FOREWORD

These volumes contain the Acts of the First Regular Session of the 72nd Legislature, 1995.

First Regular Session, 1995

The First Regular Session of the 72nd Legislature convened on January 11, 1995. The Constitutional sixty-day limit on the duration of the session was midnight, March 11, 1995. The Governor issued a proclamation on March 8, 1995 extending the session for a period of three days for the sole purpose of considering the Budget. Subsequent proclamations were issued extending the session, and the Legislature adjourned sine die on March 17, 1995.

Bills totaling 1,431 were introduced in the two houses during the session (835 House and 596 Senate). The Legislature passed 259 bills, 127 House and 132 Senate.

The Governor vetoed four bills (H. B. 2257, Deposit of certain fees into Miners' Health, Safety and Training Fund; S. B. 49, Relating to state boards of examination or registration; S. B. 227, Prohibiting change orders on state contracts exceeding a certain percentage of the original bid; and S. B. 576, Relating to reemployment after retirement for holders of elected public office). The Legislature amended and again passed S. B. 576, leaving a net total of 256 bills, 126 House and 130 Senate, which became law.

Fifty-six bills became law without the Governor's signature, 48 House bills and eight Senate bills.

There were 98 Concurrent Resolutions introduced during the session, 48 House and 50 Senate, of which 16 House and 14 Senate were adopted. Twenty-seven House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One House Joint Resolution, H. J. R. 2, Fish and Wildlife Conservation Revenue Amendment, and one Senate Joint Resolution, S. J. R. 8, Nongame Wildlife and Natural Heritage Revenue Amendment, were adopted by the Legislature. The House introduced 27 House Resolutions and the Senate introduced 32 Senate Resolutions, of which 16 House and 31 Senate were adopted.
The Senate failed to pass 39 House bills passed by the House, and 56 Senate bills failed passage by the House. Three House bills died in conference: H. B. 2828, Repealing expired language pertaining to the total state basic foundation program and foundation allowance for regional educational service agencies, etc.; H. B. 2579, Administration of the Medicaid program; and H. B. 2827, Changing service credit for retirement purposes for employees of the Legislature.

* * * * * * * * *

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

These Acts will be published with buckram binding and when available, may be purchased from the Department of Administration, Purchasing Division Section, State Capitol, Charleston, West Virginia 25305.

Donald L. Kopp,
Clerk of the House and
Keeper of the Rolls.
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### REGULAR SESSION, 1995

#### OFFICERS

**President**—Robert C. Chambers, Huntington  
**Clerk**—Donald L. Kopp, Clarksburg  
**Sergeant at Arms**—Oce Smith, Fairmont  
**Doorkeeper**—Don Yoak, Spencer

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- Warren R. McGraw (D) Beckley ........ 71st
- Robert P. Pulliam M.D. (D) Beckley ........ 71st
- Arnold W. Ryan (D) Hinton .......... 67th-69th; 71st
- Ron Thompson (D) Beckley .......... 71st

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- James J. Rowe (D) Lewistown .......... 69th-71st
- Bill Wallace (R) Cliftonville .......... 69th-71st

**Twenty-ninth**

- Tom Louiivsos (D) Oak Hill .......... 67th-68th; 70th-71st
- Bruce N. Petersen (D) Fayetteville .... 71st
- John Pino (D) Oak Hill .......... 67th-68th; 70th-71st

**Thirtieth**

- Jon Amores (D) Charleston .......... 70th
- Ann Calvert (R) Charleston .......... 70th-71st
- Joe Farris (D) Charleston .......... 70th-71st
- Dan Greer (R) South Charleston .... 69th-71st
- Margaret Miller (R) South Charleston .... 69th-71st
- Rudy Seacrist (D) Charleston .... 69th-71st
- Vic Sprouse (R) South Charleston .... 69th-71st

**Thirty-first**

- Mark A. Hunt (D) Charleston .......... 71st
- Steve Harrison (R) Nitro .......... 71st
- Dick Henderson (R) St. Albans .... 71st
- Jay Nesbitt (R) Cross Lanes .......... 71st
- Ronald Neal Walters (R) Cross Lanes .... 71st

**Thirty-second**

- Clinton N. Nichols (D) Clay ........ 69th-71st
- Marjorie H. Burke (D) Sand Fork ...... 69th-71st
- George Kallai (D) Summersville .... 69th-71st
- Joseph B. Talbott (D) Webster Springs 71st

