different meaning clearly appears from the context:

2 (1) "Authority" means the school building authority of West Virginia or, if said authority shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said authority shall be given by law;

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

4 (3) "Construction project" means a project with a cost of project greater than five hundred thousand dollars for the new construction, major renovation of facilities, buildings and structures for school purposes including the acquisition of land for current or future use in connection therewith, as well as new or substantial upgrading of existing equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation: Provided, That a construction project may not include such items as books, computers or equipment used for instructional purposes, fuel, supplies, routine utility services fees, routine maintenance costs, ordinary course of business improvements and other items which are customarily deemed to result in a current or ordinary course of business operating charge: Provided, however, That a construction project may not include a major improvement project;

5 (4) "Cost of project" means the cost of construction, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;
(5) "Facilities plan" means the county-wide comprehensive educational facilities plan for school facilities required prior to the distribution of state funds to any county board pursuant to subsection (a), section sixteen of this article;

(6) "Project" means a construction project or a major improvement project;

(7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter;

(8) "Revenue" or "revenues" means moneys deposited in the school building capital improvements fund pursuant to the operation of section ten, article nine-a of this chapter; moneys deposited in the school construction fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code and pursuant to the operation of section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited in the school building debt service fund pursuant to section eighteen, article twenty-two, chapter twenty-nine of this code; moneys deposited in the school major improvement fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code; any moneys received, directly or indirectly, from any source for use in any project completed pursuant to this article; and any other moneys received by the authority for the purposes of this article;

(9) "School major improvement plan" means the ten-year school maintenance plan to be prepared by each county board of education and by the state board of education or the administrative council of an area vocational educational center if such entity seeks funding from the authority for a major improvement project, which school major improvement plan is required prior to the distribution of state funds for a major improvement project pursuant to subsection (b), section sixteen of this article; and

(10) "School major improvement project" means a project with a cost greater than fifty thousand dollars
and less than five hundred thousand dollars for the
renovation, the repair and safety upgrading of existing
school facilities, buildings and structures, including the
substantial repair or upgrading of equipment, machin-
ery, building systems, utilities and other similar items
convenient in connection with such renovation, repair or
upgrading: Provided, That a major improvement project
may not include such items as books, computers or
equipment used for instructional purposes, fuel, sup-
plies, routine utility services fees, routine maintenance
costs, ordinary course of business improvements and
other items which are customarily deemed to result in
a current or ordinary course of business operating
charge.


1 The school building authority has the power:
2 (1) To sue and be sued, plead and be impleaded;
3 (2) To have a seal and alter the same at pleasure;
4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to
6 exceed a term of twenty-five years, or otherwise, real
7 property or rights or easements necessary or convenient
8 for its corporate purposes and to exercise the power of
9 eminent domain to accomplish such purposes;
10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;
12 (5) To make bylaws for the management and rule of
13 its affairs;
14 (6) To appoint, contract with and employ attorneys,
15 bond counsel, accountants, construction and financial
16 experts, underwriters, financial advisers, trustees,
17 managers, officers and such other employees and agents
18 as may be necessary in the judgment of the authority
19 and to fix their compensation: Provided, That contracts
20 entered into by the school building authority in connec-
21 tion with the issuance of bonds under this article to
22 provide professional and technical services, including,
23 without limitation, accounting, actuarial, underwriting,
consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds shall be subject to the provisions of article three, chapter five-a of this code: *Provided, however,* That notwithstanding any other provisions of this code, any authority of the attorney general of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: *Provided further,* That the attorney general of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within ten calendar days of receipt of such contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

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

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

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

(12) To assist any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract with said lessor on such terms and conditions as may be determined to be in the best interests of the authority, the state board of education and such county board of education, consistent with the purposes of this
article, by transferring funds to the state board of
education as provided in subsection (d), section fifteen
of this article for the use of such county board of
education;

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

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

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

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

(17) To transfer moneys to custodial accounts main-
tained by the school building authority with a state
financial institution from the school construction fund
and the school improvement fund created in the state
§18-9D-4. School building authority authorized to issue refunding revenue bonds and/or general obligation bonds for school building capital improvement projects.

(a) The school building authority may by resolution, in accordance with the provisions of this article, issue revenue bonds of the authority from time to time, either to finance the cost of construction projects for public schools in this state, or to refund, at the discretion of the authority, bonds issued to finance the cost of the construction projects for public schools in this state and outstanding under and pursuant to the provisions of this article as in effect prior to the twentieth day of July, one thousand nine hundred ninety-three. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment.

(b) The school building authority may, in accordance with the provisions of the constitution of West Virginia, issue general obligation bonds from time to time as authorized by referendum pursuant to resolution duly adopted by the Legislature, to finance the cost of construction projects for public schools in this state.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the state treasury a school
building capital improvements fund to be expended by
the authority as provided in this article.

The school building authority shall have authority to
pledge all or such part of the revenues paid into the
school building capital improvements fund as may be
needed to meet the requirements of any revenue bond
issue or issues authorized by this article prior to the
twentieth day of July, one thousand nine hundred
ninety-three, or revenue bonds issued to refund revenue
bonds issued prior to that date, including the payment
of principal of, interest and redemption premium, if
any, on, such revenue bonds and the establishing and
maintaining of a reserve fund or funds for the payment
of the principal of, interest and redemption premium,
if any, on such revenue bond issue or issues when other
moneys pledged may be insufficient therefor, including
such additional protective pledge of revenues as the
authority in its discretion has provided by resolution
authorizing the issue of such bonds or in any trust
agreement made in connection therewith. The authority
may further provide in such resolution and in such trust
agreement for such priorities on the revenues paid into
such school building capital improvements fund as may
be necessary for the protection of the prior rights of the
holders of bonds issued at different times under the
provisions of this article.

Any balance remaining in the school building capital
improvements fund after the authority has issued bonds
authorized by this article, and after the requirements of
all funds including reserve funds established in connec-
tion with the bonds issued prior to the twentieth day of
July, one thousand nine hundred ninety-three, pursuant
to this article have been satisfied, may be used for the
redemption of any of the outstanding bonds issued
hereunder which by their terms are then redeemable,
or for the purchase of such bonds at the market price,
but not exceeding the price, if any, at which such bonds
shall in the same year be redeemable, and all bonds
redeemed or purchased shall forthwith be canceled and
shall not again be issued.

The school building authority, in its discretion, may
use the moneys in the school building capital improvements fund to finance the cost of projects on a cash basis.

Any pledge of moneys in such fund for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project on a cash basis: Provided, That any expenditures from such fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

(b) There is hereby created in the state treasury a special fund named the school building debt service fund into which shall be deposited on and after the first day of April, one thousand nine hundred ninety-four, the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That moneys so deposited may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-four, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section: Provided, however,
That before the first day of May, one thousand nine hundred ninety-four, the authority shall also certify to the lottery director of the state the principal, interest and coverage ratio requirements for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-five, on any revenue bonds issued, or to be issued, on or after the first day of January, one thousand nine hundred ninety-four.

After the authority has issued bonds authorized by this article, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued hereunder which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be forthwith canceled and shall not again be issued.

(c) There is hereby created in the state treasury a special fund named the school construction fund into which shall be deposited on and after the first day of July, one thousand nine hundred ninety-four, the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated thereto by the Legislature. Expenditures from the school construction fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code, pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to
other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) There is hereby created in the state treasury a special fund named the school major improvement fund into which shall be deposited on and after the first day of July, one thousand nine hundred ninety-four, the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated thereto by the Legislature. Expenditures from the school major improvement fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code, pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(e) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section 4, article X of the constitution of West Virginia, but that revenue bonds issued hereunder prior to the twentieth day of July, one thousand nine hundred ninety-three, are not invalid. The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the school building authority created in this article to issue bonds that comply with said holding of the West
Virginia supreme court of appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature hereby further finds and declares that this section, as well as section eighteen, article twenty-two, chapter twenty-nine of this code, have been reenacted during the first extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-four, in an attempt to comply with said holding of the supreme court of appeals of West Virginia.

The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be utilized for the construction and improvement of school building facilities. The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards of education to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for such purposes through bonds and special levies whenever possible. The Legislature further encourages the school building authority, the state board of education and county boards of education to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

1. The maximum aggregate face value of bonds that may be issued by the authority, for which the moneys in the school building debt service fund are to be pledged, is one hundred sixty million dollars. The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the school building authority, which shall set forth the proposed projects and provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys considered sufficient by the authority to pay such costs, less the amounts of any other funds available for said costs or from any appropriation, grant or gift therefor: Provided, That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article shall not be required to set forth the proposed projects in the resolution. Such resolution shall prescribe the rights and duties of the bondholders and the school building authority, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith: Provided, however, That revenue bonds issued on or after the first
day of January, one thousand nine hundred ninety-four, which are secured by lottery proceeds shall mature at such time or times not exceeding ten years from their respective dates.

The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery. Such revenue bonds shall be sold in such manner as the authority may determine to be for the best interests of the state.

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

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

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

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

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

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

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

(b) An amount that is no more than three percent of
the sum of moneys that are determined by the authority
to be available for distribution during the then current
fiscal year from: (1) Moneys paid into the school building
capital improvements fund pursuant to section ten,
article nine-a of this chapter; (2) the issuance of revenue
bonds for which moneys in the school building debt
service fund are pledged as security; (3) moneys paid
into the school construction fund pursuant to section six
of this article; and (4) any other moneys received by the
authority, except moneys paid into the school major
improvement fund pursuant to section six of this article,
may be allocated and may be expended by the authority
for projects that service the educational community
statewide or, upon application by the state board, for
educational programs that are under the jurisdiction of
the state board. In addition, upon application by the
state board or the administrative council of an area
vocational educational center established pursuant to
article two-b of this chapter, the authority may allocate
and expend hereunder moneys for school major im-
provement projects proposed by the state board or such
administrative council for school facilities under the
direct supervision of the state board or such adminis-
trative council, respectively: Provided, That the author-
ity may not expend any moneys for a school major
improvement project proposed by the state board or the
administrative council of an area vocational educational
center unless the state board or such administrative
council has submitted a ten-year school major improve-
ment plan, to be updated annually, pursuant to section
Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for such project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the school building authority.

(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, such basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to such county board in
connection therewith: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount so transferred to such county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) Such a loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board of education and such county board;

(2) Such loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to such county board during the term of such investment contract, and annual renewals thereof, among the state board, the authority, such county board and a lessor: Provided, That in the event a county board of education, which has received a loan from the state building authority for a one-time payment at the beginning of the lease term, does not renew the subject lease annually until performance of the investment contract in its entirety is completed: Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of such county board to make a scheduled payment pursuant to the investment contract shall constitute an event of default under the loan agreement: And provided further, That upon such a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of such default, shall at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and
such county board: *And provided further,* That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of such outstanding principal balance; and

(3) Such loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this subsection, any county board failing to expend money within three years of the allocation thereto shall forfeit such allocation and thereafter shall be ineligible for further allocations pursuant to this subsection until the county board is ready to expend funds in accordance with an approved facilities plan: *Provided,* That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount so forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution.

(f) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, such basis to be determined by the authority in accordance with the provisions of section sixteen of this article: *Provided,* That such moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of such funds during the fiscal year in which the moneys are distributed: *Provided, however,* That any moneys allocated to
a county board and not distributed to that county board
shall be deposited in an account to the credit of that
county board, such principal amount to remain to the
credit of and available to the county board for a period
of two years. Any moneys which are unexpended after
a two-year period shall be redistributed on the basis of
need from the school major improvement fund in that
fiscal year.

(g) No local matching funds may be required under
the provisions of this section. However, the responsibil-
ities of the county boards of education to maintain school
facilities shall not be negated by the provisions of this
article, and therefore, to be eligible to receive an
allocation of school major improvement funds from the
authority, a county board must have expended in the
previous fiscal year an amount of county moneys equal
to or exceeding the lowest average amount of money
included in such county board's maintenance budget
over any three of the previous five years and must have
budgeted an amount equal to or greater than said
average in the current fiscal year: Provided, That the
state board of education shall promulgate rules relating
to county boards' maintenance budgets, including items
which shall be included therein, as soon as practical and
submitted for legislative review no later than the first
day of December, one thousand nine hundred ninety-
four.

(h) Any county board may use moneys provided by the
authority under this article in conjunction with local
funds derived from bonding, special levy or other
sources. Distribution to a county board, or to the state
board or the administrative council of an area vocational
educational center pursuant to subsection (b) of this
section, may be in a lump sum or in accordance with
a schedule of payments adopted by the authority
pursuant to such guidelines as it shall adopt.

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

(a) To facilitate the goals as stated in section fifteen
of this article and to assure the prudent and resourceful
expenditure of state funds for construction projects as described in subsection (d) of said section, each county board of education shall submit a county-wide comprehensive educational facilities plan that addresses the facilities and major improvement needs of the county pursuant to such guidelines as shall be adopted by the authority in accordance with this section and in accordance with each county's facilities plan approved by the state board of education. Any project receiving funding shall be in furtherance of such approved county-wide facilities plan.

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

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

(b) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds derived from the school major improvement fund, each county board of education shall submit to the authority a ten-year county-wide school major improvement plan that addresses the major improvement needs of each school within the county. If the state board of education or the administrative council of an area vocational educational center chooses to seek funding for a major improvement project from
the authority pursuant to subsection (f) of said section, the state board or such administrative council shall submit a ten-year school major improvement plan that addresses the major improvement needs of the school or area vocational educational center for which funding is sought. Each ten-year school major improvement plan shall be prepared pursuant to such guidelines as shall be adopted by the authority in accordance with this section and shall be updated annually to reflect projects completed and new or continuing needs. Any school major improvement project funded by the authority shall be in furtherance of such approved school major improvement plan.

The guidelines for the development and annual updates of a ten-year school major improvement plan shall state the manner, timeline and process for submission of any plan, including a repair and replacement schedule for school facilities, to the authority; such maintenance specifications as may be deemed appropriate by the authority; and those matters which are deemed by the authority to be important reflections of how the major improvement project or projects will further the overall goals of the authority.

(c) The guidelines regarding submission of the facilities plans and school major improvement plans shall include requirements for public hearings, comments or other means of providing broad-based input within a reasonable time period as the authority may deem appropriate. The submission of each plan shall be accompanied by a synopsis of all comments received and a formal comment by the county board, the state board or the administrative council of an area vocational educational center submitting such plan.

The guidelines regarding project specifications may include such matters as energy efficiency, preferred siting, construction materials, maintenance plan or any other matter related to how the project is to proceed. If a county board of education proposes to finance a construction project through a lease with an option to purchase pursuant to an investment contract as described in subsection (e), section fifteen of this article, the
specifications for such project shall include the term of the lease, the amount of each lease payment, including the payment due upon exercise of the option to purchase, and the terms and conditions of the proposed investment contract.

(d) The guidelines pertaining to quality educational facilities shall require that a facilities plan address how the current facilities do not meet and how the proposed plan and any project thereunder does meet the following goals:

(1) Student health and safety;

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

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

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

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

(6) Innovations in education;

(7) Adequate space for projected student enrollments; and

(8) To the extent constitutionally permissible, each facilities plan shall address the history of efforts taken by the county board to propose or adopt local school bond issues or special levies.

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

(e) The guidelines pertaining to quality educational facilities shall require that a school major improvement
plan address how the proposed plan and any project thereunder meet the following goals:

(1) Student health and safety, including, but not limited to, critical health and safety needs; and

(2) Economies of scale, including regularly scheduled preventive maintenance: Provided, That each county board’s school maintenance plan shall address regularly scheduled maintenance for all facilities within the county.

(f) Each county board’s facilities plan and school major improvement plan shall prioritize all the construction projects or major improvement projects, respectively, within the county. A school major improvement plan submitted by the state board or the administrative council of an area vocational educational center shall prioritize all the school improvement projects contained in such plan. Such priority list shall be one of the criteria to be considered by the authority in determining how available funds shall be expended. In prioritizing the projects, the county board, the state board or the administrative council submitting a plan shall make determinations in accordance with the objective criteria formulated by the school building authority.

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

(h) The state department of education shall conduct on-site inspections, at least annually, of all facilities which have been funded wholly or in part by moneys from the authority or state board to ensure compliance with the county board’s facilities plan and school major improvement plan as related to such facilities; to preserve the physical integrity of the facilities to the
extent possible; and to otherwise extend the useful life of the facilities: Provided, That the state board shall submit reports regarding its on-site inspections of facilities to the authority within thirty days of completion of such on-site inspections: Provided, however, That the state board shall promulgate rules regarding such on-site inspections and matters relating thereto, in consultation with the authority, as soon as practical and shall submit such proposed rules for legislative review no later than the first day of December, one thousand nine hundred ninety-four.

(i) The authority may adopt guidelines for requiring that a county board modify, update, supplement or otherwise submit changes or additions to an approved facilities plan or for requiring that a county board, the state board or the administrative council of an area vocational educational center modify, update, supplement or otherwise submit changes or additions to an approved county board facilities plan or school major improvement plan. The authority shall provide reasonable notification and sufficient time for such change or addition as delineated in guidelines developed by the authority.

(j) Based on its on-site inspection or notification by the authority to the state board that the changes or additions to a county's board facilities plan or school major improvement plan required by the authority have not been implemented within the time period prescribed by the authority, the state board shall restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation;
allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the "state lottery fund". The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund". The revenue shall be disbursed in the manner herein provided for the purposes stated herein and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. The director is authorized to expend the necessary percentage of the amount allocated as net profit, not to exceed six percent of the gross amount received, for the purposes of entering into contractual arrangements for the acquisition, financing, lease and lease-purchase, and other financing transactions, of lottery goods and services, including tickets, equipment, machinery, electronic computer systems and terminals, and supplies and maintenance therefor, for the first thirty-six months of operation, and may apportion the costs, expenses and expenditures related
there to among the commission, vendor or vendors and
licensed lottery sales agents. In the event that the
percentage allotted for operations and administration
generates a surplus, the surplus will be allowed to
accumulate to an amount not to exceed two hundred
fifty thousand dollars. On a monthly basis the director
shall report to the joint committee on government and
finance of the Legislature any surplus in excess of two
hundred fifty thousand dollars and remit to the state
treasurer the entire amount of those surplus funds in
excess of two hundred fifty thousand dollars which shall
be allocated as net profit.

(f) After satisfying the requirements for funds
dedicated to the school building debt service fund in
subsection (h) of this section to retire the ten-year bonds
authorized to be issued pursuant to section eight, article
nine-d, chapter eighteen of this code, the Legislature
shall annually appropriate all of the remaining amounts
allocated as net profits above, in such proportions as it
deems beneficial to the citizens of this state, to: (1) The
lottery education fund created in subsection (g) of this
section; (2) the school construction fund as created in
section six, article nine-d, chapter eighteen of this code;
(3) the lottery senior citizens fund created in subsection
(i) of this section; and (4) the commerce division created
in article one, chapter five-b of this code, in accordance
with subsection (j) of this section: Provided, That no
transfer to any account other than the school building
debt service account may be made in any period in
which a default exists in respect to debt service on bonds
issued by the school building authority which are
secured by lottery proceeds: Provided, however, That no
additional transfer shall be made to any account other
than the school building debt service account when net
profits for the preceding twelve months are not at least
equal to one hundred fifty percent of debt service on
bonds issued by the school building authority which are
secured by net profits.

(g) There is hereby created a special fund in the state
treasury which shall be designated and known as the
"lottery education fund". The fund shall consist of the
amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for such educational programs as it considers beneficial to the citizens of this state.

(h) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-four, and continuing on or before the twenty-eighth day of each succeeding month thereafter through the thirtieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of said section: Provided, That in no event shall said monthly amount exceed one million eight hundred thousand dollars: Provided, however, That in no event shall the total allocation of said net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director as aforesaid, or eighteen million dollars: Provided further, That in the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection
to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer said deficiency: And provided further, That a lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the authority in favor of the bonds issued by the authority which are secured by the net lottery profits.

(i) There is hereby created a special fund in the state treasury which shall be designated and known as the “lottery senior citizens fund”. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be disbursed in the manner provided below and shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(j) The commerce division may use the amounts allocated to it pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as such terms are defined in section thirteen-a, article one, chapter five-b of this code, pursuant to the authority granted to it under said article; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the
commerce division under article one, chapter five-b of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

CHAPTER 26
(H. B. 5006—By Mr. Speaker, Mr. Chambers, and Delegates Martin, Michael, Mezzatesta, Houvouras, Kiss and Burk)

[Passed March 18, 1994; in effect July 1, 1994. 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 fifteen-a, relating to creating state infrastructure and jobs development act; defining terms; creating state infrastructure and jobs development council to coordinate the evaluation of disbursement of funds for water and wastewater projects as well as other infrastructure projects and designating members of the council; advisory members of the council; requiring council to develop uniform guidelines for use by state agencies in evaluating funding requests for infrastructure projects and to create a preliminary application form to be used by all persons making such funding requests; providing requirements for project funding; providing exceptions for certain infrastructure projects and projects; permissible recommendations by council; setting forth powers and duties of council; requiring a comprehensive inventory and assessment of needs of water supply systems and sewage systems; authorizing the council to provide grants; coordination of infrastructure needs with division of highways; authorizing the appointment of local infrastructure planning teams; duties of planning teams; creation of infrastructure road improvement reserve account; a study on consolidating public service districts; exempting certain infrastructure projects which council determines are emergency projects from requirement to obtain certificate of public
convenience and necessity from state public service commission and requiring public service commission to review requests for certificates with respect to certain other emergency projects within specified time periods; authorizing the public land corporation to acquire specified property; requiring the water development authority to establish and administer a permanent and special fund permitting water development authority to deposit moneys in infrastructure fund in one or more banking institutions located in this state; recommendations by the council; reservation of specified amount of funds for projects and infrastructure projects; providing water development authority additional powers in connection with infrastructure projects and projects; recommendations by council; prohibiting water development board from receiving benefits or distributions from infrastructure fund; declaring that infrastructure projects financed by water development authority shall not be considered to be "public improvements" within meaning of article five-a, chapter twenty of the code; setting forth procedures regarding competitive bids; and dedicating a portion of annual severance tax collection for funding of projects and infrastructure projects.

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 fifteen-a, to read as follows:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia infrastructure and jobs development council created; members of council; staff of council.
§31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.
§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.
§31-15A-7. Current and prospective planning; roads and highways; report to division of highways.
§31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

§31-15A-10. Recommendations by council for expenditures of funds by loan or grant.


§31-15A-13. Prohibition on funds inuring to the benefit of or being distributable to water development board; transactions between the water development board and officers having certain interests in such transactions.

§31-15A-14. Termination or dissolution.

§31-15A-15. Projects not to be considered public improvements; competitive bid requirements.


1 This article shall be known and may be cited as the
2 "West Virginia Infrastructure and Jobs Development
3 Act."


1 For purposes of this article:

2 (a) "Code" means the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended;

4 (b) "Cost" means, as applied to any project to be
5 financed, in whole or in part, with infrastructure
6 revenues or funds otherwise provided pursuant to this
7 article, the cost of planning, acquisition, improvement
8 and construction of the project; the cost of preliminary
9 design and analysis, surveys, borings; the cost of
10 environmental, financial, market and engineering
11 feasibility studies, assessments, applications, approvals,
12 submissions or clearances; the cost of preparation of
13 plans and specifications and other engineering services;
14 the cost of acquisition of all land, rights-of-way, property
15 rights, easements, franchise rights and any other
16 interests required for the acquisition, repair, improve-
17 ment or construction of the project; the cost of demol-
ishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of excavation, grading, shaping or treatment of earth, demolishing or removing any buildings or structures; the cost of constructing any buildings or other improvements; the cost of all pumps, tanks, vehicles, apparatus and other machinery, furnishings and equipment; loan or origination fees and all finance charges and interest incurred prior to and during the construction and for no more than six months after completion of construction; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring, repairing, improving or constructing any project; the cost of placing any project in operation; and all other costs and expenses of any kind or nature incurred or to be incurred by the project sponsor developing the project that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project: Provided, That costs shall not include any amounts related to the ongoing operations of the owner or operator, depreciation thereof or any other cost which the council or the water development authority has not determined to be consistent with the purposes and objectives of this article;

(c) “Council” means the West Virginia infrastructure and jobs development council created in section three of this article;

(d) “Division of environmental protection” means the division of environmental protection established under article one, chapter twenty-two of this code, or any successor to all or any substantial part of its powers and duties;

(e) “Division of health” means the division of health created in article one, chapter sixteen of this code, or any successor to all or any substantial part of its powers and duties;
(f) "Economic development authority" means the economic development authority established under article fifteen, chapter thirty-one of the code, or any successor to all or any substantial part of its powers and duties;

(g) "Emergency project" means a project which the council has determined (i) is essential to the immediate economic development of an area of the state and (ii) will not likely be developed in that area if construction of the project is not commenced immediately;

(h) "Governmental agency" means any county; municipality; watershed improvement district; assessment district; soil conservation district; sanitary district; public service district; drainage district; regional governmental authority and any other state governmental agency, entity, political subdivision or public corporation or agency authorized to acquire, construct or operate water or wastewater facilities or infrastructure projects;

(i) "Housing development fund" means the West Virginia housing development fund established under article eighteen of this chapter, or any successor to all or any substantial part of its powers and duties;

(j) "Infrastructure fund" means the West Virginia infrastructure fund created and established in section nine of this article;

(k) "Infrastructure project" means a project in the state which the council determines is likely to foster and enhance economic growth and development in the area of the state in which the project is developed, for commercial, industrial, community improvement or preservation or other proper purposes, including, without limitation, tourism and recreational housing, land, air or water transportation facilities and bridges, industrial or commercial projects and facilities, mail order, warehouses, wholesale and retail sales facilities and other real and personal properties, including facilities owned or leased by this state or any other project sponsor, and includes, without limitation (1) the process of acquiring, holding, operating, planning,
financing, demolition, construction, improving, expanding, renovation, leasing or otherwise disposing of the project or any part thereof or interest therein, and (2) preparing land for construction and making, installing or constructing improvements on the land, including water or wastewater facilities or any part thereof, steam, gas, telephone and telecommunications and electric lines and installations, roads, bridges, railroad spurs, buildings, docking and shipping facilities, curbs, gutters, sidewalks, and drainage and flood control facilities, whether on or off the site;

(l) "Infrastructure revenue" means all amounts appropriated by the Legislature; all amounts deposited into the infrastructure fund; any amounts received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other amounts received by the state treasurer, council or the water development authority for the purposes of this article;

(m) "Project" means any wastewater facility, water facility project or any combination thereof, constructed or operated or to be constructed or operated by a project sponsor;

(n) "Project sponsor" means any governmental agency or person, or any combination thereof, including, but not limited to, any public utility, which intends to plan, acquire, construct, improve or otherwise develop a project;

(o) "Public service commission" means the public service commission of West Virginia created and established under section three, article one, chapter twenty-four of this code, or any successor to all or any substantial part of its powers and duties;

(p) "Person" means any individual, corporation, partnership, association, limited liability company or any other form of business organization;

(q) "Public utility" means any person or persons, or association of persons, however associated, whether incorporated or not, including, without limitation, any
governmental agency, operating a wastewater facility or water facility as a public service, which is regulated by the public service commission as a public utility under chapter twenty-four of this code or which is required to file its tariff with the public service commission;

(r) "State development office" means the West Virginia development office established under article two, chapter five-b of this code, or any successor to all or any substantial part of its powers and duties;

(s) "State infrastructure agency" means the division of health, division of environmental protection, housing development fund, public service commission, state development office, water development authority, economic development authority and any other state agency, division, body, authority, commission, instrumentality or entity which now or in the future receives applications for the funding of, and provides funding or technical assistance to, the planning, acquisition, construction or improvement of a project;

(t) "Wastewater facility" means all facilities, land and equipment used for or in connection with treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limitation, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings therefor or thereof and their appurtenances and systems, whether on the surface or underground including force mains and pumping facilities therefor;

(u) "Water development authority" means the West Virginia water development authority established under article five-c, chapter twenty of this code, or any successor to all or any substantial part of its powers and duties; and

(v) "Water facility" means all facilities, land and
equipment used for or in connection with the collection
and/or storage of water, both surface and underground,
transportation of water, storage of water, treatment of
water and distribution of water all for the purpose of
providing potable, sanitary water suitable for human
consumption and use.