**Thirty-third**

- Joe Martin (D) Elkins .......... 69th-71st
- William D. Proudfoot (D) Elkins ...... 69th-71st
- Douglas K. Stalnaker (R) Weston ...... 69th-71st
- Dale F. Riggs (R) Buckhannon .... 69th-71st
- Richard H. Everson (D) Philippi .... 69th-71st

**Thirty-fourth**

- Samuel J. Cann (D) Bridgeport .... 69th-71st
- Roe Fragale (D) Clarksburg ........ 69th-71st
- Larry A. Linch (D) Bridgeport .... 69th-71st
- Barbara A. Warner (D) Bridgeport .... 69th-71st

**Thirty-fifth**

- George Kallai (D) Summersville .... 69th-71st
- John F. Bennett (D) Grafton ...... 69th-71st
- Nick Fantasia (D) Kingmont .... 69th-71st

**Thirty-sixth**

- Roman W. Prezioso (D) Fairmont .... 69th-71st
- Roman W. Prezioso (D) Fairmont .... 69th-71st
- Paul E. Prunty (R) Fairmont .... 69th-71st
- Eric T. Blais (R) Morgantown .... 69th-71st
- Barbara Evans Fleischauer (D) Morgantown .... 69th-71st
- Brian Gallagher (D) Morgantown .... 69th-71st

**Thirty-seventh**

- Robert C. Beach (D) Clarksburg .... 69th-71st
- Richard A. Easterling (R) Clarksburg .... 69th-71st
- Barbara Evans Fleischauer (D) Morgantown .... 69th-71st
- Brian Gallagher (D) Morgantown .... 69th-71st

**Thirty-eighth**

- Larry A. Williams (D) Tunnelton .... 69th-71st
- David Collins (D) Davis .......... 69th-71st
- Harold K. Michael (D) Moorefield .... 69th-71st
- Allen V. Evans (R) Dorcas .... 69th-71st
- Carl Thomas (R) Keyser .......... 69th-71st

**Thirty-ninth**

- Jerry L. Mezzalesta (D) Romney .... 69th-71st
- Charles S. Trump IV (R) Berkeley Springs .... 69th-71st

**Fortieth**

- Vicki V. Douglas (D) Martinsburg .... 69th-71st
- Larry V. Faircloth (R) Martinsburg .... 69th-71st
- John Overington (R) Martinsburg .... 69th-71st
- John Dolye (D) Shepherdstown .... 69th-71st
- Dale Manuel (D) Charles Town .... 69th-71st

(D) Democrats .......... 69
(R) Republicans ............ 31
TOTAL .......... 100

(D) Democrats .......... 69
(R) Republicans ............ 31
TOTAL .......... 100
MEMBERS OF THE SENATE
REGULAR SESSION, 1995

OFFICERS
President—Earl Ray Tomblin, Logan
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Tony DeRaimo, Leewood
Doorkeeper—Porter Cotton, Chesapeake

<table>
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<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Prior Legislative Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Thais Blatnik (D)</td>
<td>Wheeling</td>
<td>(House 63rd; 65th-67th; 69th-71st)</td>
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<tr>
<td></td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
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<td>Second</td>
<td>Don Macnaughtan (D)</td>
<td>New Martinsville</td>
<td>70th-71st</td>
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<td>Larry Wiedebusch (D)</td>
<td>Glen Dale</td>
<td>(House 62nd-67th; 69th-71st)</td>
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<tr>
<td>Third</td>
<td>Donna Jean Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th; 68th-71st</td>
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<tr>
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<td>J. Frank Deem (R)</td>
<td>Vienna</td>
<td>(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th)</td>
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<td>Fourth</td>
<td>Oshel B. Craigo (D)</td>
<td>Hurricane</td>
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<td>Robert L. Dittmar (D)</td>
<td>Ravenswood</td>
<td>69th-71st</td>
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<td>Fifth</td>
<td>Robert H. Plymale (D)</td>
<td>Ceredo</td>
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<td>Thomas F. Scott (R)</td>
<td>Huntington</td>
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<td>Sixth</td>
<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th-71st</td>
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<td>A. Keith Wagner (D)</td>
<td>Iaeger</td>
<td>69th-71st</td>
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<td>Seventh</td>
<td>Lloyd G. Jackson II (D)</td>
<td>Hamlin</td>
<td>68th-69th</td>
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<td>Earl Ray Tomblin (D)</td>
<td>Chapmanville</td>
<td>(House 62nd-64th); 65th-71st</td>
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<td>Eighth</td>
<td>Jack Buckalew (R)</td>
<td>Charleston</td>
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<td>David Grubb (D)</td>
<td>Charleston</td>
<td>(House 69th-70th); 71st</td>
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<tr>
<td>Ninth</td>
<td>Billy Wayne Bailey, Jr. (D)</td>
<td>Alpoca</td>
<td>Appt. 1/8/91, 70th; 71st</td>
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<td>William R. Wooton (D)</td>
<td>Beckley</td>
<td>(House 63rd-67th; 69th); 70th-71st</td>
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<td>Tenth</td>
<td>Leonard W. Anderson (D)</td>
<td>Hinton</td>
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<td>Tony E. Whitlow (D)</td>
<td>Princeton</td>
<td>(House 60th-61st; 63rd-66th); 67th-71st</td>
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<td>Shirley D. Love (D)</td>
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<td>Randy Schoonover (D)</td>
<td>Clay</td>
<td>(House 69th-70th); Appt. 9/13/89, 71st</td>
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<tr>
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<td>William R. Sharpe, Jr. (D)</td>
<td>Weston</td>
<td>55th-64th; 67th-71st</td>
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<td>Rebecca I. White (D)</td>
<td>Jane Lew</td>
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<td>Thirteenth</td>
<td>Joe Manchin III (D)</td>
<td>Fairmont</td>
<td>(House 66th); 68th-71st</td>
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<td>Michael A. Oliverio II (D)</td>
<td>Morgantoni</td>
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<td>David E. Miller (D)</td>
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<td>Sarah M. Minear (R)</td>
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<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr., 69th); Appt. 9/25/89, 69th; 70th-71st</td>
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<td>Mike Ross (D)</td>
<td>Coalton</td>
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<td>Sixteenth</td>
<td>Harry E. Dugan (R)</td>
<td>Martinsburg</td>
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<td>John C. Yoder (R)</td>
<td>Harpers Ferry</td>
<td>71st</td>
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<td>Seventeenth</td>
<td>Larry Kimble (R)</td>
<td>Charleston</td>
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<td>Martha Yeager Walker (D)</td>
<td>Charleston</td>
<td>(House 70th); 71st</td>
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(D) Democrats ............................................................................. 26
(R) Republicans ......................................................................... 8
TOTAL ....................................................................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1995

STANDING

AGRICULTURE AND NATURAL RESOURCES

Beach (Chair of Agriculture), Dempsey (Vice Chair of Agriculture), Love (Chair of Natural Resources), Fragale (Vice Chair of Natural Resources), Ball, Burke, Ennis, Everson, Heck, Linch, Nichols, Osborne, Proudfoot, Prunty, Thompson, Tomblin, Williams, Anderson, Border, Evans, Facemyer, Henderson, Leggett, Riggs and Willison.

BANKING AND INSURANCE

Farris (Chair of Banking), Beane (Vice Chair of Banking), Gallagher (Chair of Insurance), Adkins (Vice Chair of Insurance), Cann, Dempsey, Douglas, Fantasia, Hunt, Hutchins, Kominar, Louisos, McGraw, Michael, Moore, Seacrist, Thompson, Tillis, Azinger, Clements, Faircloth, Greear, Hall, Nesbitt and Walters.

CONSTITUTIONAL REVISION

Doyle (Chair), Talbott (Vice Chair), Browning, Collins, Ellis, Fleischauer, Frederick, Givens, Kelley, Jenkins, Linch, McGraw, Moore, Petersen, Preece, Pulliam, Ryan, Calvert, Given, Harrison, Overington, Smirl, Sprouse, Stalnaker and Wallace.

EDUCATION

Preziosso (Chair), Proudfoot (Vice Chair), Ball, Beach, Collins, Dempsey, Ellis, Ennis, Everson, Heck, Hubbard, Kallai, Kuhn, Leach, McGraw, Williams, Yeager, Anderson, Blass, Hall, Haskins, Henderson, Leggett, G. Martin and Overington.