§31-15A-3. West Virginia infrastructure and jobs develop­
ment council created; members of coun­cil; staff of council.

(a) There is hereby created the West Virginia infra­
structure and jobs development council. The council
shall be a governmental instrumentality of the state.
The exercise by the council of the powers conferred by
this article and the carrying out of its purpose and
duties shall be considered and held to be, and are hereby
determined to be, essential governmental functions and
for a public purpose.

(b) The council shall consist of nine members,
including the executive director of the housing develop­
ment fund or his or her designee, the director of the
division of environmental protection or his or her
designee; the director of the economic development
authority or his or her designee; the director of the
water development authority or his or her designee, the
executive director of the state development office or his
or her designee; the director of the division of health or
his or her designee, the chairman of the public service
commission or his or her designee; and two members
representing the general public. The governor shall
appoint the public members of the council who shall
serve three-year terms. The commissioner of the division
of highways, the executive director of the state rail
authority, two members of the West Virginia Senate,
two members of the West Virginia House of Delegates,
one representative of the board of directors of the state
college system and one representative of the board of
trustees of the university of West Virginia shall serve
as advisory members of the council. The governor shall
appoint the legislative members of the council: Provided,
That no more than three of the legislative members may
be of the same political party. The governor shall
appoint the representatives of the governing boards from a list of three names submitted by each governing board. The advisory members shall be ex officio, nonvoting members of the council.

(c) The council shall annually elect one of its members as chairman, and shall appoint a secretary, who need not be a member of the council and who shall keep records of its proceedings. Five members of the council shall constitute a quorum and the affirmative vote of at least the majority of those members present shall be necessary for any action taken by vote of the council. No vacancy in the membership of the council impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the council.

(d) No member of the council shall receive any compensation or reimbursement of expenses for serving as a member.

(e) The council shall meet at least monthly to review projects and infrastructure projects requesting funding assistance and otherwise to conduct its business, and shall meet more frequently if it considers it necessary.

(f) The water development authority shall provide office space for the council, and each governmental agency represented on the council shall provide staff support for the council in the manner determined by the council from time to time.

(g) The council shall invite to all its meetings one or more representatives of the United States department of agriculture, the farmers home administration, the United States economic development agency and the United States army corps of engineers or any successors thereto.


(a) To implement and carry out the intent of this article, the council shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code to develop comprehensive, uniform guidelines for use by the council and other state infrastructure
6 agencies in evaluating any request by a project sponsor
7 for funding assistance to plan, acquire, construct,
8 improve or otherwise develop a project or infrastructure
9 project. The guidelines shall include the following
10 factors: (1) The public health benefits of the project or
11 infrastructure project; (2) the economic development
12 benefits of the project or infrastructure project; (3) the
13 degree to which the project or infrastructure project
14 will correct deficiencies in the compliance of water
15 supply or sewage treatment facilities with state or
16 federal laws, regulations or standards; (4) the degree to
17 which the project or infrastructure project encourages
18 effective and efficient consolidation of water or sewage
19 treatment systems consistent with the comprehensive
20 plan developed pursuant to section six of this article; (5)
21 the cost effectiveness of the project or infrastructure
22 project as compared with alternatives which achieve
23 substantially the same public health or economic
24 development benefits, including the consideration of
25 providing maximum feasible fire protection; (6) the
26 availability of alternative sources of funding which
27 could finance all or a part of the project and infrastruc-
28 ture project, and the need for the assistance of the
29 council to finance the project or infrastructure project
30 or attract other sources of funding; (7) the applicant's
31 ability to operate and maintain the system if the project
32 or infrastructure project is approved; (8) the degree to
33 which the project or infrastructure project achieves
34 other state or regional planning goals; (9) the estimated
35 date upon which the project or infrastructure project
36 could commence if funding were available and the
37 estimated completion date of the project or infrastruc-
38 ture project; and (10) such other considerations as the
39 council may consider necessary or appropriate to
40 accomplish the purpose and intent of this article.

(b) The council shall create a preliminary application
form which shall be used by all project sponsors
requesting funding assistance from state infrastructure
agencies to plan, acquire, construct, improve or other-
wise develop an infrastructure project or project. The
preliminary application form shall contain all informa-
tion required by all state infrastructure agencies that
will be required to issue permits and/or certificates regarding the project or infrastructure project. The preliminary application shall require the project sponsor to set forth the type and proposed location of the infrastructure project or project; the estimated total cost of the project; the amount of funding assistance required and the specific uses of the funding; other sources of funding available or potentially available for the infrastructure project or project; information demonstrating the need for the infrastructure project or project and that the proposed funding of the project is the most economically feasible and viable alternative to completing the project or infrastructure project; and such other information as the council considers necessary to enable it to recommend the type of project or infrastructure project financing, in terms of the kind, amount and source of funding, which the project sponsor should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, and to otherwise carry out the intent of this article.

§31-15A-5. Requirements for project funding assistance; review of project preliminary applications by council.

(a) No project sponsor may apply for or receive any loan, loan guarantee, grant or other funding assistance for a project or infrastructure project from any state infrastructure agency (i) unless the project sponsor requiring the funding assistance first submits a completed preliminary application to the council on the form prepared for such purpose by the council pursuant to section four of this article, and (ii) except as may be recommended by the council after consideration of the preliminary application: Provided, That any project sponsor which has an infrastructure project or project with either acceptable bids or all funding in place on the effective date of this act is not required to comply with the provisions of this section.

(b) The council shall, within thirty days of receipt of each completed preliminary application submitted to it, review the preliminary application and either (i) make
a written recommendation as to the infrastructure project or project financing, in terms of the kind, amount and source of funding, which the project sponsor submitting the application should pursue and which the state infrastructure agency or agencies should consider an appropriate investment of public funds, or (ii) if the council determines that (1) the proposed project or infrastructure project is not eligible for funding assistance from any state infrastructure agency, or (2) the proposed project or infrastructure project is not otherwise an appropriate or prudent investment of state funds, the council shall recommend that the project sponsor not seek funding from any state infrastructure agency. A project sponsor shall include the preliminary application and the council’s recommendations in any application to a state infrastructure agency.

(c) The council shall provide a copy of its recommendation with respect to each preliminary application, together with a copy of the preliminary application, to all appropriate state infrastructure agencies, which shall take into account the council’s recommendations with respect to a project or infrastructure project before taking any action with respect to the project. No state infrastructure agency shall take any action inconsistent with the recommendation of the council unless the governing body of the agency, or the head of the agency if it has no governing body, expressly finds and determines that the recommendation is not in the best interest of the state or the area in which the proposed infrastructure project or project is to be located.

(d) In reviewing each preliminary application, the council shall use the engineering, financial and technical expertise of the respective staffs of the state infrastructure agencies represented on the council so as to recommend for funding those projects or infrastructure projects which are consistent with the purposes and intent of this article and with the policies and priorities of this state generally. The council may include in its findings a recommendation that a state infrastructure agency consider technical reports on the project prepared by other infrastructure agencies or by any federal agency.
§31-15A-6. Powers, duties and responsibilities of the council generally; comprehensive assessment.

(a) In addition to the powers set forth elsewhere in this article, the council is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate the purposes and intent of this article. The council shall have the power and capacity to:

1. Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any infrastructure project or project;

2. Periodically prepare a list of infrastructure projects or projects which cannot meet the established funding guidelines of the various state infrastructure agencies, other than the housing development fund, but which are consistent with the mandates of this article and recommend to the water development authority that it make a grant or loan to the project sponsors from the infrastructure fund to finance the cost of one or more such projects or infrastructure projects;

3. Do all other acts necessary and proper to carry out the powers expressly granted to the authority in this article; and

4. Make and execute contracts, commitments and obligations and other instruments necessary or convenient for the exercise of its powers.

(b) The council shall develop a comprehensive statewide inventory of water supply systems and sewage treatment systems and an assessment of current and future needs by the first day of July, one thousand nine hundred ninety-six. The assessment shall identify the areas of the state which do not have adequate public water or sewage systems and offer recommendations for the construction of new facilities or the extension or expansion of existing facilities to meet the identified needs. The council shall include in the assessment an identification of the obstacles, issues and problems which prevent or inhibit development of adequate infra-
37 structure throughout the state, including financial, 38 governmental, physical, or geographical factors and 39 make recommendation as the council considers approp- 40 riate regarding the obstacles, issues or problems 41 identified. This comprehensive inventory and assess- 42 ment shall be updated at least once in every three-year 43 period after the initial assessment and inventory is 44 completed.

(c) The council shall study the viability of the 46 consolidation of public service districts throughout the 47 state: Provided, That the study shall encompass not only 48 public service districts but also any and all entities 49 which provide or supply water and sewer service to the 50 general public: Provided, however, That the council 51 shall, in the preparation of the study, consult with the 52 public service district division of the public service 53 commission and representatives of the West Virginia 54 rural water association and the West Virginia associa- 55 tion of public service districts, as needed. The council 56 shall report their findings and conclusions on or before 57 the sixteenth of January of the year one thousand nine 58 hundred ninety-five to the governor, speaker of the 59 House of Delegates and president of the Senate.

§31-15A-7. Current and prospective planning; roads and 60 highways; report to division of highways.

1 (a) The council shall take into account the current and 2 prospective infrastructure needs in relation to plans of 3 the division of highways for the development and 4 building of new roads. Upon completion of an environ- 5 mental impact study, the commissioner of highways 6 shall provide the council with plans for any and all new 7 roads. In a timely manner, the council shall advise the 8 commissioner of the division of highways on the 9 feasibility of the expansion of new or existing water and 10 sewer lines concomitant to the construction of the new 11 roads.

12 (b) The council has the authority to appoint local 13 infrastructure planning teams. The local infrastructure 14 planning teams may consist of the following: A designee 15 of the division of highways from the region where the
new road is being built; a designee of the division of highways from the central state office; a designee from the environmental engineers division of the department of health and human resources; a designee from the local developmental authority where the new road is being built; a designee from the regional developmental authority in the area where the new road is being built; a designee from the public service commission; a designee from the division of environmental protection; a designee from the county commission where the new road is being built who shall serve as chairperson of the planning team; a citizen of the county where the new road is being built to be chosen by the county commission; and the elected state delegates and senators from the area where the new road is being built. In order to avoid delay of any highway project, immediately upon appointment of a local infrastructure planning team, the director of the division of highways shall submit to the council a time frame within which the planning team must act and within which the planning team must submit any plans, maps, recommendations or reports developed pursuant to this subsection. The local infrastructure planning team shall meet prior to the development and building of a new road. Members of the local infrastructure planning team shall only receive payment for actual expenses incurred. The local infrastructure planning team shall advise the commissioner of the division of highways on the feasibility of an infrastructure plan. The local infrastructure planning team shall meet to develop an infrastructure plan that includes an assessment study of existing water and sewer lines and a feasibility study on future development and laying of water and sewer lines. After these studies are completed, a developmental map shall be drawn of the proposed road route with overlays of the proposed water and sewer lines. These studies and the map shall be presented to the commissioner of the division of highways and shall be used by the commissioner in the planning, developing and building of the road.

(c) The water development authority shall establish a restricted account within the infrastructure fund to be
expended for the construction of water and sewage lines as may be recommended by the council in accordance with this article and specifically, in accordance with the plan developed under subsection (b) of this section. The reserve account shall be known as the "infrastructure road improvement reserve account". The council and the division of highways may enter into agreements to share the cost of financing projects approved in accordance with this section from moneys available in the infrastructure road reserve account and moneys available from the state road fund. Annually, the council may direct the water development authority to transfer funds from the infrastructure fund in an amount not to exceed one million dollars to the restricted account: Provided, That at no time may the balance of the restricted account exceed one million dollars.

(d) For the purposes of this section the term "new" means a road right-of-way being built for the first time.

(e) After the construction of water and sewer lines adjacent to the new roads these new lines shall be turned over to existing utilities by expansion of boundaries of public service districts or shall be main extensions from the municipality.

§31-15A-8. Exemption of certain emergency projects from certificate of public convenience and necessity requirements; review of certain emergency projects by public service commission; and exemption for North Fork Hughes River watershed project.

(a) If the council determines a project to be an emergency and the emergency project will be funded solely with grant money for the extension of an existing certificated water facility or wastewater facility, and if the council finds in its recommendation that the construction and acquisition of the emergency project will have no effect on the public utility's customer rates and will have no significant effect on its operational costs as a result of the project cost, then the emergency project is exempt from the requirement to obtain a certificate of public convenience and necessity under
section eleven, article two, chapter twenty-four of this code. If the public utility is a public service district, it is exempt from the approval of the public service commission required under section twenty-five, article thirteen-a, chapter sixteen of this code.

(b) Any public utility, and any other entity that will operate as a public utility, must obtain a certificate of public convenience and necessity pursuant to section eleven, article two, chapter twenty-four of this code for any emergency project that is not exempt under subsection (a) of this section. The public service commission shall render its final decision on any application for a certificate within one hundred twenty days of the filing of the application: Provided, That the thirty-day prefiling requirement is not required. If the project sponsor is a public service district, then the project will be exempted from the approval requirements of section twenty-five, article thirteen-a, chapter sixteen of this code.

(c) Projects that are not emergency projects are subject to the requirements of section eleven, article two, chapter twenty-four of this code to the extent they would be otherwise.

(d) The North Fork Hughes River watershed project, proposed to enhance economic growth and development through tourism as provided in subsection (k), section two of this article and to include a water facility project as defined in subsection (m), section two of this article, is hereby specifically exempted from any requirement imposed by this article, except that the provisions of subsection (a) of this section are specifically made applicable to the project. The project is hereby specifically authorized and the public land corporation shall have and may exercise the power of eminent domain and all authority otherwise prescribed by law to acquire necessary land and rights-of-way, to include approximately four hundred seventy-eight acres, in connection with the project. Funding for the project shall be provided by the federal government from the Appalachian regional commission through the United States soil conservation service. Upon completion of the project, the
property acquired shall be transferred to the state park system. The commissioner of the division of tourism and parks or the successor to the commissioner’s powers and duties is directed to expand the boundaries of North Bend state park to include the project area and to operate the expanded park property, including improved recreational facilities, from funds appropriated for that purpose.

§31-15A-9. Infrastructure fund; deposits in fund; disbursements to provide loans, loan guarantees, grants and other assistance; loans, loan guarantees, grants and other assistance shall be subject to assistance agreements.

(a) There is hereby created a special revenue account in the state treasury to be appropriated by the Legislature for use by the water development authority, which shall be designated and known as the “West Virginia infrastructure fund.” The infrastructure fund shall consist of (1) infrastructure revenues; (2) any appropriations, grants, gifts, contributions, loan proceeds or other revenues received by the infrastructure fund from any source, public or private; (3) amounts received as payments on any loans made by the water development authority to pay for the cost of a project or infrastructure project; (4) insurance proceeds payable to the water development authority or the infrastructure fund in connection with any infrastructure project or project; (5) all income earned on moneys held in the infrastructure fund; and (6) all funds deposited in accordance with section sixteen of this article. Amounts in the infrastructure fund shall be segregated and administered by the water development authority separate and apart from its other assets and programs. Amounts in the infrastructure fund may not be transferred to any other fund or account or used, other than indirectly, for the purposes of any other program of the water development authority, except that the water development authority may use funds in the infrastructure fund to reimburse itself for any administrative costs incurred by it and approved by the council in
connection with any loan, loan guarantee, grant or other funding assistance made by the water development authority pursuant to this article.

(b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund may be deposited by the water development authority in one or more banking institutions located in this state and selected by the water development authority. Pending the disbursement of any money from the infrastructure fund as authorized under this section, the water development authority shall invest and reinvest the moneys subject to the limitations set forth in article eighteen, chapter thirty-one of this code.

(c) To further accomplish the purposes and intent of this article, the water development authority may pledge infrastructure revenues and from time to time establish one or more restricted accounts within the infrastructure fund for the purpose of providing funds to guarantee loans for infrastructure projects or projects: Provided, That for any fiscal year the water development authority may not deposit into the restricted accounts more than twenty percent of the aggregate amount of infrastructure revenues deposited into the infrastructure fund during the fiscal year. No loan guarantee shall be made pursuant to this article unless recourse under the loan guarantee is limited solely to amounts in the restricted account or accounts. No person shall have any recourse to any restricted accounts established pursuant to this subsection other than those persons to whom the loan guarantee or guarantees have been made.

(d) Each loan, loan guarantee, grant or other assistance made or provided by the water development authority shall be evidenced by a loan, loan guarantee, grant or assistance agreement between the water development authority and the project sponsor to which the loan, loan guarantee, grant or assistance shall be made or provided, which agreement shall include, without limitation and to the extent applicable, the following provisions:
(1) The estimated cost of the infrastructure project or project, the amount of the loan, loan guarantee or grant or the nature of the assistance, and in the case of a loan or loan guarantee, the terms of repayment and the security therefor, if any;

(2) The specific purposes for which the loan or grant proceeds shall be expended or the benefits to accrue from such loan guarantee or other assistance, and the conditions and procedure for disbursing loan or grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the water development authority or other state, federal or local bodies regarding the acquisition, construction, improvement or operation of the infrastructure project or project and granting the water development authority the right to appoint a receiver for the project or infrastructure if the project sponsor should default on any terms of the agreement.

(e) Any resolution of the water development authority approving loan, loan guarantee, grant or other assistance shall include a finding and determination that the requirements of this section have been met.

§31-15A-10. Recommendations by council for expenditures of funds by loan or grant.

(a) To further accomplish the purpose and intent of this article, the water development authority shall use the moneys in the infrastructure fund created pursuant to section nine of this article, upon receipt of one or more recommendations from the council pursuant to section five of this article, to make loans, with or without interest, loan guarantees or grants and to provide other assistance, financial, technical or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: Provided,
That no loan, loan guarantee, grant or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: Provided, however, that no grant shall be made to a profit sponsor that is not a governmental agency or a not for profit corporation under the provisions of Section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants or other assistance may be submitted by a project sponsor for one or more infrastructure projects or projects from time to time, and shall be submitted in the manner and on the preliminary application form prepared by the council pursuant to section four of this article. Any recommendation of the council approving a loan, loan guarantee, grant or other assistance shall include a finding and determination by the council that the requirements of this section have been met.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that (1) the level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other state or federal grant or loan programs. Upon a recommendation by the council, the water development authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The

Eighty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for the cost of projects as defined in subsection (m), section two of this article. Twenty percent of the funds deposited in the West Virginia infrastructure fund shall be dedicated for the purpose of providing funding for costs of infrastructure projects as defined in subsection (k), section two of this article. Project sponsors of infrastructure projects shall follow the application process as established by this article: Provided, That notwithstanding any provision of this article to the contrary, all applications for any infrastructure project shall be submitted to the council for community and economic development, or its successor, for review, recommendation and approval regarding infrastructure project funding.


To accomplish the purpose and intent of this article, the water development authority is hereby empowered, in addition to all other powers granted to it under this code, upon approval of the council, to (1) enter into agreements or other transactions with any federal or state agency in connection with any infrastructure project or project; (2) receive or administer on behalf of any federal or state agency grants, subsidies or other payments to be applied to the costs of any infrastructure project or project financed, in whole or in part, or otherwise assisted by the water development authority, including, but not limited to, payments to be applied to operating costs and debt service or obligations of any project sponsor; (3) receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made; (4) establish and amend the criteria and qualifi-
19  cations for making loans, loan guarantees or grants, or
20  providing any other assistance, for any infrastructure
21  project or project, and the terms of any loans, loan
22  guarantee, grant or assistance agreement for any
23  project; and (5) do all things which are necessary to
24  further the purposes and intent of this article.

§31-15A-13. Prohibition on funds inuring to the benefit
of or being distributable to water develop­
opment board; transactions between the
water development board and officers
having certain interests in such
transactions.

1  No part of the infrastructure fund shall inure to the
2  benefit of or be distributable to the water development
3  board directors or officers of the water development
4  authority except that the water development authority
5  is authorized and empowered to pay reasonable compen­
sation, other than to members of the water development
6  board, including the chairman, vice chairman, secre­
tary-treasurer for services rendered and to make loans
7  and exercise its other powers as previously specified in
8  furtherance of its corporate purpose: Provided, That no
9  loans shall be made, and no property shall be purchased
10  or leased from, or sold, leased or otherwise disposed of,
11  to any water development board member or officer of
12  the water development authority.

§31-15A-14. Termination or dissolution.

1  Upon the termination or dissolution of the water
2  development authority, all rights and properties of the
3  water development authority with respect to the
4  infrastructure fund shall pass to and be vested in the
5  state, subject to the rights of lienholders and other
6  creditors.

§31-15A-15. Projects not to be considered public im­
provements; competitive bid require­
ments.

1  (a) No project or infrastructure project acquired,
2  constructed, maintained or financed, in whole or in part,
3  by the water development authority shall be considered
to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code, as a result of such financing.

(b) The state and its subdivisions shall, except as provided in this subsection, solicit competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code for every project or infrastructure project funded pursuant to this article exceeding twenty-five thousand dollars in total cost. Following the solicitation of the bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on the project. Nothing in this subsection applies to work performed on construction or repair projects not exceeding a total cost of twenty-five thousand dollars by regular full-time employees of the state or its subdivisions, nor shall anything in this subsection prevent students enrolled in vocational educational schools from being utilized in the construction or repair projects when such use is a part of the students' training program. Nothing in this subsection applies to emergency repairs to building components and systems: Provided, however, That the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of the building components and systems or cause danger to those persons using the building components and systems. This subsection shall not apply to any situation where the state or a subdivision thereof comes to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body: Provided further, That the total cost of the construction or repair projects does not exceed twenty-five thousand dollars.

(c) The provisions of subsection (b) of this section shall not apply to privately owned projects or infrastructure

(a) There shall be dedicated an annual amount from the collections of the tax collected pursuant to article thirteen-a, chapter eleven of this code for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state as provided in this article.

(b) Notwithstanding any other provision of this code to the contrary, beginning on the first day of July, one thousand nine hundred ninety-five, the first sixteen million dollars of the tax collected pursuant to article thirteen-a, chapter eleven of this code shall be deposited to the credit of the West Virginia infrastructure fund created pursuant to section nine of this article: Provided, That none of the collections from the tax imposed pursuant to section six, article thirteen-a, chapter eleven of this code shall be so dedicated or deposited: Provided, however, That the portion of the tax imposed by article thirteen-a, chapter eleven and dedicated for purposes of medicaid and the division of forestry pursuant to section twenty-a of said article thirteen-a shall remain dedicated for the purposes set forth in said section twenty-a.