FINANCE

Kiss (Chair), Browning (Vice Chair), Burke, Compton, Doyle, Farris, Frederick, Gallagher, Kelley, Leach, Mezzatesta, Petersen, Pettit, Seacrist, Talbott, Tomblin, Warner, Border, Clements, Evans, Facemyer, Leggett, Miller, Wallace and Walters.
GOVERNMENT ORGANIZATION

J. Martin (Chair), Varner (Vice Chair), Adkins, Cann, Bennett, Fantasia, Fragale, Givens, Kominar, Louisos, Love, Michael, Nichols, Osborne, Prunty, Pulliam, Thompson, Azinger, Calvert, Given, Harrison, Nesbitt, Sprouse, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES

Compton (Chair), Petersen (Vice Chair), Amores, Beach, Burke, Douglas, Doyle, Ellis, Fleischauer, Gallagher, Hubbard, Hunt, Hutchins, Leach, Manuel, Osborne, Pulliam, Warner, Given, Haskins, Henderson, G. Martin, Miller, Sprouse and Thomas.

INDUSTRY AND LABOR

Pettit (Chair), Whitman (Vice Chair), Beane, Cann, Farris, Frederick, Heck, Johnson, Kelley, Kuhn, Louisos, Prunty, Talbott, Tillis, Tomblin, Williams, Yeager, Azinger, Blass, Haskins, Kime, G. Martin, Overington, Thomas and Walters.

JUDICIARY

Staton (Chair), Pino (Vice Chair), Amores, Beane, Collins, Douglas, Fleischauer, Hunt, Hutchins, Jenkins, Johnson, Linch, Manuel, Moore, Preece, Ryan, Tillis, Whitman, Faircloth, Greear, Kime, Riggs, Smirl, Thomas and Trump.

POLITICAL SUBDIVISIONS

Manual (Chair), Collins (Vice Chair), Ball, Bennett, Fantasia, Fragale, Givens, Jenkins, Johnson, Kallai, Kuhn, Pettit, Proudfoot, Ryan, Seacrist, Varner, Yeager, Anderson, Calvert, Facemyer, Harrison, Smirl, Stalnaker, Trump and Willison.

ROADS AND TRANSPORTATION

Warner (Chair), Preece (Vice Chair), Adkins, Amores, Bennett, Compton, Ennis, Everson, Hubbard, Kallai, Kominar, Leach, Love, Nichols, Pino, Varner, Whitman, Blass, Border, Clements, Evans, Greear, Hall, Kime and Nesbitt.

RULES

Chambers (Chair), Kiss, J. Martin, Mezzatesta, Michael, Prezioso, Rowe, Staton, Ashley, Faircloth, Miller and Riggs.
JOINT

ENROLLED BILLS

Moore (Chair), Fantasia (Vice Chair), Overington and Willison.

GOVERNMENT AND FINANCE

Chambers (Chair), Kiss, J. Martin, Rowe, Staton, Ashley and Trump.

GOVERNMENT OPERATIONS

J. Martin (Chair), Varner, Love, Nesbitt and Stalnaker.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Douglas (Chair), Linch (Vice Chair), Compton, Gallagher, Faircloth and Riggs.

PENSIONS AND RETIREMENT

Browning (Chair), Prezioso (Vice Chair), Frederick, Seacrist, Williams, Haskins and Wallace.

RULES

Chambers (Cochair), Rowe and Ashley

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION

J. Martin (Chair), Douglas, Mezzatesta, Michael and Willison.

INTERSTATE COOPERATION

Beane (Chair), Doyle, Farris, Fleischauer, Jenkins, Greear and Walters.

JUVENILE LAW

Givens (Chair), Douglas and Trump.
HOUSE OF DELEGATES COMMITTEES

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Prezioso (Chair), Browning, Mezzatesta, Proudfoot, Yeager and Anderson.

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES
Compton (Chair), Gallagher, Kiss, J. Martin, Petersen and Ashley.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY
Manuel (Chair), Leach, Pino, Whitman, Clements and Thomas.

SPECIAL INVESTIGATIONS
Chambers (Chair), J. Martin, Rowe, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 1995

STANDING

AGRICULTURE
Whitlow (Chair), White (Vice Chair), Anderson, Dittmar, Helmick, Love, Miller, Ross, Dugan and Minear.

BANKING AND INSURANCE
Manchin (Chair), Helmick (Vice Chair), Blatnik, Chafin, Craigo, Dittmar, Sharpe, Wagner, Wiedebusch, Wooton, Kimble, Scott and Yoder.

CONFIRMATIONS
Blatnik (Chair), Grubb (Vice Chair), Chafin, Jackson, Love, Oliverio, Wooton, Deem and Yoder.

EDUCATION
Jackson (Chair), Miller (Vice Chair), Bailey, Blatnik, Grubb, Helmick, Oliverio, Plymale, Schoonover, Wagner, White, Boley, Dugan and Minear.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Oliverio (Vice Chair), Anderson, Bowman, Jackson, Macnaughtan, Manchin, Ross, Schoonover, Wagner, Whitlow, Deem, Dugan and Minear.

FINANCE
Craigo (Chair), Manchin (Vice Chair), Bailey, Blatnik, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Sharpe, Walker, Whitlow, Boley, Dugan, Kimble and Minear.

GOVERNMENT ORGANIZATION
Wagner (Chair), Bowman (Vice Chair), Bailey, Jackson, Macnaughtan, Manchin, Miller, Plymale, Walker, White, Wiedebusch, Wooton, Buckalew, Scott and Yoder.

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SENATE COMMITTEES

HEALTH AND HUMAN RESOURCES
Walker (Chair), Macnaughtan (Vice Chair), Blatnik, Craigo, Grubb, Jackson, Manchin, Plymale, Ross, Sharpe, Wooton, Boley, Kimble and Scott.

INTERSTATE COOPERATION
Grubb (Chair), Anderson (Vice Chair), Bowman, Schoonover, Whitlow, Deem and Scott.

JUDICIARY
Wooton (Chair), Wiedebusch (Vice Chair), Anderson, Bowman, Dittmar, Grubb, Miller, Oliverio, Ross, Schoonover, Wagner, White, Buckalew, Deem, Scott and Yoder.

LABOR
Macnaughtan (Chair), Schoonover (Vice Chair), Bailey, Bowman, Love, Miller, Wagner, Wiedebusch, Deem and Minear.

MILITARY
Helmick (Chair), Bailey (Vice Chair), Dittmar, Love, Oliverio, Wiedebusch, Wooton, Buckalew and Kimble.

NATURAL RESOURCES
Dittmar (Chair), Whitlow (Vice Chair), Anderson, Bowman, Craigo, Grubb, Macnaughtan, Miller, Ross, White, Wiedebusch, Deem, Minear and Yoder.

PENSIONS
Plymale (Chair), Helmick (Vice Chair), Jackson, Manchin, Walker, Boley and Kimble.

RULES
Tomblin (Chair), Anderson, Chafin, Craigo, Manchin, Sharpe, Walker, Wooton, Boley and Buckalew.

SMALL BUSINESS
Anderson (Chair), Ross (Vice Chair), Blatnik, Craigo, Love, Oliverio, Plymale, Sharpe, Walker, Dugan, Scott and Yoder.
SENATE COMMITTEES

TRANSPORTATION
Miller (Chair), Love (Vice Chair), Dittmar, Oliverio, Plymale, Schoonover, Whitlow, Buckalew and Dugan.

JOINT

ENROLLED BILLS
Schoonover (Chair), Bailey, Walker, White and Kimble.

GOVERNMENT AND FINANCE
Tomblin (Chair), Chafin, Craigo, Sharpe, Wooton, Boley and Deem.

GOVERNMENT OPERATIONS
Wagner (Chair), Bowman, Wiedebusch, Minear and Yoder.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Ross (Chair), Grubb (Vice Chair), Anderson, Macnaughtan, Boley and Buckalew.

PENSIONS AND RETIREMENT
Plymale (Chair), Helmick (Vice Chair), Jackson, Manchin, Walker, Boley and Kimble.

RULES
Tomblin (Chair), Chafin and Boley.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION
Plymale (Chair), Helmick, Miller, Ross and Whitlow.

INTERSTATE COOPERATION
Grubb (Chair), Anderson (Vice Chair), Bowman, Schoonover, Whitlow, Deem and Scott.
SENATE COMMITTEES

JUVENILE LAW
Wiedebusch (Chair), Bowman and Yoder.

OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY
Jackson (Chair), Bailey, Blatnik, Craigo, Wagner and Dugan.