CHAPTER 27

(S. B. 1005—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 16, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, seven, eight, seventeen and eighteen, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, 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 the air pollution control commission to promulgate legislative rules relating to emission standards for hazardous air pollutants; authorizing the air pollution control commission to promulgate legislative rules relating to the air pollution control commission to prevent and control air pollution from the emission of sulfur oxides, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, temporary permits, general permits and procedures for evaluation; authorizing the air pollution control commission to promulgate legislative rules relating to prevention and control of particulate air pollution from manufacturing process operations; authorizing the air pollution control commission to promulgate legislative rules relating to standards of performance for new stationary sources; authorizing the air pollution control commission to promulgate legislative rules relating to prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to requirements for operating permits; authorizing the division of banking to promulgate legislative rules relating to acquisition of property by financial institutions and valuation of real estate owned by state-chartered banks, as modified; authorizing the division of banking to promulgate legislative rules relating to notice and treatment of joint accounts,
as modified; authorizing the division of labor to promulgate legislative rules relating to the elevator safety act, as modified; authorizing the division of natural resources to promulgate legislative rules relating to prohibitions when hunting and trapping, as amended; authorizing the division of natural resources to promulgate legislative rules relating to special fishing, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to commercial whitewater commission, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to solid waste landfill closure assistance program, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to monitoring wells, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection and coal mining operations, as amended; authorizing the division of environmental protection to promulgate legislative rules relating to sewage sludge management, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to groundwater protection act fee schedule, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground injection control fee schedule, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to underground storage tanks, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to commercial hazardous waste management facility siting fees, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to hazardous waste management; authorizing the division of environmental protection to promulgate legislative rules relating to dam safety, as modified and amended; authorizing the division of environmental protection to promulgate
legislative rules relating to groundwater quality standard variances, as modified; authorizing the division of environmental protection to promulgate legislative rules relating to lead acid battery, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to yard waste composting, as modified and amended; authorizing the division of environmental protection to promulgate legislative rules relating to the assessment of civil administrative penalties, as modified; authorizing the director of the office of miners' health, safety and training to promulgate legislative rules relating to rules and regulations governing the standards for certification of blasters for surface coal mines and surface areas of underground coal mines, as modified; and authorizing the director of the office of miners' health, safety and training to promulgate legislative rules relating to first aid training of shaft and/or slope employees, as modified.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 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.

§64-3-7. Division of labor.

§64-3-8. Division of natural resources.

§64-3-17. Division of environmental protection.

§64-3-18. Office of miners' health, safety and training.

§64-3-1. Air pollution control commission.

1 (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.

5 (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."

And,

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 informa-
tion regarding the commission's data gathering efforts, 
the development of compliance programs, the progress 
in implementation, and such other matters as the 
committee may require, pertaining to the regulations 
hereby authorized.”

(f) The legislative rules filed in the state register on 
the ninth day of January, one thousand nine hundred 
eighty-four, relating to the air pollution control commis-
sion (permits for construction and modification of 
stationary sources of air pollution for the prevention of 
significant deterioration) (series XIV), are authorized.

(g) The legislative rules filed in the state register on 
the thirtieth day of December, one thousand nine 
hundred eighty-eight, modified by the air pollution 
control commission to meet the objections of the 
legislative rule-making review committee and refiled in 
the state register on the twenty-third day of February, 
one thousand nine hundred eighty-nine, relating to the 
air pollution control commission (prevention and control 
of air pollution from hazardous waste treatment, storage 
or disposal facilities), are authorized.

(h) The legislative rules filed in the state register on 
the thirtieth day of December, one thousand nine 
hundred eighty-eight, modified by the air pollution 
control commission to meet the objections of the 
legislative rule-making review committee and refiled in 
the state register on the twenty-third day of February, 
one thousand nine hundred eighty-nine, relating to the 
air pollution control commission (good engineering 
practice as applicable to stack heights), are authorized.

(i) The legislative rules filed in the state register on 
the thirtieth day of December, one thousand nine 
hundred eighty-eight, modified by the air pollution 
control commission to meet the objections of the 
legislative rule-making review committee and refiled in 
the state register on the twenty-third day of February, 
one thousand nine hundred eighty-nine, relating to the 
air pollution control commission (TP-2, compliance test 
procedures for regulation 2 — to prevent and control 
particulate air pollution from combustion of fuel in
indirect heat exchangers), are authorized.

(j) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (ambient air quality standards for sulfur oxides and particulate matter), are authorized.

(k) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (prevention of air pollution emergency episodes), are authorized.

(l) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration), are authorized.

(m) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, relating to the air pollution control commission (standards of performance for new stationary sources), are authorized.

(n) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-nine, relating to the air pollution control commission (emission standards for hazardous air pollutants), are authorized.
(o) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-nine, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of emissions of toxic air pollutants), are authorized.

(p) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from bulk gasoline terminals), are authorized.

(q) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of November, one thousand nine hundred ninety, relating to the air pollution control commission (air quality management fee program), are authorized.

(r) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from the storage of petroleum liquids in fixed roof tanks), are authorized.

(s) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, relating to the air pollution control commission (prevention and control of air pollution from the emission of volatile organic compounds from petroleum refinery sources), are authorized.

(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 thirty-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)."

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
commission (serious and minor violations of applicable rules), are authorized.

(w) 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 amendment 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)".

(x) 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.

(y) 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 the amendment 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)".
(z) 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 authorized with the amendment set forth below:

On page four, section 2.27, after the words "VOC or" by striking out the words "100 tons per year or more of".

(aa) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the air pollution control commission (emission standards for hazardous air pollutants), are authorized.

(bb) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, 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-first day of January, one thousand nine hundred ninety-four, relating to the air pollution control commission (to prevent and control air pollution from the emission of sulfur oxides), are authorized.

(cc) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the air pollution control commission (permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, temporary permits, general permits, and procedures for evaluation), are authorized.

(dd) The legislative rules filed in the state register on the seventh day of October, one thousand nine hundred ninety-three, relating to the air pollution control
commission (to prevent and control particulate air
pollution from manufacturing process operations), are
authorized.

(ee) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-three, relating to the air pollution control
commission (standards of performance for new station-
ary sources), are authorized.

(ff) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-three, 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 sixth day of January, one thousand nine
hundred ninety-four, relating to the air pollution control
commission (to prevent and control air pollution from
hazardous waste treatment, storage or disposal facili-
ties), are authorized.

(gg) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
ninety-three, relating to the air pollution control
commission (requirements for operating permits), are
authorized.

§64-3-2. Division of banking.

(a) The legislative rules filed in the state register on
the eleventh day of June, one thousand nine hundred
eighty-two, relating to commissioner of banking (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
ninetynine, relating to the division of banking (operation
of state-chartered financial institutions in West Virgi-
nia), 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 (permiss-
able 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.
(m) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twenty-first day of October, one thousand nine hundred ninety-three, relating to the division of banking (acquisition of property by financial institutions and valuation of real estate owned by state-chartered banks), are authorized.

(n) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 November, one thousand nine hundred ninety-three, relating to the division of banking (notice and treatment of joint accounts), are authorized.

§64-3-7. Division of labor.

(a) The legislative rules filed in the state register on the tenth day of May, one thousand nine hundred eighty-two, relating to the commissioner of labor (steam boiler rules) as modified by the legislative rule-making review committee, are authorized.

(b) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-three, relating to the department of labor (hazardous chemical substances), are authorized.

(c) The legislative rules filed in the state register on the second day of February, one thousand nine hundred eighty-four, relating to the department of labor (polygraph examinations), are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine hundred eighty-seven, relating to the commissioner of labor (West Virginia occupational safety and health act), are authorized.

(e) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine
hundred eighty-seven, modified by the commissioner of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of labor (wage payment and collection act), are authorized.

(f) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-seven, relating to the commissioner of the department of labor (standards for weights and measures inspectors—adoption of NBS Handbook 130, 1987), are authorized.

(g) The legislative rules filed in the state register on the twelfth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of labor (steam boiler inspection fee schedule), are authorized.

(h) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-eight, modified by the department of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-eight, relating to the department of labor (amusement rides and amusement attractions safety act), are authorized.

(i) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-nine, modified by the department of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of August, one thousand nine hundred eighty-nine, relating to the department of labor (wage payment and collection act), are authorized.

(j) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred ninety-three, modified by the division of labor 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 ninety-three.
§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:

On page 3-4, §3E.01 by adding after the word "engineer" the words "or licensed land surveyor."

On page 3-5, §3E.02, subsection (a), by adding after the word "mining" the words "or civil."

And,

On 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:

On 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."

And,

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:

On page 10-5, by striking §10B.19 and inserting in lieu thereof a new §10B.19, to read as follows: "'Effluent limitations guidelines' means a regulation published by the Administrator under Section 304(b) or Section 301(b)(1)(B) of the CWA to adopt or revise effluent limitations or levels of effluent quality attainable through the application of secondary or equivalent treatment. For the coal industry these regulations are published at 40 C.F.R. Parts 434 and 133. (See: Appendix G and H)."

(g) The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred eighty-four, relating to the department of natural resources (small arms hunting), are authorized.

(h) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred
eighty-four, relating to the department of natural resources (hazardous waste management), are authorized.

(i) The legislative rules filed in the state register on the third day of December, one thousand nine hundred eighty-four, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management), are authorized.

(j) The legislative rules filed in the state register on the tenth day of October, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management: Small quantity generators and waste minimization certification), are authorized with the amendment set forth below:

On page 1, §3.1.4b, delete the word “or” in the reference to “paragraph (g) or (j)” and insert in lieu thereof the words “and, if applicable.”

(k) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-five, relating to the department of natural resources (WV/NPDES regulations for the coal mining point source category and related sewage facilities), are authorized.

(l) The legislative rules filed in the state register on the eleventh day of December, one thousand nine hundred eighty-five, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(m) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-six, modified by the department of
natural resources to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the ninth day of December, one thousand
nine hundred eighty-six, relating to the department of
natural resources (hazardous waste management regu-
lations), are authorized.

(n) The legislative rules filed in the state register on
the seventh day of August, one thousand nine hundred
eighty-six, relating to the director of the department of
natural resources (procedures for transporting and
dealing in fur-bearing animals), are authorized.

(o) The legislative rules filed in the state register on
the thirtieth day of December, one thousand nine
hundred eighty-six, relating to the department of
natural resources (WV/NPDES program for coal mines
and preparation plants, and the refuse and waste
therefrom), are authorized with the amendments set
forth below:

On page four, §1.9.1.a by inserting the words “five
thousand dollars or” after the words “‘significant portion
of income’ means.”;

And,

On page four, §1.9.1.a by inserting the words “whi-
ichever is less,” after the words “ten percent or more of
gross personal income for a calendar year.”

(p) The legislative rules filed in the state register on
the fifth day of March, one thousand nine hundred
eighty-six, relating to the department of natural
resources (hazardous waste management), are
authorized.

(q) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
eighty-seven, relating to the department of natural
resources (WV/NPDES regulations for coal mining
facilities), are authorized.

(r) The legislative rules filed in the state register on
the tenth day of June, one thousand nine hundred
eighty-seven, relating to the director of the department
of natural resources (outfitters and guides), are authorized.

(s) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations), are authorized.

(t) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(u) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred eighty-seven, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the department of natural resources (solid waste management), are authorized.

(w) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-seven, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations), are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period "This regulation does not apply to licensed outfitters and guides." These rules were proposed by the
director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-eight, relating to the department of natural resources (hazardous waste management), are authorized.

(y) The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (boating), are authorized.

(z) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-eight, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (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)."

(229) The legislative rules filed in the state register on the seventeenth day of March, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred ninety, relating to the division of natural resources (solid waste management), are authorized with the amendments set forth below:

On page 13, Section 3.2.6, by deleting the current language and inserting in lieu thereof the following:

3.2.6. Within two hundred (200) feet of faults that have had displacement in Holocene time (i.e., during the last eleven thousand years);

On page 64, Section 3.14.25, by deleting the current language and inserting in lieu thereof the following language:

3.14.25. Environmental Compliance History. The chief or the director may refuse to grant any permit if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or shareholder owning twenty percent (20%) or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed permitted premises, in whole or part, has exhibited a pattern of violation of the environmental statutes or regulations of this State, any other state, or the federal government."

On page 104, section 4.5.4.a, by inserting after the words "at that landfill" the following:

"Nothing within these regulations shall be construed to allow the installations of any liner or system on areas not lined as of November 30, 1989, that is not in conformance with section 4.5.4.a.E or 4.5.4.a.G of these regulations. Landfills that do have an article 5f permit and a liner installed as of November 30, 1989, may install a liner as approved by the chief.";
And,

On pages 147 through 151, sections 4.11.5 and 4.11.6, by deleting the current language and inserting in lieu thereof the following:

"4.11.5. Corrective Action Program.

Whenever a statistically significant increase is found in a Phase II or Phase III monitoring parameter, or when groundwater contamination is otherwise identified by the Chief at sites without monitoring programs, which is determined by the Chief to have resulted in a significant adverse effect on an aquifer, and which is attributable to a solid waste facility, the Chief may require appropriate corrective or remedial action pursuant to W. Va. Code Chapter 20, article 5A, and Chapter 20, article 5F to abate, remediate or correct such pollution. Any such corrective or remedial action order shall take into account any applicable groundwater quality protection standards, the existing use of such waters, the reasonable uses of such waters, background water quality, and the protection of human health and the environment."

(dd) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (underground storage tanks), are authorized.

(ee) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (transporting and selling wildlife pelts), are authorized.

(ff) The legislative rules filed in the state register on the seventeenth day of February, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of August, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (under-
ground storage tank fee assessments), are authorized.

(gg) The legislative rules filed in the state register on the twenty-fourth day of April, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of May, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (public hunting and fishing areas), are authorized.

(hh) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-nine, relating to the department of natural resources (water pollution control permit fee schedules), are authorized with the amendments set forth below:

On page five, section 3.3, by deleting the following: "Submitted fees are not refundable."

On page two, after section 2.6, by inserting the following:

"Customer" means any person that purchases waste disposal services from a facility permitted under article five-a, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended. For the purposes of these regulations, commercial and other non-single family dwelling customers shall be translated into customer equivalents by dividing the total daily estimated volume of waste water by three hundred and fifty gallons per day." and renumbering the remaining subsections.

On page nine, section 7.2, by striking out the words "seven hundred fifty dollars ($750)." and inserting in lieu thereof the following:

"determined using Table D, but in no case shall be less than two hundred fifty dollars ($250)."

And,

On page thirteen, by striking out all of Table D, Schedule of Annual Permit Fees, and inserting in lieu thereof a new Table D, designated "Schedule of Annual
Permit Fees”, to read as follows:

"TABLE D

SCHEDULE OF ANNUAL PERMIT FEES

SEWAGE FACILITIES

<table>
<thead>
<tr>
<th>Number of Customers</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1000</td>
<td>$ 250</td>
</tr>
<tr>
<td>1000 to 1499</td>
<td>$ 500</td>
</tr>
<tr>
<td>1500 to 1999</td>
<td>$ 750</td>
</tr>
<tr>
<td>2000 to 2499</td>
<td>$1000</td>
</tr>
<tr>
<td>2500 to 2999</td>
<td>$1250</td>
</tr>
<tr>
<td>3000 to 3499</td>
<td>$1500</td>
</tr>
<tr>
<td>3500 to 3999</td>
<td>$1750</td>
</tr>
<tr>
<td>4000 to 4499</td>
<td>$2000</td>
</tr>
<tr>
<td>4500 to 4999</td>
<td>$2250</td>
</tr>
<tr>
<td>greater than 5000</td>
<td>$2500</td>
</tr>
</tbody>
</table>

INDUSTRIAL OR OTHER WASTE FACILITIES

<table>
<thead>
<tr>
<th>Average Discharge Volume (gallons per day)</th>
<th>Annual Permit Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1,000</td>
<td>$ 50</td>
</tr>
<tr>
<td>1,001 to 10,000</td>
<td>$ 500</td>
</tr>
<tr>
<td>10,001 to 50,000</td>
<td>$1000</td>
</tr>
<tr>
<td>greater than 50,000</td>
<td>$2500</td>
</tr>
</tbody>
</table>

(ii) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-nine, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-nine, relating to the director of the department of natural resources (revocation of hunting and fishing licenses), are authorized.

(jj) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-nine, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of January, one
thousand nine hundred ninety, relating to the division
of natural resources (state water pollution control
revolving fund program), are authorized.

(kk) The legislative rules filed in the state register on
the twenty-ninth day of March, one thousand nine
hundred ninety, modified by the division of natural
resources to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirtieth day of August, one thousand
nine hundred ninety, relating to the division of natural
resources (assessment of civil administrative penalties),
are authorized.

(ll) 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 (gallons per day) Annual Permit Fee

<table>
<thead>
<tr>
<th>Average Discharge Volume</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>
</tbody>
</table>
| greater than 100,000    | $ 750";

And,

"TABLE G

SCHEDULE OF ANNUAL PERMIT FEES FOR AQUACULTURE FACILITIES
(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 amendment 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 word "court" and inserting in lieu thereof the word "commission".

(eee) 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.

(fff) 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 (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:

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.

(ggg) 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.

(hhh) 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 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.

(Ill) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred ninety-three, relating to the division of natural resources (prohibitions when hunting and trapping), are authorized with the amendment set forth below:

On page two, by striking out sections 3.12 in its entirety.

(mmm) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred ninety-three, 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 ninth day of November, one thousand nine hundred ninety-three, relating to the division of natural resources (special fishing), are authorized with the amendment set forth below:

On page 4, after 4.1.4 by adding two new subsections to read as follows:

4.1.5. Raleigh County Airport—A .5 acre pond at the entrance to Raleigh County Airport.

4.1.6 Woodbine Area of Cranberry River—A 300 yard long section of Cranberry River at the Woodbine Recreation Area in Nicholas County.”

(nnn) The legislative rules filed in the state register on the twenty-fourth day of January, one thousand nine hundred ninety-four, relating to the division of natural resources (commercial whitewater commission), are
authorized with the amendments set forth below:

On page six, subsections 6.1 and 6.2, by striking out the word "unduly" and inserting in lieu thereof the word "unreasonably";

And,

On page seven, subsection 7.2, by striking out the word "unduly" and inserting in lieu thereof the word "unreasonably".

§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 envi-
ronmental 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.

(e) 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 environ-
mental protection (underground storage tanks), are
authorized.

(f) 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 envi-
ronmental 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.

(g) 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 thou-
sand nine hundred ninety-three, relating to the division
of environmental protection (groundwater protection act
fee schedule), are authorized.

(h) The legislative rules filed in the state register on
the twenty-third day of April, one thousand nine
hundred ninety-three, 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 twenty-seventh day of October,
one thousand nine hundred ninety-three, relating to the
division of environmental protection (solid waste landfill
closure assistance program), are authorized.
(i) The legislative rules filed in the state register on the twenty-eighth day of January, one thousand nine hundred ninety-three, 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 sixth day of October, one thousand nine hundred ninety-three, relating to the division of environmental protection (monitoring wells), are authorized with the amendment set forth below:

On page 2, by striking out subsection 4.1 in its entirety and inserting in lieu thereof a new subsection 4.1 as follows:

"4.1 There shall be a certified monitoring well driller on site in direct charge of actively drilling, constructing, altering, testing or abandoning any monitoring well."

(j) The legislative rules filed in the state register on the twenty-eighth day of January, one thousand nine hundred ninety-three, 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 twentieth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (groundwater protection), are authorized.

(k) The legislative rules filed in the state register on the eighth day of February, one thousand nine hundred ninety-three, relating to the division of environmental protection (groundwater protection, coal mining operations), are authorized with the amendments set forth below:

On page 3, following section 2.11, by adding a new section to read as follows:

"2.12 Exempted coal mining operations means those operations subject to the exemption set forth in West Virginia Code, §20-5M-5(h), and which are of an earth disturbing nature resulting from and directly related to coal extraction. Exempted coal mining operations include: coal and slurry impoundments; refuse areas and on-site haulways.";
On page 3, section 3.1, by striking out the following:
"In cases where such statute or legislative rules are
more restrictive or in conflict with the Act or these
legislative rules, the statute or rule most protective of
groundwater applies."

On page 3, by striking out all of section 3.2 and
renumbering the remaining sections;

On page 3, Section 3.3, by striking out all of Section
3.3, and inserting in lieu thereof the following: "All coal
mining operations which are not subject to the exemp-
tion set forth in subsection (h), Section 5 of the Act, shall
conduct groundwater protection practices, and prepare
and implement groundwater protection plans, as set
forth in this regulation. All exempted coal mining
operations must conduct groundwater protection prac-
tices consistent with West Virginia Code, §20-5A-1 et
seq, and West Virginia Code, §22A-3-1 et seq. Exempted
operations are not subject to the existing quality or to
the related provisions of subsections (f) and (g), Section
5, of the Act. Further, exempted operations are not
subject to water quality standards promulgated by the
Water Resources Board pursuant to the Act. Such
operations shall nonetheless be designed, constructed,
operated, maintained, and closed in such manner as to
reasonably protect groundwater from contamination."

On page 4, Section 3.4.1.a. by striking out all of
Section 3.4.1.a. and inserting in lieu thereof the
following: "An inventory of all operations and activities
that are not exempted operations and may reasonably
be expected to contaminate groundwater, and an
indication of the current existence of and the potential
for groundwater contamination. These include but are
not limited to evaluation of materials handling areas,
loading and unloading areas, equipment cleaning,
maintenance activities, pipelines carrying contaminants,
sumps and tanks containing contaminants."

On page 4, Section 3.4.2 after the word "all" by adding
the words "existing nonexempt";

On page 5, by striking out all of section 3.4.2.a.;
On page 5, by striking out all of section 3.5 and renumbering the remaining sections;

On page 6, by striking out all of section 3.5.1;

On page 6, by striking out all of section 3.5.2;

On page 6, Section 3.6, after the word “for” by inserting the words “noncoal”;

On pages 6 and 7, by striking out all of Section 3.7 and renumbering the remaining sections;

On page 11, Section 8.1, by inserting before the words “The Director may” the words “For all nonexempt coal mining operations”;

On page 11, by striking out all of Section 8.6;

On page 12, by striking out all of Section 9.2.;

And,

On page 12, following Section 9.2, by inserting a new section as follows:

"10. Appropriateness Study.

The Environmental Protection Advisory Council shall conduct a study and report back to the Joint Committee on Government and Finance on or before November 1, 1995. The study shall be an evaluation of the appropriateness and effectiveness of these rules and shall include any recommendations, modifications or alternatives thereto."

(m) The legislative rules filed in the state register on the eighth day of July, one thousand nine hundred ninety-three, 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 twenty-first day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (sewage sludge management), are authorized with the amendments set forth below:

On pages 7 and 8, by striking out sections 3.2.2 and 3.2.2a in their entirety and inserting in lieu thereof new
sections 3.2.2 and 3.2.2a as follows:

"3.2.2. No person or entity shall be allowed to apply sewage sludge to land in a manner that will result in exceeding the maximum soil concentration for arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc, as listed in Table 3 of this rule and the soil testing requirements of this rule.

3.2.2a. The director shall assign an individual and lifetime loading rate for each land application site by considering background soil concentrations and maximum allowable pollutant concentrations as per Table 1 and per Table 3 of this rule, except as provided for in 3.2.2.b.

3.2.2.b. If circumstances at sewage sludge processing facilities result in short term excursions of Table 1 criteria, the director may develop temporary loading rates, for a period not to exceed six months, based on the provisional limitations of Table 2 of this rule."

On page 10, section 4.1.2 after the words "all permitted facilities", by striking out the words "whose methods of operations are not in compliance with this rule";

On page 19, section 6.4.1 by striking out "$10.00" and inserting in lieu thereof "$5.00";

On page 19, by striking out Section 6.4.2. in its entirety and by renumbering the remaining sections;

On page 19, in renumbered section 6.4.3., following the words "Fees generated pursuant to", by striking out the words "paragraphs 6.4.1 and 6.4.2" and insert in lieu thereof the words "paragraph 6.4.1";

On page 19, in the renumbered section 6.4.3, by striking out "$500,000" and inserting in lieu thereof "$200,000";

On page 21, Table 1, by striking out the title "POLLUTANT CONCENTRATION OF METALS IN SEWAGE SLUDGE" and inserting in lieu thereof the title "MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE FOR LAND APPLICATION";
And,

On page 21, Table 2, by striking out the title “MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE FOR LAND APPLICATION” and inserting in lieu thereof the title “PROVISIONAL MAXIMUM CONCENTRATION OF METALS IN SEWAGE SLUDGE FOR PRODUCERS NOT MEETING TABLE 1 CRITERIA”.

(n) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-three, 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 January, one thousand nine hundred ninety-four, relating to the division of environmental protection (groundwater protection act fee schedule), are authorized.

(o) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-three, 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 January, one thousand nine hundred ninety-four, relating to the division of environmental protection (underground injection control fee schedule), are authorized.

(p) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred ninety-three, 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 fourteenth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (underground storage tanks), are authorized with the amendments set forth below:

On page 3, section 3.4.5.a, following the word “closure” by inserting a period and the following: “The director can make available to applicants alternative testing procedures”;
And,

On page 4, subsection 3.4.6, by striking out "$100" and inserting in lieu thereof "$75", and by striking out "$50" and inserting in lieu thereof "$35".

(q) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twenty-first day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (commercial hazardous waste management facility siting fees), are authorized with the amendment set forth below:

On page 2, section 3.1 by striking out the words "sixty thousand dollars ($60,000)" and inserting in lieu thereof the words "one hundred thousand dollars ($100,000)".

(r) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of environmental protection (hazardous waste management), are authorized.

(s) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twentieth day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (dam safety), are authorized with the amendment set forth below:

On page 19, by striking out the entirety of sections 7.1.1.b.A. and 7.1.1.b.B. and inserting in lieu thereof new sections 7.1.1.b.A and 7.1.1.b.B as follows:

"7.1.1.b.A. Class A Dams—Class A dams shall be designed for a minimum P100 storm of six hours in duration.

7.1.1.b.B. Class B Dams—Class B dams shall be
designed for a minimum P100 storm to one-half probable maximum precipitation storm of six hours duration. The magnitude of storm must closely relate to the degree of anticipated damage downstream based upon information supplied to the Director.’’

The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 January, one thousand nine hundred ninety-four, relating to the division of environmental protection (groundwater quality standard variances), are authorized.

The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twenty-first day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (lead acid battery), are authorized with the amendment set forth below:

On page 3, section 3.4, by striking out the word “five (5)” and inserting in lieu thereof the word “three (3)”.

The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, 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 twenty-first day of January, one thousand nine hundred ninety-four, relating to the division of environmental protection (yard waste composting), are authorized with the following amendment:

On page 2, by striking out all of section 2.3 and inserting in lieu thereof a new section 2.3 as follows:

“2.3. ‘Non-residential composting activities’ means a composting activity by persons such as landscape contractors, nurseries or greenhouses, lawn and garden
companies, solid waste authorities and municipalities which are authorized to compost up to twelve thousand (12,000) tons per year of yard waste materials consisting of grass clippings, weeds, leaves, brush/shrub or tree prunings and other acceptable compostable materials which have been approved in writing by the chief to produce a safe product for use as a soil amendment/soil conditioner."

(w) The legislative rules filed in the state register on the twenty-eighth day of January, one thousand nine hundred ninety-three, 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 sixth day of October, one thousand nine hundred ninety-three, relating to the division of environmental protection (assessment of civil administrative penalties), are authorized.

§64-3-18. Office of miners' health, safety and training.

(a) 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.

(b) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred ninety-three, modified by 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 second day of November, one thousand nine hundred ninety-three, relating to the office of miners' health, safety and training (first-aid training of shaft and/or slope employees), are authorized.
AN ACT to amend and reenact sections one, two and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section nine, all relating generally to the promulgation of administrative rules and regulations by the governmental agencies within the department of health and human resources; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; authorizing the department of health and human resources to promulgate legislative rules relating to public water systems, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to distribution of state aid funds to local boards of health, as modified; authorizing the department of health and human resources to promulgate legislative rules relating to hospital licensure, as modified and amended; authorizing the division of health to promulgate legislative rules relating to cancer registry, as modified; authorizing the human rights commission to promulgate legislative rules relating to the discrimination against individuals with disabilities, as modified and amended; and authorizing the commission on aging to promulgate legislative rules relating to West Virginia long-term care ombudsman program, as modified.

Be it enacted by the Legislature of West Virginia:
That sections one, two and eight, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section nine, all to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of health and human resources.
§64-5-2. State board of health; division of health.

§64-5-1. 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, 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.';

On page twenty-one, subdivision 10.1.2., 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., 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.
(e) The legislative rules filed in the state register on the third day of May, one thousand nine hundred ninety-three, 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 eighth day of July, one thousand nine hundred ninety-three, relating to the department of health and human resources (public water systems), are authorized.

(f) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred ninety-three, 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-fourth day of January, one thousand nine hundred ninety-four, relating to the department of health and human resources (distribution of state aid funds to local boards of health), are authorized.

(g) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred ninety-four, 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-fourth day of January, one thousand nine hundred ninety-four, relating to the department of health and human resources (hospital licensure), are authorized with the amendments set forth below:

"On page 4, section 3.20, by striking out all of section 3.20 and inserting in lieu thereof the following: "Section 6a Hospital — A nonprofit hospital, as identified in W. Va. Code §16-5-B-6a, whether governed by an in-state or out-of-state board of directors, or a hospital owned by a county, city or other political subdivision of the State of West Virginia, except for existing nonprofit hospitals which are owned or operated by a corporation which was incorporated in another state prior to March 9, 1983: Provided, however, This definition does not include the corporation defined in W. Va. Code §18-11C-1(d) and";"
On page 16, section 8.3.2. by striking the comma after the word “safety” and inserting in lieu thereof the word “or”;

On page 16, section 8.3.2. after the word “et seq.,” by striking out the words “or involves a cost in excess of two hundred thousand dollars ($200,000)”;

On page 17, section 8.4.2. by striking the comma after the word “safety” and inserting in lieu thereof the word “or”;

On page 17, section 8.4.2. after the word “et seq.,” by striking out the words “or involves a cost in excess of two hundred thousand dollars ($200,000)”;

On page 45, section 12, by striking all of subdivision 12.2.1 and inserting in lieu thereof a new subdivision 12.2.1 to read as follows:

12.2.1 All general acute care hospitals shall provide emergency services: Provided, That the Director may grant exceptions to this requirement based upon (a) the need to avoid an unnecessary duplication of services, (b) a recognition of practical economies of scale within the community, or (c) other such appropriate factors relating to the optimum delivery of emergency services within available resources and deemed by the director to be substantial. The requirement of this subdivision for the provision of emergency services shall be waived by the director in the case of a rural primary care hospital if such hospital has entered into an appropriate patient transfer agreement with another referral hospital to provide for emergency services. If the hospital provides emergency services, it shall have an emergency room which is located so as to permit easy access from automobiles and ambulances. The emergency service shall be of a size comparable to the need imposed upon it and shall be adequately equipped to provide whatever life-saving measures may be needed for patients admitted to this service.”

§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.
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.”

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.

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.

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.

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.

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
(o) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (procedures for recovery of corneal tissue for transplant), are authorized.

(p) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-three, relating to the state board of health (well water regulations), are authorized with the amendments set forth below:

§4.1. In the first sentence delete the word “obtaining” and insert in lieu thereof the words “applying for”. In the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the period and add the words “unless emergency conditions prevail as noted under §4.3.”

With the balance of §4.2 and create a new §4.3 with the following changes: In the first sentence delete the word “deadline” and insert in lieu thereof the word “requirements.” Add after the first sentence the sentence, “Emergency conditions and unavoidable circumstances are those conditions involving acts of God, water outages or disruption of water service, unsatisfactory water quality or quantity or public health threats.” In the third sentence delete the word “exceed” and insert in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two sentences at the end of the section: “Such standards shall constitute the minimum standards for the installation, the alteration or the deepening of water wells. Any plans approved by the director pursuant to these regulations shall be in substantial compliance with the heretofore mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as §4.8 and §4.8 as §4.9.

And,

§5.2. Delete the words “four (4)” and insert in lieu
thereof the words "two (2)" and delete the words "active, continuous."

(q) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (trauma center or facility designation), are authorized.

(r) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases), are authorized.

(s) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (licensure of medical adult day care centers), are authorized.

(t) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation), are authorized.

(u) The legislative rules filed in the state register on the seventeenth day of December, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the director of health (adult group home licensure), are authorized.

(v) The legislative rules filed in the state register on the twenty-ninth day of October, one thousand nine hundred eighty-five, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the state board of health (licensure of hospice care programs), are authorized.

(w) The legislative rules filed in the state register on the thirty-first day of October, one thousand nine hundred eighty-five, modified by the director of health
to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
twenty-seventh day of December, one thousand nine
hundred eighty-five, relating to the director of health
(rules governing emergency medical services), are
authorized with the amendments set forth below:

On page 3, §3.9 shall read as follows:

"3.9 Quorum — When applied to the EMSAC, a
majority of the members thereof, except in the instance
when at any meeting of the EMSAC, where a quorum
is not present and the director causes to be deposited in
the United States mail, postage prepaid, return receipt
requested, to each member of the EMSAC within three
days, a notice calling a meeting of the EMSAC at some
convenient place in the state of West Virginia two weeks
after the meeting at which no quorum was present.
Quorum means any number of members of the EMSAC
who attend such subsequent meeting. Any member
missing two consecutive meetings shall be removed from
the EMSAC."

On page 6, §4.7.1 shall be deleted in its entirety;

And,

On page 7, §4.10.1 shall read as follows:

"4.10.1 every applicant for certification as an EMSP
prior to such certification, shall demonstrate his or her
knowledge and ability by undergoing a written exam-
ination 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-
(z) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (methods and standards for chemical tests for intoxication), are authorized.

(aa) The legislative rules filed in the state register on the twenty-first day of November, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (licensure of behavioral health centers), are authorized.

(bb) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure), are authorized.

(cc) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure and allowing hospitals to have licensed hospital professionals, other than licensed
physicians, on their medical staff), are authorized.

(dd) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (vital statistics), are authorized.

(ee) The legislative rules filed in the state register on the eleventh day of September, one thousand nine hundred eighty-seven, relating to the director of the department of health (immunization criteria for transfer students), are authorized.

(ff) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-seven, relating to the director of the department of health (hazardous substances), are authorized with the amendment set forth below:

Page 33, section 8, line 8 (unnumbered), by adding at the end of section 8 the following proviso: “Provided, that the owner’s or operator’s submissions are based on the threshold reporting requirements contained in section 5, article 31, chapter 16.”

(gg) The legislative rules filed in the state register on the eighteenth day of November, one thousand nine hundred eighty-seven, relating to the director of the department of health (trauma center or facility designation), 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.

(ll) The legislative rules filed in the state register on
the nineteenth day of October, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twentieth day of December, one thousand
nine hundred eighty-eight, relating to the state board of
health (volatile synthetic organic chemicals), are
authorized.

(mm) The legislative rules filed in the state register
on the second day of January, one thousand nine
hundred ninety, modified by the division of health to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of January, one thousand nine hundred
ninety, relating to the division of health (asbestos
abatement licensing), are authorized.

(nn) The legislative rules filed in the state register on
the thirtieth day of August, one thousand nine hundred
eighty-nine, modified by the division of health to meet
the objections of the legislative rule-making review
committee and refiled in the state register on the
seventeenth day of November, one thousand nine
hundred eighty-nine, relating to the division of public
health (AIDS-related medical testing and confidentiality), are
authorized.

(oo) The legislative rules filed in the state register on
the nineteenth day of December, one thousand nine
hundred eighty-nine, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of January, one
thousand nine hundred ninety, relating to the state
board of health (nursing home licensure), are
authorized.

(pp) The legislative rules filed in the state register on
the nineteenth day of December, one thousand nine
hundred eighty-nine, relating to the state board of
health (licensure of behavioral health centers), are
authorized.

(qq) The legislative rules filed in the state register on
the twenty-eighth day of December, one thousand nine
hundred eighty-nine, relating to the state board of
health (methods and standards for chemical test for
intoxication), are authorized.

(rr) The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred ninety, modified by the board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of September, one thousand nine hundred ninety, relating to the board of health (fees for permits), are authorized with the amendments set forth below:

On page two, subsection 3.6, by striking out all of the subsection and renumbering the subsequent subsections.

On page four, subsection 5.4, by striking out all of the subsection and renumbering the subsequent subsections.

And,

On page six, Table 64-30c, by striking out Table 64-30c and inserting in lieu thereof a new table, to read as follows:

<table>
<thead>
<tr>
<th>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
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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.

(ccc) The legislative rules filed in the state register
on the sixteenth day of August, one thousand nine hundred ninety-three, 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 fifteenth day of October, one thousand nine hundred ninety-three, relating to the division of health (cancer registry), are authorized.


(a) The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred ninety, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred ninety, relating to the human rights commission (discrimination against the handicapped), are authorized.

(b) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred ninety-one, relating to the human rights commission (sexual harassment), are authorized.

(c) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the human rights commission (exemption of private clubs), are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of March, one thousand nine hundred ninety-one, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of November, one thousand nine hundred ninety-one, relating to the human rights commission (religious discrimination), are
authorized.

(e) The legislative rules filed in the state register as an emergency rule on the twenty-second day of March, one thousand nine hundred ninety-one, relating to the human rights commission (waiver of rights under the human rights act), are authorized.

(f) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, modified by the human rights commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred ninety-three, relating to the human rights commission (discrimination against individuals with disabilities), are authorized with the amendments set forth below:

On page 7, section 4, subsection 4.7, after the words "hazard to" by striking the words "the safety of others" and inserting in lieu thereof the words "his or her health and safety or the health and safety of others";

And,

On page 7, section 4, subsection 4.8, by striking the first sentence of subsection 4.8, and inserting in lieu thereof the following: "In deciding whether an individual poses a direct threat to health and safety, the employer has the burden of demonstrating that a reasonable probability of a materially enhanced risk of substantial harm to the health or safety of the individual or others cannot be eliminated or reduced by reasonable accommodation."


The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred ninety-three, modified by the commission on aging 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-four, relating to the commission on aging (West Virginia long-term care ombudsman program), are authorized.
AN ACT to amend and reenact section five, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to charges for use of the Legislature's computer subscriber system; providing that information in the database system in a magnetic or electronic form is not a public record; and providing that the Legislature shall not be required or compelled to allow access to all or a portion of its databases for inspection and copying and shall not be required to make available copies of all or a portion of its databases on magnetic or electronic media.

Be it enacted by the Legislature of West Virginia:

That section five, article three, 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 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-5. Charges for use of the Legislature's computer subscriber system.

The joint committee on government and finance is hereby authorized to charge and collect fees from agencies of state executive and judicial departments and from private persons, corporations and associations for access to and use of the Legislature's computer subscriber system databases in accordance with fees, procedures and restrictions approved by the joint committee. Fees collected are to be deposited in a special revolving fund of the joint committee on government and finance and may be expended for expansion, maintenance and support of the Legislature's computer system as authorized by the joint committee. No part of the information contained in the Legislature's computer system databases in its magnetic or electronic form is a public record as that term is defined in section two,
article one, chapter twenty-nine-b of this code. Notwithstanding any provisions of section three, article one, chapter twenty-nine-b of this code to the contrary, the Legislature shall not be required or compelled to allow access to all or a portion of its databases for inspection and copying and shall not be required to make available copies of all or a portion of its databases on magnetic or electronic media.

CHAPTER 30
(H. B. 5008—By Delegates P. White, Douglas, Brown, Compton, Rutledge, Yeager and Leach)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b; to amend and reenact section two, article four-b of said chapter; and to amend and reenact sections two, three, four and five, article four-c of said chapter, all relating to the state medicaid program; relating to acceleration and expansion of medicaid coverage for children and expansion of medicaid coverage for the terminally ill; initiating the option of hospice care to terminally ill and initiating the option of medicaid coverage for all children whose family income is below one hundred percent of federal poverty level; authorizing the expansion of medicaid coverage for children whose family income is below one hundred thirty-three percent of federal poverty level within funding limits; providing for the further expansion of medicaid coverage to children whose family income is below one hundred fifty percent of the federal poverty level; requiring a report from the department of health and human resources to the governor and the Legislature regarding the feasibility of the expansion, number of children participating in the accelerated program, the average annual cost of coverage, the number of
children expected to participate in the expansion program, the medical trust fund balance and the expected future deposits to said fund; requiring periodic reports to the legislative task force on uncompensated health care and medicaid expenditures; designating funding from the medical services trust fund for the specified programs, and requiring termination of expanded coverage if the funding source is insufficient; requiring annual reports from the health care cost review authority to the governor and Legislature regarding the number of children and elderly covered by the expanded program, the cost of services by type and service provided and a cost-benefit analysis of the effect of expansion on other insurers and the reduction of uncompensated care in hospitals due to the expansion; requiring consideration of the reduction of uncompensated care and charity care in the rate review process for hospitals; requiring annual reports from the health care cost review authority to the governor and the Legislature concerning the reduction in cost shift created by the expansion of medicaid coverage; requiring a review period to study additional utilization by behavioral health centers and initiating a moratorium on the issuance of additional behavioral health licenses during the study period, providing exceptions for health care facilities with a license, approved certificate of need or application pending; providing an exception for agreements for state owned psychiatric hospitals; continuing medicaid enhancement boards; changing the composition of the general medicaid enhancement board.

Be it enacted by the Legislature of West Virginia:

That article four-a, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-b; that section two, article four-b of said chapter be amended and reenacted; and that sections two, three, four and five, article four-c of said chapter be amended and reenacted, all to read as follows:

CHAPTER 9. HUMAN SERVICES.

Article 4A. Medicaid Uncompensated Care Fund.
ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the department of health and human resources shall undertake the following:

(1) Effective the first day of July, one thousand nine hundred ninety-four, the department shall initiate a streamlined application form, which shall be no longer than two pages, for all families applying only for medicaid coverage for children.

(2) Effective the first day of July, one thousand nine hundred ninety-four, the department shall initiate the option of hospice care to terminally ill West Virginians who otherwise qualify for medicaid. On or before the first day of January, one thousand nine hundred ninety-five, and periodically thereafter, the department shall report to the legislative task force on uncompensated health care and medicaid expenditures created pursuant to section four, article twenty-nine-c, chapter sixteen of this code regarding the program initiation provided for in this subdivision. The report shall include, but not be limited to, the total number, by age, of newly eligible clients served as a result of the initiation of the program pursuant to this subdivision, the average annual cost of coverage per client, and the total cost, by provider type, to serve all clients.

(3) Effective the first day of July, one thousand nine hundred ninety-four, the department shall accelerate the medicaid option for coverage of medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty level. On or before the first day of January, one thousand nine hundred ninety-five, and periodically thereafter, the department shall report to the legislative task force on
uncompensated health care and medicaid expenditures
regarding the program acceleration provided for in this
subdivision. The report shall include, but not be limited
to, the number of newly eligible clients, by age, served
as a result of the acceleration, the average annual cost
of coverage per client and the total cost of all clients
served by provider type.

(4) Effective the first day of July, one thousand nine
hundred ninety-five, the department may initiate the
medicaid option to expand coverage of medicaid to all
West Virginia children whose family income is below
one hundred thirty-three percent of the federal poverty
level. To prepare for program expansion the department
shall submit a report to the governor and the Legisla-
ture on the first day of January, one thousand nine
hundred ninety-five, regarding the feasibility of the
expansion. The report is to include, but not be limited
to, the number of newly eligible clients participating in
the programs specified in this section, the average
annual cost of coverage per client, the percentage of
expected participation for the expansion, the projected
cost of the expansion, the medical services trust fund
balance and the future disproportionate share moneys
expected to be deposited in the medical services trust
fund pursuant to section two-a of this article. The
department shall continually update the additional
information required to be provided to the governor and
the Legislature regarding this expansion and periodi-
cally report the information to the legislative task force
on uncompensated health care and medicaid expendi-
tures created pursuant to section four, article twenty-
nine-c, chapter sixteen of this code.

(5) Effective the first day of July, one thousand nine
hundred ninety-six, the department may initiate the
medicaid option to expand coverage of medicaid to all
West Virginia children whose family income is below
one hundred fifty percent of the federal poverty level.
To prepare for program expansion, the department shall
submit a report to the governor and the Legislature on
the first day of January, one thousand nine hundred
ninety-six, regarding the feasibility of the expansion.
Additionally, the report is to include, but not be limited to, the number of clients who would be newly eligible to participate in the program, the average annual cost of coverage per client, by age, the percentage of expected participation for the expansion and the projected cost of the expansion, the balance of the medical services trust fund and the future disproportionate share moneys expected to be deposited in the medical services trust fund pursuant to section two-a of this article. The department shall periodically update and report to the legislative task force on uncompensated health care and medicaid expenditures created pursuant to section four, article twenty-nine-c, chapter sixteen of this code regarding the additional information required to be submitted to the governor and the Legislature.

(b) Notwithstanding the provisions of section two-a of this article, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subsection (a) of this section: Provided, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after the thirtieth day of June, one thousand nine hundred ninety-four, may be applied to cover the cost of the specified programs: Provided, however, That in fiscal year one thousand nine hundred ninety-five, the amount of funds applied from the disproportionate share funds, not including accrued interest, shall not exceed ten million dollars: Provided further, That in the interest of fiscal responsibility, the department shall terminate the program specified in subdivisions (4) and (5) of subsection (a) of this section, if the future moneys deposited from disproportionate share payments in the medical services trust fund are insufficient to cover the cost of the expanded program.

(c) On the first day of January, one thousand nine hundred ninety-five and annually thereafter, the department shall report to the governor and to the Legislature information regarding the number of children and elderly covered by the program, the cost
of services by type of service provided, a cost-benefit
analysis of the acceleration and expansion on other
insurers and the reduction of uncompensated care in
hospitals as a result of the programs.

(d) The health care cost review authority established
by section five, article twenty-nine-b of this chapter
shall consider in its rate review that uncompensated
care and charity care are reduced by the programs
specified in subsection (a) of this section and shall take
the reduction into account when determining rates. This
determination shall be undertaken in each hospital's
next rate review and shall be determined prospectively.

(e) On the first day of January, one thousand nine
hundred ninety-five, and annually thereafter, the health
care cost review authority shall present to the governor
and to the Legislature a report concerning the reduction
in cost shift created by the operation of the provisions
of this article.

(f) The department shall review the additional
utilization by behavioral health centers as a result of the
acceleration and expansion for a period of eighteen
months from the enactment of this article: Provided,
That during the eighteen-month study period the
department shall not issue additional behavioral health
licenses: Provided, however, That this license provision
does not apply to facilities filing for renewal applica-
tions or to any health care facility which has a certif-
icate of need in effect or an application pending on the
first day of March, one thousand nine hundred ninety-
four: Provided further, That this licensure prohibition
shall not apply to behavioral health services provided
pursuant to any agreement for state owned psychiatric
hospitals which are approved by the federal health care
finance administration.

ARTICLE 4B. PHYSICIAN/MEDICAL PRACTITIONER PRO-
VIDER MEDICAID ACT.

§9-4B-2. Physician/medical practitioner provider medi-
caid enhancement board; continuation and
composition.

There is hereby continued the West Virginia physi-
cian/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, and 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-six. 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.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-2. General medicaid enhancement board.
§9-4C-3. Dentist provider medicaid enhancement board.

§9-4C-4. Ambulance service provider medicaid enhancement board.

§9-4C-5. Facility providers’ medicaid enhancement board.

§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 members appointed by the governor, including 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. The terms of the lay persons who are members of the board as of the seventeenth day of March, one thousand nine hundred ninety-four, shall expire on the first day of July, one thousand nine hundred ninety-four.

(d) The terms of all members expire on the first day of July, one thousand nine hundred ninety-six.

§9-4C-3. Dentist provider medicaid enhancement board.

There is hereby continued the dentist provider medicaid enhancement board to consist of five members.
3 In order to carry out the purposes of this article, the dentist provider medicaid enhancement board shall represent dentist providers. The board shall consist of three dentists, one lay person and the secretary, or his or her designee, who shall serve as an ex officio, nonvoting member. The governor shall select the dentist members from six recommendations submitted to the governor by the state dental association and the lay board member at his or her discretion. The state dental association shall submit all recommendations to the governor within five days of the effective date of this article. The governor shall make all appointments within fifteen days of receipt of all recommendations. After the 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-six.

§9-4C-4. Ambulance service provider medicaid enhancement board.

1 There is hereby continued the ambulance service provider medicaid enhancement board to consist of seven members. In order to carry out the purpose of this article, this board shall represent ambulance service providers. The board shall consist of five ambulance service providers, one lay person and the secretary, or his or her designee, as an ex officio, nonvoting member. The governor shall make all appointments within twenty days of the effective date of this article. After the initial appointment of the board, any appointment to fill a vacancy shall be for the unexpired term only, and the terms of all members shall expire on the first day of July, one thousand nine hundred ninety-six.

§9-4C-5. Facility providers' medicaid enhancement board.

1 (a) The outpatient hospital medicaid enhancement board created by this section shall cease to exist on the effective date of this article.

4 (b) There is hereby continued 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-six.

CHAPTER 31

(S. B. 1021—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and eight, article five-f, chapter twenty of said code; to further amend said article by adding thereto a new section, designated section twelve; to amend and reenact sections five and seven, article five-n of said chapter; to amend and reenact sections five and eight, article eleven of said chapter; and to amend and reenact section one-i, article two, chapter twenty-four of said code, all relating to solid waste; adding definitions; authorizing a special extension of the landfill closure deadline up to the
thirty-first day of December, one thousand nine hundred ninety-four; allowing certain permittees who satisfy certain requirements to satisfy repayment obligation of the solid waste assessment fee; authorizing the solid waste management board to pledge revenues paid to the closure cost assistance fund to meet the requirements of certain bond issues; authorizing the director of the division of environmental protection to assist certain solid waste facilities by allowing the pledge of certain funds to satisfy loan requirements; authorizing an implementation date for certain recyclable materials of the first day of July, one thousand nine hundred ninety-five; extending the yard waste prohibition until the first day of January, one thousand nine hundred ninety-six; and exempting the public service commission from being required to make certain determinations regarding existing commercial solid waste disposal facilities.

Be it enacted by the Legislature of West Virginia:

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

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20. Natural Resources.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
(1) "Board" means the solid waste management board provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, previously known as the West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.

(3) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal
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revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.

(5) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) "Industrial waste" means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) "Owner" includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conserva-
(9) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(10) "Revenue" means any money or thing of value collected by, or paid to, the solid waste management board as rent, use fee, service charge or other charge for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the solid waste management board to governmental agencies to finance, in whole or in part, the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(11) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a, chapter twenty of this code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e, chapter twenty of this code, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, produc-
tion, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(12) "Solid waste facility" means any system, facility, land, contiguous land, improvements on land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(13) "Solid waste disposal project" or "project" means any solid waste facility, wastewater treatment plants, sewer treatment plants, water and sewer systems and connecting pipelines the acquisition or construction of which is authorized by the solid waste management board or any acquisition or construction which is financed, in whole or in part, from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(14) "Solid waste disposal shed" or "shed" means a geographical area which the solid waste management board designates as provided in section eight of this article for solid waste management.

(15) "Solid waste facility operator" means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate
CHAPTER 20. NATURAL RESOURCES.

Article 5F. Solid Waste Management Act.

§20-5F-2. Definitions.

§20-5F-8. Limited extension of solid waste facility closure deadline.

§20-5F-12. Effect of reenactment; manner of codification.

§20-5F-2. Definitions.

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

2 (1) "Agronomic rate" means the whole sewage sludge application rate, by dry weight, designed:

3 (A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

4 (B) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

5 (2) "Applicant" means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

6 (3) "Approved solid waste facility" means a solid waste facility or practice which has a valid permit under this article.

7 (4) "Backhauling" means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption or reusable item which may be refilled with any substance or material
used as food by humans.