OVERSIGHT COMMISSION ON
REGIONAL JAIL AND CORRECTIONAL FACILITY
Blatnik (Chair), Craigo, Helmick, Love, Wiedebusch and
Yoder.

SPECIAL INVESTIGATIONS
Tomblin (Chair), Blatnik, Wooton, Buckalew and Boley.
AN ACT to amend article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to the tolling of statutes of limitation upon claims and causes of action which have not been instituted prior to a stay or order resulting from a bankruptcy proceeding.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.


1 The running of any statute of limitation shall be tolled
2 for any claim or cause of action for which the prosecution
3 of the same within the period of limitation has been stayed
by the provisions of the United States bankruptcy code or
by an order entered in a bankruptcy proceeding pending
the duration of the stay or the effective period of the order
and for a period thereafter of the remaining period of
limitation or for one year, whichever is longer.

CHAPTER 2
(H. B. 2338—By Delegates Prezioso, Gallagher, Staton,
Douglas, Jenkins, Leach and Mezzatesta)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article eight, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dismissal of cases for failure to prosecute.

Be it enacted by the Legislature of West Virginia:

That section nine, article eight, chapter fifty-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. ABATEMENT, REVIVAL, DISCONTINUANCE, RE-INSTATEMENT OF SUITS.

§56-8-9. Discontinuance for failure to prosecute or pay court costs.

Any court in which is pending any case wherein for
more than one year there has been no order or proceeding
but to continue it, or wherein the plaintiff is delinquent in
the payment of accrued court costs, may, in its discretion,
order such case to be struck from its docket; and it shall
thereby be discontinued. A court making such order may
direct it to be published in such newspaper as it may
name.
AN ACT to repeal sections fifteen and sixteen, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article two-b of said chapter; to amend and reenact section eighteen, article fifteen, chapter eleven of said code; to amend and reenact sections one, two, three, four, five, seven, eleven, twenty and twenty-two, article two-a, chapter twenty-nine of said code; and to further amend said article by adding thereto six new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e and eleven-f, all relating to the state aeronautics commission generally; repealing the commission's authority relating to the licensing of air schools and aeronautics instructors, the certification of airport sites and the licensing of airports; repealing provisions relating to the regulation of weather modification; purposes for which the commission may use taxes on aircraft fuel; revising definitions relating to aeronautics; amending definitions; replacing the state road commissioner with the secretary of transportation as a member of the commission; eliminating the commission's general supervision of airports, air schools and aeronautics; eliminating the commission's authority to classify airports; eliminating the commission's rule-making authority regarding air schools, the classification of airports and the enforcement of the federal air commerce act; legislative rules; commission authority regarding investments with board of investments; commission seal; qualification of and limitations on director of aeronautics; eliminating police powers of and enforcement of laws by commission, agents and employees; removing designation of commission as agent regarding federal moneys in certain circumstances; applications for and receipts by political subdivisions for federal aid; prohibiting the operation of aircraft while under the influence of alcohol, controlled substances or drugs; implied consent to test; tests for alcohol which may be administered; use of test results;
certain immunity from liability incident to administering tests; interpretation and use of chemical test; right to demand test; fee for withdrawing blood sample and administering urine test; payment for fees; commission authority to inspect; enforcement of aeronautics laws; commission orders, notices and hearings; method of mailing notices; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-4. Organization of commission; meetings; reports; offices.
§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; administrative and other assistants.
§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.
§29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.
§29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.
§29-2A-11d. Interpretation and use of chemical test.
§29-2A-11e. Right to demand test.
§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.

As used in the statutes of West Virginia, unless the context otherwise requires:

(a) "Aeronautics" means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities.

(b) "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

(c) "Airmen" means any individual who engages, as the person in command, or as pilot, mechanic or member of the crew, in the navigation of the aircraft while under way and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator. It does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(d) "Air navigation" or "navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport within this state.

(e) "Air navigation facility" means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an
airport, and any combination of any or all of such facilities.

(f) "Airport" means any area of land or water which is used, or intended for use, for the landing and take off of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(g) "Airport hazard" means any structure, object of natural growth or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to such landing or taking off.

(h) "Commission" means the West Virginia state aeronautics commission.

(i) "Director" means the director of aeronautics of this state.