(5) "Bulking agent" means any material mixed and composted with sewage sludge.

(6) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten thousand and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(7) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(8) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(9) "Composting" means the aerobic, thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

(10) "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

(11) "Director" means the director of the division of
environmental protection or such other person to whom
the director has delegated authority or duties pursuant
to article one, chapter twenty-two of this code.

(12) "Division" means the division of environmental
protection.

(13) "Energy recovery incinerator" means any solid
waste facility at which solid wastes are incinerated with
the intention of using the resulting energy for the
generation of steam, electricity or any other use not
specified herein.

(14) "Incineration technologies" means any technology
that uses controlled flame combustion to thermally
break down solid waste, including refuse-derived fuel,
to an ash residue that contains little or no combustible
materials, regardless of whether the purpose is process-
ning, disposal, electric or steam generation or any other
method by which solid waste is incinerated.

(15) "Incinerator" means an enclosed device using
controlled flame combustion to thermally break down
solid waste, including refuse-derived fuel, to an ash
residue that contains little or no combustible materials.

(16) "Landfill" means any solid waste facility for the
disposal of solid waste on land. Such facility is situated,
for purposes of this article, in the county where the
majority of the spatial area of such facility is located.

(17) "Materials recovery facility" means any solid
waste facility at which source-separated materials or
materials recovered through a mixed waste processing
facility are manually or mechanically shredded or
separated for purposes of reuse and recycling, but does
not include a composting facility.

(18) "Mixed solid waste" means solid waste from
which materials sought to be reused or recycled have not
been source-separated from general solid waste.

(19) "Mixed waste processing facility" means any solid
waste facility at which materials are recovered from
mixed solid waste through manual or mechanical means
for purposes of reuse, recycling or composting.
(20) "Municipal solid waste incineration" means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

(21) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(22) "Person" or "persons" mean any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(23) "Recycling facility" means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical or thermal transformation of solid waste occurs: Provided, That mixed waste recovery facilities, sludge processing facilities and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, and articles nine and eleven of this chapter.

(24) "Sewage sludge" means solid, semisolid or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(25) "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for land application, incineration or disposal at an approved
landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic digestion and anaerobic digestion.

(26) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(27) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article five-a of this chapter, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article five-e of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility which is regulated under chapter twenty-two, twenty-two-a or twenty-two-b of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to such chapters.

(28) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited, dumped or thrown.

(29) "Solid waste disposal shed" means the geographi-
(30) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with subsection (b), section two-b of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

(31) "Solid waste facility operator" means any person or persons possessing or exercising operational, managerial or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

(32) "Source-separated materials" means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

§20-5F-8. Limited extension of solid waste facility closure deadline.

(a) The director may grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to a solid waste facility required under the terms of an extension granted pursuant to this subsection to close by the thirtieth day of June, one thousand nine hundred ninety-three, or required by solid waste management rules to close by the thirtieth day of September, one thousand
nine hundred ninety-three, provided that the solid waste facility:

(1) Has a solid waste facility permit, or by the first day of March, one thousand nine hundred ninety-three, had an application to obtain a permit pending before the division for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste management rules; and

(2) Has a certificate of need or had an application pending therefor, from the public service commission; and

(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the division of environmental protection to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with title forty-seven, series thirty-eight, solid waste management rules or to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with preclosure provisions of title forty-seven, series thirty-eight, solid waste management rules: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, or such date as any landfill installs a composite liner system, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management rules.

(b) Any solid waste facility seeking to extend its closure deadline until the thirtieth day of September, one thousand nine hundred ninety-four, shall submit to the director, no later than the thirtieth day of April, one thousand nine hundred ninety-three, an application sufficient to demonstrate compliance with the requirements of subsection (a) of this section. The director shall grant or deny any application within thirty days of receipt thereof: Provided, That as a condition precedent
for granting such closure extension, a solid waste facility must enter into an agreement with the director that the solid waste facility shall, no later than the thirtieth day of September, one thousand nine hundred ninety-three, complete and submit to the director an analysis of the facility's specific requirements and cost to comply with the applicable design criteria, groundwater monitoring provisions of title forty-seven, series thirty-eight, solid waste management rules and the corrective action, financial assurance and closure and post-closure care provisions of Subtitle (d) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6941-6949.

(c) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in section four, article five, chapter twenty-nine-a of this code, in the circuit court of the county where such facility exists: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director of the division.

(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(e) Notwithstanding any other provision of this article, the director, upon receipt of a request for an extension, shall grant an extension of the closure deadline up to
the thirtieth day of September, one thousand nine
hundred ninety-four, to any solid waste facility required
to close on the thirty-first day of March, one thousand
nine hundred ninety-three, or the thirtieth day of
September, one thousand nine hundred ninety-three,
which is owned by a solid waste authority or owned by
a municipality and which accepts at least thirty percent
of its waste from within the county in which it is located
and which has not been determined by the director to
pose a significant risk to human health and safety or
cause substantial harm to the environment and which
could not be granted an extension up to the thirtieth day
of September, one thousand nine hundred ninety-four,
pursuant to the terms of subsections (a) and (b) of this
section if:

(1) The cost of transporting the waste is prohibitive;
or

(2) The cost of disposing of waste in other solid waste
facilities within the wasteshed would increase.

(f) Notwithstanding any other provision of this article,
the director shall grant an extension of the closure
deadline up to the thirtieth day of September, one
thousand nine hundred ninety-four, to any solid waste
landfill which, on or before the first day of March, one
thousand nine hundred ninety-three, has entered into a
compliance schedule with the director for the construc-
tion of a transfer station or to any solid waste landfill
which on the first day of March, one thousand nine
hundred ninety-three, is already in the process of
constructing a solid waste transfer station and applies
by the first day of April, one thousand nine hundred
ninety-three, to enter into with the director, a com-
pliance schedule for the completion of the transfer
station: Provided, That upon the completion of the
transfer station and commencement of operations of the
transfer station, such landfill shall cease accepting solid
waste for disposal.

(g) Notwithstanding any other provision of this
article, any commercial solid waste facility which has
demonstrated and continues to be in compliance with
the requirements of subsections (a) and (b) of the prior enactment of this section in chapter one hundred twenty-five, acts of the Legislature, regular session, one thousand nine hundred ninety-three, may make application by the first day of August, one thousand nine hundred ninety-four, to the director for a special extension of the closure deadline up to the thirty-first day of December, one thousand nine hundred ninety-four. Such application shall set forth all reasons why the applicant should receive a special extension. The director shall grant or deny an application within thirty days of receipt thereof. As a condition for being granted a special extension, the solid waste facility permittee must meet one of the following conditions:

(1) Have started construction of an approved composite liner system; or

(2) Have obtained financing for such construction; or

(3) Have demonstrated good faith efforts to obtain such financing and the director has made a finding, in writing, that such financing and construction is likely to occur within the extension period and that the facility is necessary to the waste management plan of the wasteshed or the geographic area served.

§20-5F-12. Effect of reenactment; manner of codification.

It is the intent of the Legislature that the provisions of Enrolled Senate Bill No. 1021, enacted during the first extraordinary session of the Legislature in the year one thousand nine hundred ninety-four, shall be deemed to amend and reenact the provisions of Enrolled House Bill No. 4065, enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-four, as follows: Section three, article three of chapter twenty-two-c; sections two and seventeen, article fifteen, sections ten and twelve, article sixteen of chapter twenty-two; and section one-i, article two of chapter twenty-four, are intended to be amended and reenacted by the provisions of the following sections, respectively, of Enrolled Senate Bill No. 1021: Section
three, article twenty-six of chapter sixteen; sections two and eight, article five-f, sections five and seven, article five-n of chapter twenty; and section one-i, article two, chapter twenty-four. Further, the provisions of Enrolled House Bill No. 4065 shall be codified as though the provisions of Enrolled Senate Bill No. 1021, including sections five and eight, article eleven, chapter twenty, were set forth in extenso in Enrolled House Bill No. 4065, and appropriate chapter, article or section numbers and headings shall be inserted by the clerk of the House of Delegates in editing, compiling and publishing the acts of the Legislature. The clerk is further directed to correct any citations or references in the text of Enrolled Senate Bill No. 1021 as may be required by its codification as a part of Enrolled House Bill No. 4065. The provisions of Enrolled Senate Bill No. 1021 set forth above, and the provisions of this section, as printed and presented to the governor, shall not otherwise be codified.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-5. Limitation on assistance.

§20-5N-7. Solid waste facility closure cost assistance fund.

§20-5N-5. Limitation on assistance.

The director may provide closure assistance only to permittees who meet the following requirements:

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills allowed to accept solid waste pursuant to the provisions of section eight, article five-f of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of September, one thousand nine hundred ninety-three;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the
amounts needed to comply, in a timely manner, with the
closure requirements provided in article five-f of this
chapter and any rules promulgated pursuant thereto:
Provided, That any permittee which is a municipality,
county, county solid waste authority or regional solid
waste authority and which has been required to close a
landfill, or any portion thereof, due to the lack of an
approved composite liner system, shall be eligible for
closure assistance for any closure costs related to such
closure that exceed the amount that permittee has set
aside for closure expenses pursuant to subsection (a),
section four of this article. If any such permittee
continues to accept solid waste after receiving such
closure assistance, the payment of the "solid waste
assessment fee" by that permittee as required in section
four of this article shall satisfy both the repayment of
any such closure assistance and the payment of said
solid waste assessment fee; and

(3) The permittee must maintain a permit for the
landfill pursuant to the provisions of section five, article
five-f of this chapter and maintain the full amount of
the bond required to be submitted pursuant to section
five-b of said article.

§20-5N-7. Solid waste facility closure cost assistance
fund.

(a) The "closure cost assistance fund" is continued as
a special revenue account in the state treasury. The fund
shall operate as a special fund whereby all deposits and
payments thereto do not expire to the general revenue
fund, but shall remain in such account and be available
for expenditure in the succeeding fiscal year. Separate
sub-accounts may be established within the special
account for the purpose of identification of various
revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be
deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the state
treasury which are specifically designated by acts of the
Legislature for inclusion in the fund, including moneys collected and deposited into the fund pursuant to section four of this article;

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

(3) Amounts repaid by permittees pursuant to section nine, article five-f of this chapter; and

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

(d) The solid waste management board, upon written approval of the director, has the authority to pledge all or such part of the revenues paid into the closure cost assistance fund as may be needed to meet the requirements of any revenue bond issue or issues of the solid waste management board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor. Any pledge of moneys in the closure cost assistance fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project on a cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with the provisions of this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided for in sections three and ten of this article, as provided in subsection (f) of this section and for payment of bonds and notes issued pursuant to section four-a of this article: Provided, That no more than one percent of the annual deposits to such fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the solid waste management board, and with
the approval of the projects by the director of the division of environmental protection, the director may pledge and place into escrow accounts up to an aggregate of two million dollars of the fund to satisfy two years debt service requirement that permittees of publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project-by-project basis, may not exceed five hundred thousand dollars for a project and shall be made available after loan commitments are received. The director may pledge funds for a loan only when the following conditions are met:

(1) The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet the provisions of title forty-seven, series thirty-eight, solid waste management rules;

(2) The permittee dedicates all yearly debt service revenue, as determined by the public service commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and

(3) That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

ARTICLE 11. WEST VIRGINIA RECYCLING PLAN.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.

(a) On or before the eighteenth day of October, one thousand nine hundred ninety-two, each municipality described in subsection (b) of this section shall submit a proposal to the solid waste management board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The solid waste management board
shall review the submitted plans for consistency with
the criteria provided in this section, the county or
regional solid waste management plan and the statewide
management plan. The solid waste management board
may make suggested changes to the plan and shall
provide technical assistance to the municipalities in the
development of the plans.

(b) On or before the eighteenth day of October, one
thousand nine hundred ninety-three, each municipality
with a population of ten thousand or more people, as
determined by the most recent decennial census by the
bureau of the census of the United States department
of commerce, shall establish and commence implemen-
tation of a source separation and curbside collection
program for recyclable materials. Implementation shall
be phased in by the first day of July, one thousand nine
hundred ninety-five. Such program shall include, at a
minimum, the following:

(1) An ordinance adopted by the governing body of the
municipality requiring that each person, partnership,
corporation or other entity in the municipality shall
separate at least three recyclable materials, as deemed
appropriate by the municipality, from other solid waste:
Provided, That the list of recyclables to be separated
may be adjusted according to whether the generator is
residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during
which separated materials are to be placed at the
curbside, or similar location, for collection.

(3) A system that collects recyclable materials from
the curbside, or similar location, at least once per
month: Provided, That to encourage full participation,
the program shall, to the maximum extent possible,
provide for the collection of recyclables at the same rate
of frequency, and simultaneous with, the regular
collection of solid waste.

(4) Provisions to ensure compliance with the ordi-
nance, including incentives and penalties.

(5) A comprehensive public information and education
program covering the importance and benefits of
recycling, as well as the specific features and require-
ments of the recycling program. As part of the educa-
tion program, each municipality shall, at a minimum,
notify all persons occupying residential, commercial,
institutional or other premises within its boundaries of
the requirements of the program, including how the
system will operate, the dates of collection, the respon-
sibilities of persons within the municipality and
incentives and penalties.

(6) Consultation with the county or regional solid
waste authority in which the municipality is located to
avoid duplication, ensure coordination of solid waste
programs and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of
this section, a comprehensive recycling program for
solid waste may be established in any county of this state
by action of a county commission in accordance with the
provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid
waste shall be segregated into separate identifiable
recyclable materials by each person, partnership,
corporation and governmental agency subscribing to a
solid waste collection service in the county or transport-
ing solid waste to a commercial solid waste facility in
the county;

(2) Each person engaged in the commercial collection,
transportation, processing or disposal of solid waste
within the county shall accept only such solid waste
from which recyclable materials in accordance with said
county's comprehensive recycling program have been
segregated; and

(3) That the provisions of the recycling plan prepared
pursuant to section four of this article shall, to the extent
practicable, be incorporated in said county's comprehen-
sive recycling program.

(d) For the purposes of this article, recyclable
materials shall include, but not be limited to, steel and
bi-metallic cans, aluminum, glass, paper and such other
solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by:

(1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue.

A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other countywide election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than seventy days before the election, order that the issue be placed on the ballot and referendum held at the next primary, general or special election to determine whether it is the will of the voters of said county that a policy of comprehensive recycling of solid waste be established in the county: Provided, That the petition bearing the necessary signatures has been filed with the county commission at least one hundred days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to estab-
lish a comprehensive recycling program for solid waste in __________ County, West Virginia?

☐ For Recycling
☐ Against Recycling

(Place a cross mark in the square opposite your choice.)

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within one hundred eighty days of said certification, establishing a comprehensive recycling program for solid waste in the county:

Provided, That such program shall be implemented and operational no later than twelve months following said certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, said policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in __________ County, West Virginia?

☐ Continue Recycling
☐ End Recycling

(Place a cross mark in the square opposite your choice.)"

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive
recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than thirty thousand persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: Provided, That such materials recovery facility shall be subject to approval by both the public service commission and the solid waste management board upon a finding by both the public service commission and the solid waste management board that the establishment of such materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

(a) Effective the first day of June, one thousand nine hundred ninety-four, it shall be unlawful to deposit lead-acid batteries in a solid waste facility in West Virginia; effective the first day of June, one thousand nine hundred ninety-five, it shall be unlawful to deposit tires in a solid waste facility in West Virginia; and effective the first day of January, one thousand nine hundred ninety-six, it shall be unlawful to deposit yard waste, including grass clippings and leaves, in a solid waste facility in West Virginia: Provided, That such prohibitions do not apply to a facility designed specifically to compost such yard waste or otherwise recycle or reuse such items: Provided, however, That reasonable and
14 necessary exceptions to such prohibitions may be included as part of the rules promulgated pursuant to subsection (c) of this section.

17 (b) No later than the first day of May, one thousand nine hundred ninety-three, the solid waste management board shall design a comprehensive program to provide for the proper handling of yard waste and lead-acid batteries. No later than the first day of May, one thousand nine hundred ninety-four, a comprehensive plan shall be designed in the same manner to provide for the proper handling of tires.

25 (c) No later than the first day of August, one thousand nine hundred ninety-three, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of this code, as amended, to implement and enforce the program for yard waste and lead-acid batteries designed pursuant to subsection (b) of this section. No later than the first day of August, one thousand nine hundred ninety-four, the division of environmental protection shall promulgate rules, in accordance with chapter twenty-nine-a of said code, as amended, to implement and enforce the program for tires designed pursuant to subsection (b) of this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

1 (a) Notwithstanding any provision of this article, or any provision of article five-f or nine, chapter twenty, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services
in any county or wasteshed of the state resulting from
the closure of an existing landfill in said county or
wasteshed: Provided, That the commission is not
required to make any determination of need, necessity
or reasonableness when acting on any application filed
pursuant to this article regarding an existing commer-
cial solid waste disposal facility, which is owned or
operated by a county government or by an agency, board
or entity thereof, and which has previously been denied
a certificate of need prior to the effective date of this
section. The authority granted to the commission under
this section shall expire after the thirtieth day of
September, one thousand nine hundred ninety-three. No
temporary certificate issued pursuant to this section
shall extend beyond the thirtieth day of September, one
thousand nine hundred ninety-four. The director of the
division of environmental protection shall modify any
commercial solid waste facility permit, issued under
article five-f, chapter twenty of this code, to conform
with the maximum monthly solid waste disposal
tonnage and any other terms and conditions set forth in
a temporary certificate issued under this section.

(b) If the net tonnage increase under a temporary
certificate application made pursuant to subsection (a)
of this section would cause the gross monthly solid waste
disposal tonnage of such facility to exceed ten thousand
tons, a temporary certificate shall be issued only if the
solid waste facility has: (1) Obtained from the county or
regional solid waste authority for the county or counties
in which the facility is located a certificate of site
approval or approval for conversion from a Class B
facility to a Class A facility; and (2) obtained from the
county or regional solid waste authority for the county
or counties in which the facility is located approval to
increase the maximum monthly tonnage disposed at the
facility; and (3) obtained from the county commission for
the county or counties in which the landfill is located
approval to operate as a Class A facility; and (4) has a
certificate of need application pending before the public
service commission; and (5) has installed a composite
liner system in compliance with the requirements set
forth in the solid waste management rules promulgated
by the division of environmental protection or its
predecessor. Such emergency certificate shall not
authorize an increase in the maximum monthly solid
waste disposal tonnage in an amount greater than that
approved by the county or regional solid waste authority
for the county or counties in which the landfill is located.

CHAPTER 32
(H. B. 5003—By Delegates Martin, Michael and Love)
[Passed March 16, 1994; in effect July 1, 1994. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article
ten, chapter four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section eight-f, article twenty-one,
chapter eleven of said code, all relating to continuing
departments, agencies and boards; scheduling perfor­
manCe audits and preliminary performance reviews by
the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:
That sections four and five, article ten, chapter four of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted; and that section
eight-f, article twenty-one, chapter eleven of said code be
amended and reenacted, all to read as follows:

Chapter
  4. The Legislature.
  11. Taxation.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.
§4-10-4. Termination of departments, agencies or boards following perform­
ance audits.
§4-10-5. Termination of agencies or boards following preliminary perfor­
ance reviews.
§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-five: Division of environmental protection; division of labor; division of tourism; division of corrections; division of natural resources; division of highways.

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

(3) 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: Farm management commission; state structural barriers compliance board; share in your future commission.

(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; the marketing and development divisions of the department of agriculture; real estate commission; juvenile facilities review panel; office of water resources; center for professional development; board of architects; state building commission; family law masters system; public employees insurance agency; public employees
insurance agency finance board; division of rehabilitation services.

(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; workers' compensation; unemployment compensation; office of judges of workers' compensation; 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; child advocate office; 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; 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; public service commission.

(7) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia's membership in the Ohio river valley water sanitation commission; ethics commission; oil and gas inspectors' examining board; veterans' council; West Virginia's membership in the southern regional education board.
CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8f. Termination of credit by law.

1 The tax credit allowed by this section shall be
2 terminated on the thirty-first day of December, one
3 thousand nine hundred ninety-five, unless review of the
4 tax credit shall be undertaken pursuant to the provi-
5 sions of sections nine, ten and eleven, article ten, chapter
6 four of this code: Provided, That for those rehabilitation
7 projects for which a completed Part 2 (Description of
8 Rehabilitation) of the historic preservation certification
9 application was filed with the West Virginia division of
10 culture and history prior to that date and subsequently
11 approved in accordance with section eight-c of this
12 article, the credit shall continue to be allowed pursuant
13 to this article.

14 The West Virginia division of culture and history
15 shall provide a full disclosure of applications for credit
16 made and of credits granted pursuant to this section to
17 the joint committee on government and finance and to
18 the governor annually. The first report shall be pres-
19 ented on or before the first day of January, one thousand
20 nine hundred ninety-five.

CHAPTER 33

(H. B. 5000—By Delegates Kiss, Rowe, Fragale and Petersen)

[Passed March 16, 1994; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a revolving valuation fund in each county; funding of valuation and training programs; conditions for transfer of funds; repayment of valuation commis-

sion; continuing funding of on-going extra costs asso-

related with the valuation and training; additional funds for assessors' offices; requiring assessors to submit a
request to the valuation commission regarding the percentage; allowing the valuation commission to recommend a lower percentage; certification of the percentage to the chief inspector's office; distribution of funds provided by the valuation commission; and deposit of moneys due to the valuation fund.

Be it enacted by the Legislature of West Virginia:

That section eight, article one-c, 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 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

1. (a) In order to finance the extra costs associated with the valuation and training mandated by this article, there is hereby created a revolving valuation fund in each county which shall be used exclusively to fund the assessor's office. The valuation and training programs, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety, shall be funded through the valuation commission and funds shall be distributed in accordance with need on a county by county basis and the county's approved plan. The necessary funds shall be transferred to each county's valuation fund following approval of the plans submitted by the respective assessors. The funds shall be transferred by the valuation commission on condition that no persons shall be hired under this section without the approval of the valuation commission, the hiring shall be without regard to political favor or affiliation, and the persons hired under this section are subject to the provisions of the ethics act in chapter six-b of this code, including, but not limited to, the conflict of interest provisions under chapter six-b of this code. Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of the employment by the valuation commission.
During the fiscal year commencing the first day of July, one thousand nine hundred ninety-four, and thereafter as necessary, any county receiving moneys provided by the valuation commission under this section shall use the county's valuation fund receipts which exceed the total amount received in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to repay the valuation commission the money received plus accrued interest: Provided, that the fund should not drop below one percent of the total municipal, county commission and county school board revenues generated by application of the respective regular levy rates.

(b) To finance the ongoing extra costs associated with the valuation and training mandated by this article, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-one, and for a period of at least three consecutive years, an amount equal to two percent of the previous year's projected tax collections, or whatever percent is approved by the valuation commission, from the regular levy set by, or for, the county commission, the county school board and any municipality in the county shall be prorated as to each levying body, set aside and placed in the valuation fund. In May of each year the sheriff of each county shall make a final transfer to the assessor's valuation fund which will reflect any difference in the amount of actual collections in the previous fiscal year as opposed to those previously projected by the chief inspector's office as the basis for the contributions to the valuation fund, to bring the total transfers for that year to two percent of the previous year's actual collections. The two percent payment shall continue in any county where funds borrowed from the state pursuant to subsection (a) of this section have not been fully repaid until such moneys, together with accrued interest thereon, have been fully repaid or until the first day of July, one thousand nine hundred ninety-four, whichever comes last. Each year thereafter, for counties with loans, and each fiscal year after the thirtieth day of June, one thousand nine hundred ninety-four, for those counties without loans, the valuation fund shall be
continued at an annual amount of two percent of the
previous year's projected tax collections from such
regular levies: Provided, That for the fiscal year
beginning on the first day of July, one thousand nine
hundred ninety-five, and any fiscal year thereafter, the
assessors, in order to receive two percent or any percent
of the previous year's projected tax collections for their
valuation funds, must submit a request to the valuation
commission no later than the fifteenth day of December,
one thousand nine hundred ninety-four, and by the same
date in December each year thereafter. The submission
shall include a projected expenditure budget, including
any balances expected to be carried forward, with
justification for the percent requested for their valuation
fund for the ensuing fiscal year. A copy of the projected
budget and justifications shall also be sent to the
assessor's county commission, municipalities and school
board. The valuation commission shall meet after the
fifteenth day of January but prior to the first day of
February each year beginning in the year one thousand
nine hundred ninety-five, and has authority to accept
and confirm two percent as a justifiable amount, or to
establish whatever lower percent of the previous year's
projected tax collections each assessor shall receive
based upon the evidence at hand, and the particular
reevaluation needs of the county. Absent a proper
application by any assessor, the valuation commission
may, after consultation with the tax commissioner's
office, set whatever allowable percent it considers
proper. Following its decisions, the valuation commis-
sion shall certify to the chief inspector's office of the
department of tax and revenue, the percent approved
for each assessor's valuation fund, and the chief
inspector's office shall notify each affected sheriff and
levying body of the moneys due from their levies to their
respective valuation funds. County commissions, boards
of education and municipalities may present written
evidence, prior to the fifteenth day of January, one
thousand nine hundred ninety-five, and by the same date
of each year thereafter, acceptable to the valuation
commission showing that a lesser amount than that
requested by the assessor would be adequate to fund the
extra costs associated with the valuation mandated by
section seven of this article: Provided, however, That the
county commissions, in addition, shall fund the county
assessor's office at least the level of funding provided
during the fiscal year in which this section was initially
enacted.

These additional funds are intended to enable assess-
sors to maintain current valuations and to perform the
periodic reevaluation required under section nine of this
article.

(c) Any funds provided by the valuation commission
shall be distributed among the counties by the property
valuation training and procedures commission based
upon workload, need and other relevant factors as shown
by the valuation plans developed under section seven of
this article.

(d) Moneys due the valuation fund shall be deposited
by the sheriff of the county on a monthly basis as
directed by the chief inspector's office for the benefit of
the assessor and shall be available to and may be spent
by the assessor without prior approval of the county
commission, which shall not exercise any control over
the fund. Clerical functions related to the fund shall be
performed in the same manner as done with other
normal funding provided to the assessor.

CHAPTER 34
(S. B. 1023—Originating in the Committee on Finance.)

[Passed March 18, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-
four, 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 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-two; preserving prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-four, 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 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-four, 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-three, 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-four, 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-four shall be retroactive and shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-three, 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-three, the law in effect for each of those years shall be fully preserved as to each such year.

CHAPTER 35
(H. B. 5016—By Delegates Pettit and Love)

[Passed March 17, 1994; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine; to amend and reenact section twelve-b, article twenty-three, chapter nineteen of said code; to amend and reenact section nine, article twenty-two, chapter twenty-nine of said code; and to amend chapter twenty-nine of said code by adding thereto a new article, designated article twenty-two-a, all relating to the operation of video lottery games at licensed horse and dog racetracks; creating a tourism promotion fund; earmarking one fourth of one percent of a televised racing day's pari-mutuel pool for the racetrack employee's pension trust; removing a prohibition against including the handle from televised simulcast racing in the calculation of average daily handle; authorizing a lottery game which uses an electronic computer and a video screen to operate a game and communicate the results thereof, and restricting its availability to private clubs, retail liquor licenses and class A nonintoxicating
beer licensees; creating the racetrack video lottery act; providing legislative findings and declarations and legislative purpose; providing definitions of terms; authorizing the implementation and operation of video lottery games; providing for the application of article twenty-two, chapter twenty-nine; specifying video lottery terminal requirements and specifications; relating to applications for approval of video lottery terminals, testing of video lottery terminals and report of test results, modifications to approved video lottery terminals, seizure and destruction of nonconforming video lottery terminals; prescribing hardware specifications, software specifications for randomness testing, percentage payout, continuation of game play after malfunction and play transaction records; establishing license and permit qualifications for manufacturers, racetracks, service technicians and validation managers; relating to information to be furnished by applicants for license or permit and waiver of liability; requiring oath or affirmation of applications; requiring applicants to provide accurate and material information; relating to forms of application; providing for local option elections; relating to form of petition for local option elections, legal publications related to local option elections, certification of results of local option elections, issuance of video lottery license, notice of incomplete application and notice of license or permit denial, suspension or revocation; providing procedures for review of license or permit denial, suspension or revocation; relating to license and permit fees, renewal fees and renewal dates, bonding, renewal of license or permit and notice of change affecting license or permit; providing that license or permit is not transferrable or assignable; relating to general duties of all video lottery license and permit holders, specific duties of permitted manufacturers, permitted service technicians, permitted validation managers and licensed racetracks; specifying video lottery game accounting and reporting requirements; relating to communications protocol data, distribution of net terminal income, remittance through electronic transfer of funds, commission control of accounting for terminal income, optional manual reporting and pay-
ment, request for reports, examination of accounts and records and video lottery terminal maintenance; requiring manufacturers to provide training; relating to availability of training, reports and certificates of training programs, requirements of service technicians, requirement for maintenance logs, keys to video lottery terminals, notification of repairs to the logic area, notification of broken seals on logic boards, number and location of terminals, security requirements and payment of credits, method of payments and restrictions on payment of credits; requiring defacing of redeemed tickets; relating to liability for video lottery terminal malfunction and transportation and registration of video lottery terminals; providing hearing and appeal procedures; defining certain misdemeanor and felony offenses related to the operation of video lottery games and establishing penalties therefor; providing for civil penalties for certain violations; providing for a resolution of any disagreement between the racing commission and the lottery commission; providing for severability; and providing an effective date and termination date.

Be it enacted by the Legislature of West Virginia:

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

Chapter

19. Agriculture.
29. Miscellaneous Boards and Officers.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DIVISION OF TOURISM AND PARKS.
§5B-1-9. Tourism promotion fund created; use of funds; and establishment of tourism promotion fund commission.

There is hereby created in the state treasury, a special revenue fund to be known as the “tourism promotion fund”. It shall be expended by the commissioner of the division of tourism and parks in the following manner:

(a) A minimum of five percent of the moneys deposited in the fund each year shall be used solely for direct advertising for West Virginia travel and tourism. Direct advertising means advertising which is limited to television, radio, newspaper, magazines and outdoor billboards, or any combination thereof;

(b) The balance of the moneys deposited in the fund shall be used for direct advertising within the state’s eight regional development districts. The funds shall be made available to these districts beginning the first day of July, one thousand nine hundred ninety-four, according to rules promulgated by the division of tourism and parks; and

(c) (1) There is hereby established an eight-member tourism promotion fund commission which shall be composed of one member each from the House and Senate, each to be appointed by the speaker and the president, respectively, the commissioner of the department of tourism and parks and his or her designee, the state travel director for the division of tourism and parks, and four representatives of the private sector tourism industry appointed by the governor from a list submitted by the West Virginia hospitality and travel association. Members of the commission who are not employees of the state of West Virginia shall be reimbursed for traveling expenses.

(2) The commission shall meet upon call by the commissioner, but shall meet at least four times each fiscal year beginning the first day of July, one thousand nine hundred ninety-four. All advertising expenditures over twenty-five thousand dollars from the tourism promotion fund require prior approval from the commission.
(d) The commission may assign televised racing days at any time. When a televised racing day is assigned, the commission shall assign either a steward or an auditor to preside over the televised races at the licensee racetrack.

(e) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(2) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivision (1) of this subsection, the licensee shall pay, for each televised racing day, one fourth of one percent of the total pari-mutuel pools for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission and to be used for payments into the pension plan for all employees of the licensed racing association.

(f) After deducting the tax required by subsection (e) of this section, the amount required to be paid under the terms of the contract with the legal wagering entity of another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty
percent of the remainder into the purse fund established under the provisions of subdivision (1), subsection (b), section nine of this article.

(g) The provisions of the “Federal Interstate Horse-racing Act of 1978”, also known as Public Law 95-515, Section 3001-3007 of Title 15, U.S. Code, as amended, controls in determining the intent of this section.

(h) On and after the first day of January, one thousand nine hundred ninety-five, the handle from televised simulcast racing shall be included in the calculation of “average daily handle” as it is calculated in section ten of this article to determine the alternative daily pari-mutuel pool tax.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article
22A. Racetrack Video Lottery.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing of results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems.

(a) The commission shall initiate operation of the state lottery on a continuous basis at the earliest feasible and practical time, first initiating operation of the pre-printed instant winner type lottery. The lottery shall be initiated and shall continue to be operated so as to produce the maximum amount of net revenues to benefit the public purpose described in this article consonant with the public good. Other state government departments, boards, commissions, agencies and their officers
(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery: Provided, That:

(1) No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

(2) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

(3) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(4) No lottery utilizing a machine may use machines which dispense coins or currency.

(5) A lottery game which utilizes an electronic computer and a video screen to operate a lottery game and communicate the results thereof, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player, may only be made available by the commission in (A) private clubs licensed in accordance with the provisions of article seven, chapter sixty of this code, (B) retail licensees licensed in accordance with the provisions of article three-a of said chapter sixty, and (C) in the facilities of class A licensees which are licensed in accordance with the provisions of section nine, article sixteen, chapter eleven of this code, in which facility at least seventy-five percent of the nonintoxicating beer sold by the class A licensee in the preceding year was sold for consumption on the premises: Provided, That if sales information is not available for the preceding year, the commission in its discretion may base any issuance or denial of an annual license upon a reasonable projection of the volume of sales of nonintoxicating beer for consumption on the premises as a percentage of the total sales of nonintoxicating beer.

(6) Selection of the winner must be predicted totally
(7) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(8) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(9) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.

(10) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid more than once, and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(11) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(12) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(13) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the
The determination of whether the participant is a valid winner is subject to the lottery or game play rules and the winner validation tests established by the commission. The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(14) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential, and shall not be subject to any discovery procedure in any civil, judicial, administrative or other proceeding, nor subject to the provisions of article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) The commission shall proceed with operation of such additional lottery games, including the implementation of games utilizing a variety of existing or future technological advances at the earliest feasible date. The commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-2. Legislative findings and declarations.
§29-22A-4. Video lottery games authorized.
§29-22A-5. Video lottery terminal requirements; filing of specific game rules with the secretary of state; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.
This article shall be known and may be cited as the “Racetrack Video Lottery Act.”
§29-22A-2. Legislative findings and declarations.

(a) The Legislature finds and declares that the limited video lottery games authorized by this article are "lotteries" as that term is commonly understood and as that term is used in West Virginia Constitution, article VI, section thirty-six, the video lottery games authorized by this article being lottery games which utilize advanced computer technology; and that the Constitution grants to the Legislature the authority to establish, by general law, the manner of regulation, control, ownership and operation of lottery games in the state of West Virginia.

(b) The Legislature further finds and declares that the state can control, own and operate a video lottery by possessing a proprietary interest in the main logic boards, all erasable, programmable read-only memory chips used in any video lottery equipment or games, and software consisting of computer programs, documentation and other related materials necessary for the video lottery system to be operated. The state may acquire a proprietary interest in video lottery game software, for purposes of this article, through outright ownership or through an exclusive product license agreement with a manufacturer whereby the manufacturer retains copyrighted ownership of the software but the license granted to the state is nontransferable and authorizes the state to run the software program, solely for its own use, on the state's central equipment unit and electronic video terminals networked to the central equipment unit.

(c) The Legislature further finds and declares that the state can control and regulate a video lottery if the state limits licensure to a limited number of video lottery facilities located at qualified horse or dog racetracks, extends strict and exclusive state regulation to all persons, locations, practices and associations related to the operation of licensed video lottery facilities, and provides comprehensive law enforcement supervision of video lottery activities.

(d) The Legislature further finds and declares that
since the public has an interest in video lottery operations and since lottery operations conducted pursuant to West Virginia Constitution, article VI, section thirty-six, and under this article represent an exception to the general statutory policy of the state concerning wagering for private gain, participation in a video lottery by a licensee or permittee under this article shall be deemed a privilege conditioned upon the proper and continued qualification of the licensee or permittee and upon the discharge of the affirmative responsibility of each licensee to provide to the regulatory and investigatory authorities established by this article any assistance and information necessary to assure that the policies declared by this article are achieved. Consistent with this policy, it is the intent of this article to preclude the creation of any property right in any license or permit issued by the state under this article, the accrual of any value to the privilege of participation in any video lottery operation, or the transfer of any license or permit, and to require that participation in video lottery operations be solely conditioned upon the individual qualifications of persons seeking such privilege.

(e) The purpose of this article is to define and provide specific standards for the operation of video lottery games at pari-mutuel racing facilities licensed by the state racing commission pursuant to article twenty-three, chapter nineteen of this code. The Legislature finds and declares that the existing pari-mutuel racing facilities in West Virginia provide a valuable tourism resource for this state and provide significant economic benefits to the citizens of this state through the provision of jobs and the generation of state revenues; that this valuable tourism resource is threatened because of a general decline in the racing industry and because of increasing competition from racing facilities and lottery products offered by neighboring states; and that the survival of West Virginia's pari-mutuel racing industry is in jeopardy unless modern lottery games are authorized at the racetracks.

As used in this article:

(a) "Applicant" means any person applying for any video lottery license or permit.

(b) "Associated equipment" means any hardware located on the licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer", "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and disable programs;

(e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.

(h) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals
(j) "Display" means the visual presentation of video lottery game features on the video display monitor or screen of a video lottery terminal.

(k) "Gross terminal income" means the total amount of cash inserted into the video lottery terminals operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(l) "License", or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.

(m) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(n) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components thereof, the random number generator thereof, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(o) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(p) "Own" means any beneficial or proprietary
interest in any property or business of an applicant or licensed racetrack.

(q) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That, for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a facility which was licensed prior to the first day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and which conducts not less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing commission in accordance with the provisions of section twelve-b, article twenty-three, chapter nineteen of this code.

(r) "Permit" means authorization granted by the commission to a person to function as either a video lottery manufacturer, service technician or validation manager.

(s) "Person" means any natural person, corporation, association, partnership, limited partnership or other entity, regardless of its form, structure or nature.

(t) "Player" means a person who plays a video lottery game on a video lottery terminal at a racetrack licensed by the commission to conduct video lottery games.

(u) "Service technician" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who performs service, maintenance and repair on licensed video lottery terminals in this state.

(v) "Video lottery game" means a commission approved, owned and controlled electronically simulated game of chance which is displayed on the screen or video monitor of a video lottery terminal and which:

(1) Is connected to the commission's central control computer by an on-line or dial-up communication system;
(2) Is initiated by a player's insertion of coins or currency into a video lottery terminal, which causes game play credits to be displayed on the video lottery terminal and, with respect to which, each game play credit entitles a player to choose one or more symbols or numbers or to cause the video lottery terminal to randomly select symbols or numbers;

(3) Allows the player to win additional game play credits based upon game rules which establish the random selection of winning combinations of symbols or numbers or both and the number of free play credits to be awarded for each winning combination of symbols or numbers or both;

(4) Is based upon a computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either (A) signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination, (B) signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether such additional selection presents the best chance, based upon probabilities, that the player may select a winning combination, or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear
all game play credits and print a redemption ticket
entitling the player to receive the cash value of the free
plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly
associated with casino gambling: roulette, dice, baccarat
card games, or games having a video display depicting
symbols which appear to roll on drums to simulate a
classic casino slot machine: Provided, That game themes
of other card games and keno may be used.

(w) “Validation manager” means a person who holds
a permit issued by the commission and who performs
video lottery ticket redemption services.

(x) “Video lottery” means a lottery which allows a
game to be played utilizing an electronic computer and
an interactive computer terminal device, equipped with
a video screen and keys, a keyboard or other equipment
allowing input by an individual player, into which
terminal device the player inserts coins or currency as
consideration in order for play to be available, and
through which terminal device the player may receive
free games or credit that can be redeemed for cash, or
nothing, as may be determined wholly or predominantly
by chance. “Video lottery” does not include a lottery
game which merely utilizes an electronic computer and
a video screen to operate a lottery game and communi-
cate the results thereof, such as the game “Travel”, and
which does not utilize an interactive electronic terminal
device allowing input by an individual player.

(y) “Video lottery terminal” means a commission-
approved interactive electronic terminal device which is
connected with the commission’s central computer
system, and which is used for the purpose of playing
video lottery games authorized by the commission. A
video lottery terminal may simulate the play of one or
more video lottery games.

(z) “Wager” means a sum of money or thing of value
risked on an uncertain occurrence.

§29-22A-4. Video lottery games authorized.

1 The state lottery commission is authorized to imple-
ment and operate video lottery games at pari-mutuel racing facilities in this state in accordance with the provisions of this article and the applicable provisions of article twenty-two of this chapter. The provisions of article twenty-two of this chapter apply to this article, except in the event of conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two of this chapter. In that event, the provisions of this article shall supersede any conflicting or inconsistent provisions contained in article twenty-two of this chapter.

§29-22A-5. Video lottery terminal requirements; filing of specific game rules with the secretary of state; application for approval of a video lottery terminal; testing of video lottery terminals; report of test results; modifications to previously approved models; conformity to prototype; seizure and destruction of terminals.

(a) Video lottery terminals registered with and approved by the commission for use at licensed racetracks may offer video lottery games regulated, controlled, owned and operated by the commission in accordance with the provisions of this section, and utilizing specific game rules separately filed from time to time by the commission with the secretary of state.

(b) A manufacturer may not sell or lease a video lottery terminal for placement at a licensed racetrack in this state unless the terminal has been approved by the commission. Only manufacturers with permits may apply for approval of a video lottery terminal or associated equipment. The manufacturer shall submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals and any other information requested by the commission for the purpose of analyzing and testing the video lottery terminal or associated equipment.

(c) The commission may require that two working models of a video lottery terminal be transported to the location designated by the commission for testing,
(1) The manufacturer shall pay all costs of testing, examination, analysis and transportation of such video lottery terminal models. The testing, examination and analysis of any video lottery terminal model may require dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The commission may require that the manufacturer provide specialized equipment or pay for the services of an independent technical expert to test the terminal.

(2) The manufacturer shall pay the cost of transportation of two video lottery terminals to lottery headquarters. The commission shall conduct an acceptance test to determine terminal functions and central system compatibility. If the video lottery terminal fails the acceptance test conducted by the commission, the manufacturer shall make all modifications required by the commission.

(d) After each test has been completed, the commission shall provide the terminal manufacturer with a report containing findings, conclusions and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with the provisions of this article. Prior to approving a particular terminal model, the commission may require a trial period not in excess of sixty days for a licensed racetrack to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the commission.

(e) The video lottery terminal manufacturer and licensed racetrack are jointly responsible for the assembly and installation of all video lottery terminals and associated equipment. The manufacturer and licensed racetrack shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a request for modification of an existing video terminal prototype is approved by the commission. The request must contain a detailed
description of the type of change, the reasons for the change and technical documentation of the change.

(f) Each video lottery terminal approved for placement at a licensed racetrack must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission. If any video lottery terminal or any video lottery terminal modification, which has not been approved by the commission, is supplied by a manufacturer and operated by a licensed racetrack, the commission shall seize and destroy all of that licensed racetrack's and manufacturer's noncomplying video lottery terminals and shall suspend the license and permit of the licensed racetrack and manufacturer.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) Video lottery terminals licensed for placement in this state shall meet the following hardware specifications:

(1) Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

(2) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.
(3) An on/off switch which controls the electrical
current used in the operation of the terminal shall be
located in an accessible place within the interior of the
video lottery terminal.

(4) The operation of each video lottery terminal may
not be adversely affected by any static discharge or
other electromagnetic interference.

(5) A minimum of one electronic or mechanical coin
acceptor or other means accurately and efficiently to
establish credits shall be installed on each video lottery
terminal. Each video lottery terminal may also contain
bill acceptors for one or more of the following: One
dollar bills, five dollar bills, ten dollar bills and twenty
dollar bills. All coin and bill acceptors must be approved
by the commission prior to use on any video lottery
terminal in this state.

(6) Access to the interior of video lottery terminal
shall be controlled through a series of locks and seals.

(7) The main logic boards and all erasable program-
mable read-only memory chips (Eproms) are deemed to
be owned by the commission and shall be located in a
separate locked and sealed area within the video lottery
terminal.

(8) The cash compartment shall be located in a
separate locked area within or attached to the video
lottery terminal.

(9) No hardware switches, jumpers, wire posts or any
other means of manipulation may be installed which
alter the pay tables or payout percentages in the
operation of a game. Hardware switches on a video
lottery terminal to control the terminal's graphic
routines, speed of play, sound and other purely cosmetic
features may be approved by the commission.

(10) Each video lottery terminal shall contain a single
printing mechanism capable of printing an original
ticket and retaining an exact legible copy within the
video lottery terminal or other means of capturing and
retaining an electronic copy of the ticket data as
approved by the commission. The following information
shall be recorded on the ticket when credits accrued on
a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed
in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the
commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be
on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed
on the video lottery terminal face or screen. The
commission may reject any rules of play which are
incomplete, confusing, misleading or inconsistent with
game rules approved by the commission. For each video
lottery game, there shall be a display detailing the
credits awarded for the occurrence of each possible
winning combination of numbers or symbols. A video
lottery terminal may not allow more than two dollars
to be wagered on a single game. All information
required by this subdivision shall be displayed under
glass or another transparent substance. No stickers or
other removable devices may be placed on the video
lottery terminal screen or face without the prior
approval of the commission.

(13) Communication equipment and devices shall be
installed to enable each video lottery terminal to
communicate with the commission's central computer
system by use of a communications protocol provided by
the commission to each permitted manufacturer, which
protocol shall include information retrieval and termi-
nal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

(14) All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

(b) Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:

(1) Chi-square test. Each symbol or number shall satisfy the ninety-nine percent confidence limit using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

(2) Runs test. Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the “runs test” for the existence of recurring patterns within a set of data.

(3) Correlation test. Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

(4) Serial correlation test. Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal:
(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval must be obtained prior to applying for testing of such high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used;

(2) Number of credits wagered;

(3) Number of credits won;

(4) Number of credits paid out by a printed ticket;

(5) Number of times the logic area was accessed;

(6) Number of times the cash door was accessed;

(7) Number of credits wagered in the current game;
(8) Number of credits won in the last complete video lottery game; and

(9) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall directly or through a contract with a third party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals, utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate, any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

§29-22A-7. License and permit qualifications; individual qualifications; applicant required to furnish information; waiver of liability; oath or affirmation; duty to provide accurate and material information.

(a) No video lottery license or permit may be granted unless the commission has determined that the applicant satisfies all of the following qualifications:

(1) An applicant for a video lottery license must hold a valid racing license granted by the West Virginia
racing commission under provisions of article twenty-three, chapter nineteen of this code.

(2) An applicant must be a person of good character and integrity.

(3) An applicant must be a person whose background, including criminal record, reputation and associations, does not pose a threat to the security and integrity of the lottery or to the public interest of the state. A person who has been convicted of any violation of article twenty-two of this chapter or of this article or of any crime related to theft, bribery, gambling or involving moral turpitude is not eligible for any license or permit. The commission shall revoke the license or permit of any person who is convicted of any such crime after a license or permit is granted.

(4) An applicant must be a person who demonstrates the business ability and experience necessary to establish, operate and maintain the business for which a video lottery license or permit application is made.

(5) An applicant must be a person who has secured adequate financing for the business for which a video lottery license or permit application is made. The commission shall determine whether financing is from a source which meets the qualifications of this section, and is adequate to support the successful performance of the duties and responsibilities of the licensed racetrack or permit holder. An applicant for a video lottery license shall disclose all financing or refinancing arrangements for the purchase, lease or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the commission. A licensed racetrack shall request commission approval of any change in financing or lease arrangements at least thirty days before the effective date of the change.

(6) A racetrack applying for a video lottery license or a license renewal must present to the commission evidence of the existence of an agreement, regarding the proceeds from video lottery terminals, between the applicant and the representative of a majority of the horse owners and trainers, the representative of a
majority of the pari-mutuel clerks and the representative of a majority of the breeders or the representative of a majority of the kennel owners for the applicable racetrack who hold permits required by section two, article twenty-three, chapter nineteen of this code.

(7) A racetrack applying for a video lottery license or a license renewal must file with the commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease or other assignment to the racetrack of video lottery terminals, the electronic computer components thereof, the random number generator thereof, or the cabinet in which it is housed. Once filed with the commission, such agreement shall be a public document subject to the provisions of article one, chapter twenty-nine-b of this code.

(b) No video lottery license or permit may be granted to an applicant until the commission determines that each person who has control of the applicant meets all applicable qualifications of subsection (a) of this section. The following persons are deemed to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant (but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business) who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant.

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(c) Applicants must furnish all information, including
financial data and documents, certifications, consents, waivers, individual history forms and other materials requested by the commission for purposes of determining qualifications for a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation requested by the commission. The burden of proving qualification for any video lottery license or permit shall be on the applicant.

(d) Each applicant shall bear all risks of adverse public notice, embarrassment, criticism, damages or financial loss which may result from any disclosure or publication of any material or information obtained by the commission pursuant to action on an application. The applicant shall, as a part of its application, expressly waive any and all claims against the commission, the state of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

(e) All application, registration and disclosure forms and other documents submitted to the commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before an officer qualified to administer oaths.

(f) An applicant who knowingly fails to reveal any fact material to qualification or who knowingly submits false or misleading material information is ineligible for a video lottery license or permit.

§29-22A-8. Form of application; local option elections; issuance of license; notice of incomplete application; notice of license or permit denial, suspension or revocation; procedure for review of license or permit denial, suspension or revocation; fees, renewal fees and renewal dates; bonding; renewal of licenses and permits; notice of change affecting license or permit; license or permit not transferrable or assignable.
(a) The commission shall determine the form of applications to be used and shall not consider incomplete applications. The commission may consider an application when the applicant has completed and executed all forms and documents required by the commission and all application fees and costs have been paid.

(b) The question of whether video lottery games shall be permitted at pari-mutuel racetracks shall be determined by local option election in each county in which a pari-mutuel racetrack is located. The local option election on this question may be placed on the ballot in each county at the primary election to be held on the tenth day of May, one thousand nine hundred ninety-four, or at any primary, general or special election to be held thereafter. The county commission of the county in which the racetrack is located shall give notice to the public of such election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

☐ Yes  ☐ No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election to the commission.
(c) Upon receipt of the results of the election from the county commission, and if a majority has voted "yes", the commission shall issue the requested license if the applicant is otherwise qualified for the license. If a majority has voted "no", the commission shall so notify the applicant, the application shall be denied, and another election on the issue shall not be held for a period of two years. If a majority has voted "yes", another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts.

The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the county of ___________, do hereby petition that a special election be held within the county of ___________ upon the following question: Shall West Virginia lottery commission video lottery games be permitted within an area at the [name of racetrack] in which pari-mutuel betting is authorized by law?

Name                      Address                      Date

(Post office or street address)

(d) If the commission, prior to the first day of November, one thousand nine hundred ninety-three, has authorized any racetrack to conduct video lottery games at its pari-mutuel facility, the games may continue to operate until the first day of January, one thousand nine hundred ninety-five, pending the results of any local option election held pursuant to the provisions of this section.

(e) The commission may not issue any license or permit until background investigations are concluded. The commission must make an affirmative determina-
tion that the applicant is qualified and the applicable
license or permit fees have been paid prior to issuing
any license or permit.

(f) The commission shall notify the applicant if an
application is incomplete and the notification shall state
the deficiencies in the application.

(g) The commission shall notify applicants in writing
of the denial, suspension or revocation of a permit or
license and the reasons for the denial, suspension or
revocation in accordance with the provisions of section
fifteen of this article.

(h) An applicant may request a hearing to review a
license or permit denial, suspension or revocation in
accordance with section fifteen of this article.

(i) The following license or permit fees shall be paid
annually by each licensed racetrack, or permitted
manufacturer, service technician or validation manager:

(1) Racetrack: $1,000.
(2) Manufacturer: $10,000.
(3) Service technician: $100.
(4) Validation manager: $50.

The fees shall be paid to the commission at the time
of license or permit application and on or before the first
day of July of each year thereafter, at which time the
license or permit may be renewed.

(j) An applicant for a video lottery license shall, prior
to the issuance of the license, post a bond or irrevocable
letter of credit in a manner and in an amount estab-
lished by the commission. The bond shall be issued by
a surety company authorized to transact business in
West Virginia and the company shall be approved by
the insurance commissioner of this state as to solvency
and responsibility.

(k) The commission shall renew video lottery licenses
and permits annually as of the first day of July of each
year, if each person seeking license or permit renewal
submits the applicable renewal fee, completes all
renewal forms provided by the commission, and continues to meet all qualifications for a license or permit.

(1) License and permit holders shall notify the commission of any proposed change of ownership or control of the license or permit holder and of all other transactions or occurrences relevant to license or permit qualification. In order for a license or permit to remain in effect, commission approval is required prior to completion of any proposed change of ownership or control of a license or permit holder.

(m) A license or permit is a privilege personal to the license or permit holder and is not a legal right. A license or permit granted or renewed pursuant to this article may not be transferred or assigned to another person, nor may a license or a permit be pledged as collateral. The purchaser or successor of any license or permit holder must independently qualify for a license or permit. The sale of more than five percent of a license or permit holder's voting stock, or more than five percent of the voting stock of a corporation which controls the license or permit holder or the sale of a license or permit holder's assets, other than those bought and sold in the ordinary course of business, or any interest therein, to any person not already determined to have met the qualifications of section seven of this article voids the license unless the sale has been approved in advance by the commission.

§29-22A-9. General duties of all video lottery license and permit holders; duties of permitted manufacturers; duties of permitted service technicians; duties of permitted validation managers; duties of licensed racetracks.

(a) The general duties required of all video lottery license and permit holders are as follows:

(1) Promptly report to the commission any facts or circumstances related to video lottery operations which constitute a violation of state or federal law.

(2) Conduct all video lottery activities and functions in a manner which does not pose a threat to the public
(3) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a license or permit holder, the commission, the state or the employees thereof, arising from the license or permit holder's participation in the video lottery system authorized by this article.

(4) Assist the commission in maximizing video lottery revenues.

(5) Maintain all records required by the commission.

(b) The specific duties required of manufacturers are as follows:

(1) Manufacture terminals and associated equipment for placement in this state in accordance with the specifications and procedures specified in sections five and six of this article.

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed racetracks.

(3) Maintain and provide an inventory of spare parts to assure the timely repair and continuous operation of licensed video lottery terminals intended for placement in this state.

(4) Provide to licensed racetracks and permitted service technicians technical assistance and training in the service and repair of video lottery terminals and
associated equipment so as to assure the continuous
authorized operation and play of such video lottery
terminals.

(5) Obtain certification of compliance under the
provisions of part fifteen of the federal communication
commission rules for all video lottery terminals placed
in this state.

(c) The specific duties required of service technicians
are as follows:

(1) Maintain all skills necessary for the timely repair
and service of licensed video lottery terminals and
associated equipment so as to ensure the continued,
approved operation of those terminals.

(2) Attend all commission mandated meetings, seminars
and training sessions concerning the repair and
maintenance of licensed video lottery terminals and
associated equipment.

(3) Promptly notify the commission of any electronic
or mechanical video lottery terminal malfunctions.

(d) The specific duties required of validation managers
are as follows:

(1) Attend all commission mandated meetings, seminars
and training sessions concerning the validation and
redemption of video lottery winning tickets and the
operation of all ticket validation terminals and
equipment.

(2) Maintain all skills necessary for the accurate
validation of video lottery tickets.

(3) Supervise video lottery ticket validation procedures at the applicable licensed racetrack.

(e) The specific duties required of all licensed
racetracks are as follows:

(1) Acquire video lottery terminals by purchase, lease
or other assignment and provide a secure location for
the placement, operation and play of the video lottery
terminals.
(2) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer.

(3) Permit no person to tamper with or interfere with the operation of any video lottery terminal.

(4) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the licensed racetrack are at all times connected and prevent any person from tampering or interfering with the operation of the telephone lines.

(5) Ensure that video lottery terminals are within the sight and control of designated employees of the licensed racetrack.

(6) Ensure that video lottery terminals are placed and remain placed in the specific locations within the licensed racetrack which have been approved by the commission. No video lottery terminal or terminals at a racetrack shall be relocated without the prior approval of the commission.

(7) Monitor video lottery terminals to prevent access to or play by persons who are under the age of eighteen years or who are visibly intoxicated.

(8) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals.

(9) Provide no access by a player to an automated teller machine (ATM) in the area of the racetrack where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game.

(10) Pay for all credits won upon presentment of a valid winning video lottery ticket.

(11) Report promptly to the manufacturer and the
commission all video lottery terminal malfunctions and notify the commission of the failure of a manufacturer or service technician to provide prompt service and repair of such terminals and associated equipment.

(12) Conduct no video lottery advertising and promotional activities without the prior written approval of the director.

(13) Install, post and display prominently at locations within or about the licensed racetrack, signs, redemption information and other promotional material as required by the commission.

(14) Permit video lottery to be played only during those hours established and approved by the commission.

(15) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least two million dollars per claim.

(16) Promptly notify the commission in writing of any breaks or tears to any logic unit seals.

(17) Assume liability for lost or stolen money from any video lottery terminal.

(18) Submit an audited financial statement, which has been approved by the commission, to the commission when applying for a license or permit and annually thereafter prior to the time a license or permit may be renewed.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or
applicants applying for a manufacturer's permit, the
protocol documentation data necessary to enable the
respective manufacturer's video lottery terminals to
communicate with the commission's central computer
for transmitting auditing program information and for
activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack
shall be remitted to the commission through the
electronic transfer of funds. Licensed racetracks shall
furnish to the commission all information and bank
authorizations required to facilitate the timely transfer
of moneys to the commission. Licensed racetracks must
provide the commission thirty days' advance notice of
any proposed account changes in order to assure the
uninterrupted electronic transfer of funds. From the
gross terminal income remitted by the licensee to the
commission, the commission shall deduct an amount
sufficient to reimburse the commission for its actual
costs and expenses incurred in administering racetrack
video lottery at the licensed racetrack, and the resulting
amount after such deduction shall be the net terminal
income. The amount deducted for administrative costs
and expenses of the commission may not exceed four
percent of gross terminal income.

(c) Net terminal income shall be divided as set out in
this subsection. The licensed racetrack's share shall be
in lieu of all lottery agent commissions and is considered
to cover all costs and expenses required to be expended
by the licensed racetrack in connection with video
lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net
terminal income, which shall be paid into the general
revenue fund of the state to be appropriated by the
Legislature;

(2) Fourteen percent of net terminal income at a
licensed racetrack shall be deposited in the special fund
established by the licensee, and used for payment of
regular purses in addition to other amounts provided for
in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are
located shall receive two percent of the net terminal income;

(4) One half of one percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia greyhound breeding development fund created under section ten, article twenty-three, chapter nineteen of this code shall receive an equal share of a total of not less than one and one-half percent of the net terminal income: Provided, That for any racetrack which does not have a breeder's program supported by the thoroughbred development fund or the greyhound breeding development fund, the one and one-half percent provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section nine, article one, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in
Charleston, West Virginia. The money shall be deposited in the state treasury in the special department of culture and history fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That after sufficient moneys have been deposited in the fund to complete the veterans memorial, the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund established by the licensee and used for payment of regular purses, in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack's failure to maintain this balance, the commission may disable all of a licensed racetrack's video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack must report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery
terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.
§29-22A-11. Maintenance of video lottery terminals; manufacturers required to provide training; notice of availability of training; reports and certificates of training programs; terminals to be maintained in the condition approved; maintenance log required; keys to video lottery terminals; notice of repairs to the logic area; notice of broken seals on logic board.

(a) No video lottery terminal may be placed in operation in this state until the manufacturer provides training in the service and repair of each approved video lottery terminal model and service technicians complete such training. Manufacturers must submit to the commission the following information on each training program conducted:

1. An outline of the training curriculum;
2. A list of the instructors and their qualifications;
3. Instructional materials; and
4. The time, dates and location of the training programs.

(b) Manufacturers shall notify all licensed racetracks who have purchased or leased that manufacturer's video lottery terminals of all scheduled training programs. Training programs must be scheduled at convenient locations within this state to facilitate attendance by service technicians. Manufacturers must inform licensed racetracks of any new developments in the service and repair of video lottery terminals and provide appropriate subsequent training programs.

(c) The manufacturers shall issue training certificates to each person upon successful completion of a video lottery training program. The certificate shall include the name of the person who completed the training program and the date and the location of the training program. A person who successfully completes training is eligible for a service technician's permit. No person may conduct maintenance on any video lottery terminal or associated equipment unless the commission has
issued a service technician permit to that person.

(d) Each manufacturer shall file with the commission the following information within two weeks after the completion of a training program:

(1) The name of each person who attended and completed the training program;

(2) The name of the manufacturer offering the course;

(3) The manufacturer’s video lottery terminal models on which training for service and repair was provided;

(4) The date and location of the training program; and

(5) Copies of all certificates of completion.

(e) A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person, including lottery personnel, who gains entry into any internal space of a video lottery terminal must sign the log, record the time and date of entry, record the mechanical meter readings and list the areas inspected or repaired. The maintenance log forms shall be retained by licensed racetracks for a period of three years from the date of the last entry. The maintenance logs shall be available upon request for inspection by the commission.

(f) Licensed racetracks shall provide the commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. A logic box seal shall be provided by the commission. The seal shall be affixed by commission personnel to prevent unauthorized access to the video lottery terminal logic unit.

(g) No repairs to, or replacement of, the logic board or circuitry within the logic area may occur unless authorized commission personnel are present and observe the repairs or replacement. The logic area seal shall not be broken by anyone other than authorized commission personnel. Each service technician shall submit a written report within twenty-four hours after the repairs or replacement are completed and the report shall include the serial number of any replacement
board and the new logic area seal number.

(h) The software eproms on the logic board of each video lottery terminal shall be tested by the commission prior to sealing the logic area. Licensed racetracks or permit holders shall notify the commission in writing of any discovered damage, tears or breaks in the logic area seal and, upon notice, the video lottery terminal shall be disabled. The video lottery terminal shall remain disabled until completion by the commission of an investigation of the seal damage.

§29-22A-12. Number and location of video lottery terminals; security.

(a) A racetrack which has been licensed to conduct video lottery games has the right to install and operate up to four hundred video lottery terminals at a licensed racetrack. A licensed racetrack may apply to the commission for authorization to install and operate more than four hundred video lottery terminals. If the commission determines that the installation of additional machines is in the best interest of the licensed racetrack, the lottery commission and the citizens of this state, the commission may grant permission to install and operate additional machines.

(b) All video lottery terminals in licensed racetracks shall be physically located as follows:

(1) The video lottery location shall be continuously monitored through the use of a closed circuit television system capable of recording activity for a continuous twenty-four hour period. All video tapes shall be retained for a period of at least thirty days;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The licensed racetrack shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount locations;

(4) No video lottery terminal may be relocated without
prior approval from the commission; and

(5) Operational video lottery terminals may only be
located in the building or structure in which the
grandstand area of the racetrack is located and in the
area of such building or structure where pari-mutuel
wagering is permitted under the provisions of article
twenty-three, chapter nineteen of this code: Provided,
That if the commission, before the first day of No­
vember, one thousand nine hundred ninety-three, has
authorized any racetrack to operate video lottery
terminals and offer video lottery games in a location
which would not conform to the requirements of this
subdivision, the racetrack may continue to use video
lottery terminals registered with and approved by the
commission at that nonconforming location and to offer
such games and any variations or composites of such
games as may be approved by the commission: Provided,
however, That after the tenth day of May, one thousand
nine hundred ninety-four, for each video lottery termi­
nal located in a nonconforming location, the racetrack
shall locate and operate one video lottery terminal in the
building or structure in which the grandstand area of
the racetrack is located and in the area of such building
or structure where pari-mutuel wagering is permitted.

(c) A licensee shall allow video lottery games to be
played only on days when live racing is being conducted
at the racetrack and/or on televised racing days:
Provided, That this restriction shall not apply to any
racetrack authorized by the commissioner prior to the
first day of November, one thousand nine hundred
ninety-three, to operate video lottery terminals and
conduct video lottery games.

(d) Security personnel shall be present during all
hours of operation at each video lottery terminal
location. Each license holder shall employ such number
of security personnel as the commission determines to
be necessary to provide for safe and approved operation
of the video lottery facilities and the safety and well-
being of the players.
§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.

(a) No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

(1) The ticket is fully legible and printed on paper approved by the commission and the ticket contains all information required by this article;

(2) The ticket is not mutilated, altered, unreadable or tampered with in any manner;

(3) The ticket is not counterfeit, in whole or in part; and

(4) The ticket is presented by a person authorized to play video lottery pursuant to this article.

(b) Each licensed racetrack shall designate validation managers and employees authorized to redeem tickets during the business hours of operation. Credits shall be immediately paid in cash or by check when a player presents a valid ticket for payment. No credits may be paid in tokens, chips or merchandise.

(c) Licensed racetracks shall not redeem tickets for credits awarded on video lottery terminals which are not located on its premises. A ticket must be presented for payment no later than ten days after the date the ticket is printed. The commission is not liable for the payment of any video lottery ticket credits.

(d) All tickets redeemed by a licensed racetrack shall be defaced in a manner which prevents any subsequent presentment and payment.

(e) The commission is not responsible for any video lottery terminal malfunction which causes a credit to be wrongfully awarded or denied to players. The licensed racetrack is solely responsible for any wrongful award or denial of credits.
§29-22A-14. Transportation and registration of video lottery.

(a) Trucking companies or common carriers shipping video lottery terminals shall be bonded and shall ship all terminals in sealed trailers.

(b) A manufacturer transporting one or more video lottery terminals into this state shall, prior to shipment, provide the commission with the following information on forms prescribed by the commission:

1. The full name, address and permit number of the person shipping the video lottery terminals;
2. The method of shipment and the name of the carrier;
3. The full name, address and license number of the licensed racetrack to which the video lottery terminals are being sent and the destination of the terminals if different from the address;
4. The number of video lottery terminals in the shipment;
5. The serial number of each video lottery terminal in the shipment;
6. The model number and description of each video lottery terminal in the shipment; and
7. The expected arrival date of the video lottery terminals at their respective destination within this state.

(c) A licensed racetrack which purchases or leases a video lottery terminal shall, upon receipt of the terminal, provide the commission with the following information on forms prescribed by the commission:

1. The full name, address and license number of the licensed racetrack receiving the video lottery terminal;
2. The full name, address and permit number of the manufacturer from whom the video lottery terminal was received;
3. The serial number of each video lottery terminal.
received;
(4) The model number and description of each video
lottery terminal received;
(5) The expected date and time of video lottery
terminal arrival; and
(6) The expected date and time of video lottery
terminal installation, and if a video lottery terminal is
not placed in operation, the licensed racetrack must
notify the commission of the location where the terminal
is stored.
(d) Any person transporting a video lottery terminal
from one location to another in this state, other than for
repair or servicing purposes, shall notify the commission
in writing prior to the transportation of the terminal
and provide the following information on forms required
by the commission:
(1) The full name, address and license number of the
person or entity transporting the video lottery terminal;
(2) The reason for transporting the video lottery
terminal;
(3) The full name, address and license number of the
person or entity to whom the terminal is being sent and
the destination of the video lottery terminal if it is
different from the address;
(4) The serial and model number of the video lottery
terminal;
(5) The video lottery terminal license number, if
affixed;
(6) The manufacturer of the video lottery terminal;
and
(7) The expected date and time of video lottery
terminal installation or reinstallation.
(e) Any person shipping video lottery terminals to a
destination outside of this state shall, prior to the
shipment, provide the commission with the following
information on forms prescribed by the commission:
(1) The full name, address and license or permit number of the person shipping the video lottery terminals;

(2) The method of shipment and the name of the carrier;

(3) The full name and address of the person to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

(4) The serial number of each video lottery terminal being shipped;

(5) The model number and description of the video lottery terminal being shipped;

(6) The video lottery terminal control number, if affixed;

(7) The manufacturer of the video lottery terminal being shipped; and

(8) The expected date and time of the shipment.

(f) Each video lottery terminal placed in operation in this state must have a commission registration decal permanently affixed, with a video lottery terminal registration control number placed thereon. A decal registration fee is hereby imposed. The amount of the fee shall equal six percent of the total consideration paid to the manufacturer for the use, or the ownership of the video lottery terminal. The fee shall be paid by the manufacturer to the commission prior to the receipt of the registration decal. The registration decal fee shall be collected by the commission and deposited to the credit of the general revenue fund of the state. No person other than authorized commission personnel shall affix or remove a registration control number. The affixing of the commission decal on a video lottery terminal evidences that the decal registration fee has been paid and that the terminal has been registered, inspected and approved for operation in this state. No terminal may be transported out of this state until authorized commission personnel have removed the
§29-22A-15. Hearing and appeal procedure; order refusing license or permit or suspending or revoking same; petition for hearing; petition requirements; cost of hearings; subpoenas and subpoenas duces tecum; no stay of suspension or revocation order; hearing date; place of hearing; continuances; absence of petitioner; hearing; argument and briefs; evidence admissible at hearing; record of proceedings; commission’s decision; appeal to circuit court.

(a) If the commission refuses to issue a licensee or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect including a statement of the reasons for that action and shall, by certified mail, return receipt requested, mail a copy of the order to the applicant, or the license or permit holder, or serve the same in the manner provided for the service of legal process.

(b) Any applicant or licensee or permit holder adversely affected by such order has the right to a hearing thereon before the commission or a person designated as hearing examiner, if a petition in writing requesting a hearing is served upon the commission within ten days following the receipt of the order by such applicant, or license or permit holder.

(c) The petition for a hearing shall be in writing and shall include an original and one copy. The petition must contain the following:

(1) A clear and concise statement of each error which the petitioner alleges to have been committed by the commission in refusing to issue a license or permit, or suspending or revoking a license or permit, with each assignment of error being shown in separately numbered paragraphs.

(2) A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.
(3) A prayer setting forth the relief sought.

(4) The signature of the petitioner.

(5) Verification by the petitioner.

(d) The person demanding a hearing shall give security for the cost of the hearing in the amount of three hundred dollars in the form of certified check, cashier’s check or money order, which shall accompany the petition demanding a hearing.

(e) In all hearings held under this article, oral and documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Subpoenas or subpoenas duces tecum may be issued by either the commission or its duly appointed hearing examiner and the following provisions shall govern and control:

(1) Every subpoena or subpoena duces tecum must be served at least five days before the return date thereof, either by personal service made by any person eighteen years of age or older, or by registered or certified mail, but a return acknowledgment signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

(2) All subpoenas and subpoenas duces tecum shall be issued in the name of the commission. Service of subpoenas and subpoenas duces tecum issued at the insistence of the commission are the responsibility of the commission, but any party requesting issuance of a subpoena or subpoena duces tecum is responsible for service of any such subpoena. Any person who serves a subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state.

(3) All fees shall be paid by the commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the commission.
(4) All fees related to any subpoenas or subpoena duces tecum issued at the insistence of an interested party shall be paid by the interested party.

(5) All requests by an interested party for a subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(6) Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of this state and shall appear as a witness or produce such books, records or papers as are requested in response to a subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, shall, upon application by the commission, compel obedience by contempt proceedings as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify therein.

(f) The service of a petition for hearing upon the commission shall not operate to suspend the execution of any suspension or revocation of a video lottery license or permit with respect to which a hearing is being demanded.

(g) The commission shall set a date for any hearing demanded and notify the person demanding a hearing not later than seven days before the hearing date of the date and time of the hearing, which hearing shall be held within thirty days after receipt of the petition.

(h) Hearings may not be delayed by a motion for continuance made less than ten days before the date set for the hearing.

(i) The commission may designate a hearing examiner to conduct any hearing.

(j) The petitioner may appear individually, or by legal
(k) The petitioner, or his duly authorized representative, may, with the approval of the commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Waivers and agreements must be in writing or upon the record.

(l) The petitioner shall be given an opportunity for argument within the time limits fixed by the commission following submission of evidence. The commission, upon request of the petitioner, shall accept briefs in addition to or in lieu of argument. Briefs must be filed within ten days after the hearing date.

(m) The commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The commission may exclude any evidence which is irrelevant, unduly repetitious or lacking in substantial probative effect.

(n) There shall be a record made of all hearings held pursuant to this article.

(o) After the conclusion of the hearing and within ten days of receipt of the transcript thereof and receipt of any briefs, the person designated by the commission as hearing examiner shall prepare a recommended decision, supported by findings of fact and conclusions of law, affirming, modifying or vacating the earlier order of the commission. Thereafter, the commission, within ten days of receipt of the recommended decision, shall either accept or reject the recommended decision, and if it accepts the decision, it shall cause the director to sign and acknowledge the recommended decision as its own, after having reviewed the transcript and all exhibits attached and affixed thereto; and if it shall reject the same, it shall within ten days of receipt of the recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either
event, the decision shall be final unless vacated or modified upon judicial review thereof. A copy of the decision shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

(p) A petition for appeal by an applicant, licensee or permit holder may be filed with the circuit court of Kanawha County, West Virginia, or with the circuit court of the county in which the racetrack is located, if filed no later than thirty days after the date upon which the petitioner receives notice of the final decision of the commission.

§29-22A-16. Offenses and penalties.

(a) A licensee who places a video lottery game or video lottery terminal into play without authority of the commission to do so is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(b) A person who operates, carries on or exposes for play a video lottery game or video lottery terminal after the person's license has expired and prior to the actual renewal thereof is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(c) A licensee who possesses any video lottery terminal or other device, equipment or material which the person knows has been manufactured, distributed, sold, tampered with or serviced in violation of the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.
(d) A licensee who knowingly conducts, carries on, operates or exposes for play, or allows to be conducted, carried on, operated or exposed for play any video lottery game, video lottery terminal, or other device, equipment or material which has in any manner been tampered with, or placed in a condition, or operated in a manner, the result of which tends to deceive the public or tends to alter the normal random selection of characteristics or the normal chance of the video lottery game which could determine or alter the result of the game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than fifty thousand dollars.

(e) A licensee who employs or continues to employ an individual, not issued a permit under the provisions of this article, in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than five thousand dollars, except that in the case of a person other than a natural person, the amount of the fine imposed may be not more than twenty-five thousand dollars.

(f) A person who, without obtaining the requisite permit as provided for in this article, works or is employed in a position with duties which would require a permit under the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year and fined not more than ten thousand dollars.

(g) A person who, while a video lottery game is being played at a licensed racetrack, uses, or assists another in the use of, an electronic, electrical, or mechanical device which is designed, constructed, or programmed specifically for use in obtaining an advantage at playing any video lottery game is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than six months or fined not more than one
(h) A person who knowingly violates a provision of this article, or the rules of play or game rules of a video lottery game and who profits thereby in an amount equal to one thousand dollars or more, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than two thousand five hundred dollars. If the person profits thereby in an amount less than one thousand dollars, such person is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed two thousand five hundred dollars, or both.

(i) A person who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article shall be subject to a civil penalty as may be determined by the commission, not to exceed ten thousand dollars.

§29-22A-17. Disagreement as to duties of racing commission and lottery commission.

In the event of a disagreement between the racing commission and the lottery commission with regard to their respective duties or responsibilities in carrying out the purposes of this article, such disagreement shall be resolved by the secretary of the department of tax and revenue in a manner not inconsistent with the provisions of this article, article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable.


This article terminates and shall be of no further force and effect on and after the thirtieth day of June, one thousand nine hundred ninety-seven.
HOUSE JOINT RESOLUTION 500

(By Mr. Speaker, Mr. Chambers, and Delegates Houvouras, Martin, Kiss, Burk, Michael and Mezzatesta)

[Adopted March 19, 1994]

Proposing an amendment to the Constitution of the State of West Virginia authorizing the issuing and selling of state bonds in an amount not exceeding three hundred million dollars and the distribution of the proceeds thereof for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-four, which proposed amendment is to read as follows:

INFRASTRUCTURE IMPROVEMENT AMENDMENT.

I. The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred million dollars, which shall be in addition to all other bonds heretofore authorized. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation,
construction and improvement of sites for economic development in this state in a manner and subject to such conditions, qualifications and requirements as shall be prescribed by general law. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time, provide for the irrevocable dedication, prior to the application of such tax proceeds for any other purpose, of an annual portion of any gross receipts tax which is then currently imposed on businesses that sever, extract and, or produce natural resources within this state which will be sufficient to pay, as it may accrue, the interest on such bonds and the principal thereof, within and not exceeding thirty years and all such taxes so levied and the additional tax hereinafter described shall be irrevocably dedicated to such purpose until such principal and interest on such bonds are finally paid and discharged: Provided, That when a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an additional annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty years: Provided, however, That such additional tax shall be levied in any year only to the extent that the moneys from the tax previously dedicated herein are insufficient therefor. Any of the covenants, agreements or provisions in the acts of the Legislature levying and dedicating such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

II. The Legislature shall have power to enact legislation to implement the provisions of this amendment.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such amendment is hereby numbered “Amendment No. 3” and designated as the “Infrastructure Improvement Amendment” and the purpose of the proposed amendment is summarized as follows: “To allow the issuing and selling of not more than three
hundred million dollars in general obligation bonds of the state, the proceeds of which will be used (1) to finance the construction and improvement of water systems and (2) to finance sewage systems and the acquisition and improvement of economic development sites in this state; to dedicate as the initial source of repayment of the principal of and interest on the bonds, a portion of the existing gross receipts tax on the activity of severing, extracting or producing natural resources, and providing for the levy of additional taxes sufficient to pay such bonds to the extent that the amounts dedicated as aforesaid are insufficient therefor."
AN ACT supplementing, amending, reducing and expiring items of the existing appropriations of the department of education, state department of education—state aid to schools, “former” account no. 2950, “WVFIMS” account no.: fund no. 0317, fiscal year 1994, organization no. 0402; and the department of military affairs and public safety, regional jail and correctional facility authority, “former” account no. 6010, “WVFIMS” account no.: fund no. 0536, fiscal year 1994, organization no. 0615, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of the state department of education—state aid to schools, “former” account no. 2950, “WVFIMS” account no.: fund no. 0317, fiscal year 1994, organization no. 0402; and the department of military affairs and public safety, regional jail and correctional facility authority, “former” account no. 6010, “WVFIMS” account no.: fund no. 0536, fiscal year 1994, organization no. 0615, chapter one, acts of the Legislature, first extraordinary session, one
thousand nine hundred ninety-three, known as the budget bill, be supplemented, amended, reduced and expired to read as follows:

1

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

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

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The purpose of this supplemental appropriation bill is to amend chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-three, by reducing or expiring the items of appropriation in the aforesaid accounts in the fiscal year of 1993-1994 because the expenditure of funds from a general revenue appropriation for debt service on revenue bonds has been declared unconstitutional by the West Virginia supreme court of appeals.

AN ACT to amend and reenact section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article nine-a, chapter eighteen of said code; to amend and reenact sections two, six, eight, thirteen and fifteen, article nine-d of said chapter; and to further amend said article by adding thereto a new section, designated section seventeen, all relating to dedicating consumers sales tax proceeds for the payment of bonds issued and to be issued by the school building authority; providing for certification of
the amount needed to pay bond principal and interest for each fiscal year; providing for the payment of principal and interest on bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or bonds issued for the refunding of bonds issued prior to that date; creating a special fund for the deposit of dedicated consumers sales tax revenues; providing for the issuance of bonds for which that dedicated revenue is pledged for repayment; limiting the permissible expenditures from the school building capital improvements fund and the school building debt service fund; limiting the total amount of debt which may be issued by the school building authority; and establishing limitations on contracting for the sale of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

That section thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article nine-a, chapter eighteen of said code be amended and reenacted; that sections two, six, eight, thirteen and fifteen, article nine-d of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seventeen, all to read as follows:

Chapter
11. Taxation.
18. Education.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


1 Beginning the first day of November, one thousand nine hundred ninety-three, and continuing on the first day of each succeeding month thereafter, there shall be dedicated monthly from the collections of this tax, prior to the payment or commitment of the proceeds or collections of this tax for any other purpose whatsoever, an amount equal to one eighth of the projected annual principal and interest requirements on any and all
§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

CHAPTER 18. EDUCATION.

Article
9A. Public School Support.
9D. School Building Authority.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.
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;

(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; and

(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. The 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, an amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, 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. The school building capital improvements fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the school building debt services fund have been pledged for repayment pursuant to said section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-6. School building capital improvements fund in state treasury; school building debt service fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.
§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.
§18-9D-15. Legislative intent; distribution of money.
§18-9D-17. Limitations on contracts for sale of bonds or other securities.


1. The following terms, wherever used or referred to in this article, have the following meanings, unless a different meaning clearly appears from the context:

2. (1) "Authority" means the school building authority of West Virginia or, if said authority shall be abolished, any board or officer succeeding to the principal functions thereof, or to whom the powers given to said authority shall be given by law;

3. (2) "Bonds" means bonds issued by the authority pursuant to this article;

4. (3) "Project" or "capital improvement project" means the new construction, major renovation, repair and safety upgrading of facilities, buildings and structures for school purposes including the acquisition of land for current or future use in connection therewith, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation, but may not include such items as books, fuel, supplies and other items which are customarily deemed to result in a current operating charge;
(4) "Cost of project" means the cost of construction, renovation, repair and safety upgrading of facilities, buildings and structures for school purposes; the cost of land, equipment, machinery, furnishings, installation of utilities and other similar items convenient in connection with placing the foregoing into operation; and the cost of financing, interest during construction, professional service fees and all other charges or expenses necessary, appurtenant or incidental to the foregoing, including the cost of administration of this article;

(5) "Revenue" or "revenues" means moneys deposited in the school building capital improvements fund pursuant to the operation of section ten, article nine-a of this chapter; moneys deposited in the school building debt service fund pursuant to the operation of section thirty, article fifteen, chapter eleven of this code; any moneys received, directly or indirectly, from any source for the use of all or any part of any project completed pursuant to this article; and any other moneys received by the authority for the purposes of this article;

(6) "Facilities plan" means the regional plan for school facilities required prior to the distribution of state funds to any county board pursuant to section fifteen of this article; and

(7) "Region" means the area encompassed within and serviced by a regional educational service agency established pursuant to section twenty-six, article two of this chapter.

§18-9D-6. School building capital improvements fund in state treasury; school building debt service fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the state treasury a school building capital improvements fund to be expended by the authority as provided in this article.

The school building authority shall have authority to
pledge all or such part of the revenues paid into the
school building capital improvements fund as may be
needed to meet the requirements of any revenue bond
issue or issues authorized by this article prior to the first
day of January, one thousand nine hundred ninety-four,
or revenue bonds issued to refund revenue bonds issued
prior to that date, including the payment of principal
of, interest and redemption premium, if any, on such
revenue bonds and the establishing and maintaining of
a reserve fund or funds for the payment of the principal
of, interest and redemption premium, if any, on such
revenue bond issue or issues when other moneys pledged
may be insufficient therefor, including such additional
protective pledge of revenues as the authority in its
discretion has provided by resolution authorizing the
issue of such bonds or in any trust agreement made in
connection therewith. The authority may further
provide in such resolution and in such trust agreement
for such priorities on the revenues paid into such school
building capital improvements fund as may be neces-
sary for the protection of the prior rights of the holders
of bonds issued at different times under the provisions
of this article.

Any balance remaining in the school building capital
improvements fund after the authority has issued bonds
authorized by this article, and after the requirements of
all funds including reserve funds established in connec-
tion with the bonds issued pursuant to this article have
been satisfied, may be used for the redemption of any
of the outstanding bonds issued hereunder which by
their terms are then redeemable, or for the purchase of
such bonds at the market price, but not exceeding the
price, if any, at which such bonds shall in the same year
be redeemable, and all bonds redeemed or purchased
shall forthwith be canceled and shall not again be
issued.

The school building authority, in its discretion, may
use the moneys in the school building capital improve-
ments fund to finance the cost of projects on a cash basis.
Any pledge of moneys in such fund for revenue bonds
shall be a prior and superior charge on such fund over
the use of any of the moneys in such fund to pay for the
cost of any project on a cash basis: Provided, That any
expenditures from such fund, other than for the
retirement of revenue bonds, may only be made by the
authority in accordance with the provisions of this
article.

(b) There is hereby created in the state treasury a
special fund named the school building debt service
fund into which shall be deposited on and after the first
day of November, one thousand nine hundred ninety-
three, the amounts specified in section thirty, article
fifteen, chapter eleven of this code. All amounts
deposited in the fund shall be pledged to the repayment
of the principal, interest and redemption premium, if
any, on any revenue bonds or refunding revenue bonds
authorized by this article: Provided, That moneys so
deposited shall not be pledged to the repayment of any
revenue bonds issued prior to the first day of January,
one thousand nine hundred ninety-three, or with respect
to revenue bonds issued for the purpose of refunding
revenue bonds issued prior to the first day of January,
one thousand nine hundred ninety-four. The authority
may further provide in the resolution and in the trust
agreement for priorities on the revenues paid into the
school building debt service fund as may be necessary
for the protection of the prior rights of the holders of
bonds issued at different times under the provisions of
this article. On or prior to the first day of January of
each year, commencing the first day of January, one
thousand nine hundred ninety-four, the authority shall
certify to the state tax commissioner the principal and
interest requirements for the following fiscal year on
any revenue bonds issued on or after the first day of
January, one thousand nine hundred ninety-four, and for
which moneys deposited in the school building debt
service fund have been pledged, or will be pledged, for
repayment pursuant to this section: Provided, however,
That before the first day of November, one thousand
nine hundred ninety-three, the authority shall also
certify to the tax commissioner of the state the principal
and interest requirements for the fiscal year ending on
the thirtieth day of June, one thousand nine hundred
ninety-four, on any revenue bonds issued, or to be issued, on or after the first day of January, one thousand nine hundred ninety-four.

After the authority has issued bonds authorized by this article, and after the requirements of all funds have been satisfied, including reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued hereunder which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be forthwith canceled and shall not again be issued.

(c) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article ten of the constitution of West Virginia. The Legislature further finds and declares that the financial capacity of a county to construct facilities depends on the county's bonding capacity (local property wealth) and on voter willingness to pass bond issues instead of criteria related to educational needs, or upon the ability of the school building authority created in this article to issue bonds that comply with said holding of the West Virginia supreme court of appeals. The Legislature hereby further finds and declares that this section, as well as section thirty, article fifteen, chapter eleven of this code, have been reenacted during the second extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-three, in an attempt to comply with said holding of the supreme court of appeals of West Virginia. The Legislature hereby further finds and declares that the continued construction and improvement of school building facilities and the dedication of the consumers sales tax pursuant to
said section to finance such construction and improve-
ment are for the use and benefit of the state, its counties,
its municipalities and its other political subdivisions,
and such construction and improvement serves the vital
public purpose of providing for a thorough and efficient
system of free schools in this state. The Legislature
hereby further finds and declares that it intends,
through the reenactment of this section and section
thirty, article fifteen, chapter eleven of this code, to
dedicate a source of state revenue to a special fund for
the purpose of paying the debt service on bonds and
refunding bonds issued subsequent to the first day of
January, one thousand nine hundred ninety-four, the
proceeds of which will be utilized for the construction
and improvement of school building facilities. The
Legislature further finds and declares that the vast
majority of free schools in West Virginia are owned by
the counties, and that the reenactment of this section
and section thirty, article fifteen, chapter eleven of this
code meets the requirements of section six-a, article ten
of the constitution of West Virginia. The Legislature
hereby further finds and declares that it intends,
through the reenactment of this section and section
thirty, article fifteen, chapter eleven of this code, to
comply with the provisions of section four, article ten,
section six, article ten, section six-a, article ten, and
section one, article twelve of the constitution of West
Virginia.

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

The maximum aggregate face value of bonds that
may be issued by the authority, for which the moneys
in the school building debt service fund are to be
pledged, is one hundred eighty-five million dollars. The
issuance of revenue bonds under the provisions of this
article shall be authorized from time to time by
resolution or resolutions of the school building authority.
which shall set forth the proposed projects and provide
for the issuance of bonds in amounts sufficient, when
sold as hereinafter provided, to provide moneys consi-
dered sufficient by the authority to pay such costs, less
the amounts of any other funds available for said costs
or from any appropriation, grant or gift therefor:

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

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

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

After the issuance of any of such revenue bonds, the revenues pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.
Such revenue bonds and the revenue refunding bonds and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof.

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


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

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

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

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

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

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

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

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

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

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

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

§18-9D-17. Limitations on contracts for sale of bonds or
other securities.
(a) When issuing its bonds or other securities pursuant to the provisions of this article, the school building authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has been convicted, within the five years preceding the date when such bonds or other securities are proposed to be issued, of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security, and if the authority further finds that the offense committed involves:

(1) The bribery of a public officer or employee or a member of the immediate family of a public officer or employee;

(2) Perjury;

(3) Larceny;

(4) Any substantially equivalent activity, however denominated by the laws of the relevant jurisdiction; or

(5) The conspiracy to commit any such offense.

(b) When issuing its bonds or other securities, the school building authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or
entity, whether prior to or subsequent to becoming so associated, has, within the five years preceding the date when such bonds or other securities are proposed to be issued:

1. Directly or indirectly given, offered or promised money, services, or any other thing of value having a value of greater than one hundred dollars to a public officer or employee or a member of the immediate family of a public officer or employee when the money, service or other thing of value constituted a material part of the factual basis upon which the public officer or employee or a member of the immediate family of the public officer or employee was convicted of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security; or

2. Willfully aided, abetted, counseled, commanded, induced, or procured a violation which constitutes the basis for a misdemeanor or felony conviction as described in subsection (a) of this section or subdivision (1) of this subsection.

(c) When issuing its bonds or other securities pursuant to the provisions of this article, the school building authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has conducted or is conducting any business or transaction in which a financial interest is held by a public officer or employee, agent or attorney of the government of this state, or a member of the immediate family of such persons, if the public officer or employee, agent or attorney is in a position whereby he or she may personally and substantially influence the discretionary
actions of the authority in connection with the issuance
of bonds or other securities, through decision, approval,
disapproval, recommendation, the rendering of advice,
investigation, or otherwise: Provided, That the ethics
commission shall, on or before the fifteenth day of
December, one thousand nine hundred ninety-three,
promulgate an emergency rule to establish guidelines
and standards for the implementation of this subsection
by the authority.

(d) For purposes of this section, the term "immediate
family" means a spouse and any unemancipated child of
a person.

(e) The school building authority may declare void
and rescind any contract with any person or business
entity acting as an investment adviser, underwriter,
broker, dealer, government securities broker, govern-
ment securities dealer, transfer agent, attorney, bond
counsel, trustee or accountant, if the authority finds, on
the record after notice and opportunity for hearing, that
continuing to employ or contract with such person or
business entity would be contrary to the public interest,
and that such person or business entity, or any person
associated with such person or entity, whether prior to
or subsequent to becoming so associated, has engaged in
conduct which would prohibit the authority, under the
provisions of this section, from entering into a contract
with such person or business entity if the contract was
yet to be executed.

Parliamentarian's Note: In a mandamus proceeding, the Supreme Court
of the State declined to issue a writ of mandamus and held that this act
violated Section 4, Article X of the Constitution. (State ex rel. Marockie v.

CHAPTER 3
(Com. Sub. for S. B. 101—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed October 18, 1993; in effect from passage. Approved by the Governor.]
as amended, by adding thereto a new section, designated section thirty-a; to amend and reenact section ten, article twenty, chapter thirty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-eight, all relating to dedicating consumers sales tax proceeds for the payment of bonds to be issued by the regional jail and correctional facility authority; providing for the disposition of the balance of collections of said tax; creating a special fund for the deposit of dedicated tax proceeds; providing for the issuance of bonds for which the dedicated revenue is pledged for repayment; providing for the repayment of lease-purchase obligations to be incurred; setting forth legislative findings and intent; limiting the total face value of bonds which may be issued; and providing limitations on contracting for the sale of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


1 After the proceeds of the tax under this article have
2 been dedicated under the provisions of section thirty of
3 this article, the proceeds of the tax imposed by this
4 article shall be distributed as provided in subdivisions
5 (a) and (b) of this section.

6 (a) Beginning the first day of November, one thousand
nine hundred ninety-three, and continuing on the first
day of each succeeding month thereafter, there shall be
dedicated monthly from the collections of this tax, prior
to the payment or commitment of the proceeds or
collections of this tax for any other purpose, other than
the dedication from the collections of this tax for the
school building debt service fund as set forth in section
thirty of this article, an amount equal to one eighth of
the projected annual principal and interest require-
ments on any and all revenue bonds or refunding bonds
issued, or to be issued, or to be incurred, or lease-
purchase obligations entered into by the authority with
another state entity on or after the first day of January,
one thousand nine hundred ninety-four, for which
moneys in the regional jail and correctional facility
development fund have been pledged, or will be pledged
for repayment pursuant to section ten, article twenty,
chapter thirty-one of this code, such principal and
interest requirements having been certified to the tax
commissioner in accordance with the provisions of said
section: Provided, That in no event shall the proceeds of
this tax, to be paid annually into the regional jail and
 correctional facility development fund, in any fiscal year
exceed the lesser of the principal and interest require-
ments certified to the tax commissioner as aforesaid, or
four million dollars. The amount dedicated shall be
deposited monthly into the regional jail and correctional
facility development fund created by said section.

(b) The proceeds from the tax imposed by this article
remaining after compliance with the provisions of
section thirty of this article and subdivision (a) of this
section shall be deposited in the general revenue fund
of the state.

CHAPTER 31. CORPORATIONS.

ARTICLE 26. WEST VIRGINIA REGIONAL JAIL AND CORRECC-
TIONAL FACILITY AUTHORITY.

§31-20-10. Regional jail and correctional facility development fund.
§31-20-28. Limitations on contracts for sale of bonds or other securities.

§31-20-10. Regional jail and correctional facility develop-
ment fund.
(a) The regional jail and correctional facility development fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the authority for the purposes of this article. Separate accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Revenues deposited into the fund shall be used to make payments of interest and shall be pledged as security for bonds, security interests or notes issued or lease-purchase obligations entered into with another state entity by the authority pursuant to this article.

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

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

(e) The fund shall consist of the following:

1. Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;
2. Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;
3. Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;
4. All sums paid by the counties pursuant to subsection (h) of this section; and
(5) All interest earned on investments made by the state from moneys deposited in this fund.

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

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

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness, including lease-purchase obligations entered into by the authority with another state entity or other obligation incurred by borrowing of the authority;

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

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

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

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

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

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the regional jail and correctional facility development fund a cost per day for each inmate so incarcerated to be determined by the regional jail and correctional facility authority according to criteria and by procedures established by regulations pursuant to article three, chapter twenty-nine-a of this code to cover the costs of operating the regional jail facilities of this state to maintain each such inmate which costs shall not include the cost of construction, acquisition or renovation of said regional jail facilities: Provided, That each regional jail facility operating in this state shall keep a record of the date and time of the incarceration of an inmate, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. Thereafter, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.
(i) On and after the first day of November, one thousand nine hundred ninety-three, the amounts as and when specified in section thirty-a, article fifteen, chapter eleven of this code shall be paid into the regional jail and correctional facility development fund. All of the specified amounts deposited in this fund shall be pledged to the repayment of the principal and interest on any revenue bonds or refunding bonds authorized by article twenty, chapter thirty-one of this code, or any lease-purchase obligations entered into with another state entity. On or prior to the first day of January of each year, commencing the first day of January, one thousand nine hundred ninety-four, the authority shall certify to the tax commissioner of the state the principal and interest requirements for the following fiscal year on any revenue bonds or refunding bonds issued or to be issued or lease-purchase obligations entered into or to be entered into with another state entity, on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys contained within the regional jail and correctional facility development fund have been, or will be, pledged for repayment pursuant to this section: Provided, That before the first day of November, one thousand nine hundred ninety-three, the authority shall also certify to the state tax commissioner the principal and interest requirements or lease-purchase obligations entered into by the authority with another state entity for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-four, on any revenue bonds or refunding bonds issued or lease-purchase obligations entered into by the authority with another state entity, by the authority on or after the first day of January, one thousand nine hundred ninety-four. The maximum aggregate face value of bonds that may be issued by the authority, for which moneys in the regional jail and correctional facility development fund are to be pledged, is sixty-one million dollars.

(j) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the revenue bonds authorized under the school building authority act, as enacted in article nine-d, chapter...
eighteen of this code prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section four, article ten of the constitution of West Virginia. The Legislature hereby further finds and declares that this section, as well as section thirty, article fifteen, chapter eleven of this code have been reenacted during the second extraordinary session of the West Virginia Legislature in the year one thousand nine hundred ninety-three, and that section thirty-a of said article has been enacted in an attempt to comply with the holding of the supreme court of appeals of West Virginia. The Legislature hereby further finds and declares that the continued construction and improvement of jail and prison facilities and the dedication of the consumers sales tax pursuant to said section to finance such construction and improvement are for the use and benefit of the state, its counties, its municipalities and its other political subdivisions, and such construction and improvement serves the vital public purpose of assuring the physical safety of each citizen and the public at large. The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and the enactment of section thirty-a of said article to dedicate a source of state revenue to a special fund for the purpose of paying a portion of the debt service on bonds and refunding bonds issued and lease-purchase obligations entered into by the authority with another state entity, subsequent to the first day of January, one thousand nine hundred ninety-four, the proceeds of which will be utilized for the construction and improvement of jail and prison facilities. The Legislature hereby further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code, and the enactment of section thirty-a of said article to comply with the provisions of section four, article ten; section six, article ten; section six-a, article ten; and section one, article twelve of the constitution of West Virginia.
§31-20-28. Limitations on contracts for sale of bonds or other securities.

(a) When issuing its bonds or other securities pursuant to the provisions of this article, the regional jail and correctional facility authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that employing or contracting with such person or business entity would be contrary to the public interest, and that such person or business entity, or any person associated with such person or entity, whether prior to or subsequent to becoming so associated, has been convicted, within the five years preceding the date when such bonds or other securities are proposed to be issued, of a felony or misdemeanor under the laws of this state, a sister state or the United States of America, involving the sale or purchase of any government security, and if the authority further finds that the offense committed involves:

(1) The bribery of a public officer or employee or a member of the immediate family of a public officer or employee;

(2) Perjury;

(3) Larceny;

(4) Any substantially equivalent activity, however denominated by the laws of the relevant jurisdiction; or

(5) The conspiracy to commit any such offense.

(b) When issuing its bonds or other securities, the regional jail and correctional facility authority shall not employ or contract with any person or business entity acting as an investment adviser, underwriter, broker, dealer, government securities broker, government securities dealer, transfer agent, attorney, bond counsel, trustee or accountant, if the authority finds, on the record after notice and opportunity for hearing, that
employing or contracting with such person or business
entity would be contrary to the public interest, and that
such person or business entity, or any person associated
with such person or entity, whether prior to or subse-
quent to becoming so associated, has, within the five
years preceding the date when such bonds or other
securities are proposed to be issued:

(1) Directly or indirectly given, offered or promised
money, services, or any other thing of value having a
value of greater than one hundred dollars to a public
officer or employee or a member of the immediate
family of a public officer or employee when the money,
service or other thing of value constituted a material
part of the factual basis upon which the public officer
or employee or a member of the immediate family of the
public officer or employee was convicted of a felony or
misdemeanor under the laws of this state, a sister state
or the United States of America, involving the sale or
purchase of any government security; or

(2) Willfully aided, abetted, counseled, commanded,
induced, or procured a violation which constitutes the
basis for a misdemeanor or felony conviction as des-
dcribed in subsection (a) of this section or subdivision (1)
of this subsection.

(c) When issuing its bonds or other securities pursuant
to the provisions of this article, the regional jail and
correctional facility authority shall not employ or
contract with any person or business entity acting as an
investment adviser, underwriter, broker, dealer, govern-
ment securities broker, government securities dealer,
transfer agent, attorney, bond counsel, trustee or
accountant, if the authority finds, on the record after
notice and opportunity for hearing, that employing or
contracting with such person or business entity would
be contrary to the public interest, and that such person
or business entity, or any person associated with such
person or entity, whether prior to or subsequent to
becoming so associated, has conducted or is conducting
any business or transaction in which a financial interest
is held by a public officer or employee, agent or attorney
of the government of this state, or a member of the
immediate family of such persons, if the public officer
or employee, agent or attorney is in a position whereby
he or she may personally and substantially influence the
discretionary actions of the authority in connection with
the issuance of bonds or other securities, through
decision, approval, disapproval, recommendation, the
rendering of advice, investigation, or otherwise: Pro-
vided, That the ethics commission shall, on or before the
fifteenth day of December, one thousand nine hundred
ninety-three, promulgate an emergency rule to establish
guidelines and standards for the implementation of this
subsection by the authority.

(d) For purposes of this section, the term “immediate
family” means a spouse and any unemancipated child of
a person.

(e) The regional jail and correctional facility authority
may declare void and rescind any contract with any
person or business entity acting as an investment
adviser, underwriter, broker, dealer, government
securities broker, government securities dealer, transfer
agent, attorney, bond counsel, trustee or accountant, if
the authority finds, on the record after notice and
opportunity for hearing, that continuing to employ or
contract with such person or business entity would be
contrary to the public interest, and that such person or
business entity, or any person associated with such
person or entity, whether prior to or subsequent to
becoming so associated, has engaged in conduct which
would prohibit the authority, under the provisions of
this section, from entering into a contract with such
person or business entity if the contract was yet to be
executed.
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, 1994

HOUSE BILLS

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## DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

### Regular Session, 1994

**House Bills = 4 Digits**

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**CHAPTER 22A**

The several articles relating to the Office of Miners’ Health, Safety and Training are moved to Chapter 22A. This chapter contains all of the programs of the Office of Miners’ Health, Safety and Training contained in former Chapters 22 and 22A.

**CHAPTER 22B**

The Act renames: (1) the Air Pollution Control Commission—the Air Quality Board; (2) the Water Resources Board—the Environmental Quality Board; and (3) the Reclamation Board of Review—the Surface Mine Board. It consolidates provisions which are common to all three boards.

**CHAPTER 22C**

A new Chapter 22C is created for the following miscellaneous boards, authorities, commissions and compacts which are related to the Division of Environmental Protection:
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**Regional Jail Authority Bonds**

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**Regional Jail, Correctional Facility Development Fund**

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**School Building Authority Bonds**

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