(j) "Municipality" means any county, city, town, village or other political subdivision of this state. "Municipal" means pertaining to a municipality as herein defined.

(k) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon the ground within this state.

(l) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic and includes any trustee, receiver, assignee or other similar representative thereof.

(m) The singular of any of the above defined terms shall include the plural and plural the singular.


There is hereby created an aeronautics commission, to be known as "The West Virginia State Aeronautics Commission", to consist of five members to be appointed by the governor, by and with the advice and consent of the Senate. One of such members shall be the secretary of transportation ex officio, whose term as such member shall continue for the period that he or she holds the office of
secretary of transportation. The other four members of
the commission shall be appointed by the governor, each
to serve a term beginning the first day of July, one thou-
sand nine hundred forty-seven, one to serve for a term of
one year, one to serve for a term of two years, one to serve
for a term of three years and one to serve for a term of
four years. The successors of the members (other than the
secretary of transportation) initially appointed as provided
herein shall be appointed for terms of four years each in
the same manner as the members originally appointed
under this article, except that any person appointed to fill
a vacancy occurring prior to the expiration of the term for
which his or her predecessor was appointed shall be ap-
pointed only for the remainder of such term. Each mem-
ber shall serve until the appointment and qualification of
his or her successor. No more than three members of the
commission shall be members of the same political party.
All members of the commission shall be citizens and resi-
dents of this state. The members of the commission who
shall be appointed by the governor as provided by this
section shall be selected with due regard to their fitness by
reason of their aeronautical knowledge and practical expe-
rience in the field of aeronautics. In making such ap-
pointments, the governor shall, so far as may be possible
and practicable, select the several members from different
geographical sections of the state.

No member shall receive any salary for his or her
services, but each shall be reimbursed for actual and nec-
essary expenses incurred by such member in the perform-
ce of his or her duties in accordance with state travel
rules.


The commission shall assume, carry on and succeed to
all the duties, rights, powers, obligations and liabilities
heretofore belonging to, exercised by, or assumed by the
state board of aeronautics, pursuant to statutory authority
heretofore existing and as changed or modified by the
provisions of this article. It may enter into any contracts
necessary to the execution of the powers granted to it by
this article. It is empowered and directed to encourage,
foster and assist in the development of aeronautics in this
state and to encourage the establishment of airports and
air navigation facilities. It shall cooperate with and assist
the federal government, the municipalities of this state and
other persons in the development of aeronautics and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the commission in the development of aeronautics and aeronautics facilities in this state. The commission is hereby given the power and authority to make such rules as it may deem necessary and advisable for the public safety, governing the designing, laying out, locating, building, equipping and operating of all airports and the conduct of all other phases of aeronautics.

The commission shall keep on file with the secretary of state, and at the principal office of the commission, a copy of all its rules and orders having general effect for public inspection. It shall provide for the publication and general distribution of all its orders, rules and procedures having general effect. Copies of any such orders or rules shall be delivered to any person interested, free of charge, upon request. The publication and distribution of any such order or rule as provided herein shall be sufficient notice to the public of the provisions, requirements and effect thereof.

Each rule of the commission shall be promulgated as a legislative rule pursuant to the provisions of chapter twenty-nine-a of this code.

Except where otherwise prohibited, the commission is authorized to permit the state board of investments to invest, as provided by this code, any funds received by the commission pursuant to the provisions of this code.

§29-2A-4. Organization of commission; meetings; reports; offices.

The commission shall make, and may from time to time amend, rules for the administration of the powers granted to it by this article as are not inconsistent therewith and as the commission may deem expedient. The commission shall organize by electing from among its members a chairman who shall serve as such for a period of two years. Such chairman shall have the power to sign documents, execute contracts and otherwise act for and in the name of the commission in all matters within the lawful powers of the commission and duly authorized by a majority of its members.

The commission shall determine the number, date and
place of its regular meetings, but at least one such meeting shall be held annually at the commission's established offices in the city of Charleston. Whenever the convenience of the public or of interested persons may be promoted, or delay or expense may be prevented, the commission may hold meetings, hearings or proceedings at any other place designated by it.

The commission shall report in writing to the governor on or before the thirty-first day of August of each year. The report shall contain a summary of the commission's proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue received and all expenditures made by or on behalf of the commission, such other information as it may deem necessary or useful and any additional information which may be requested by the governor. The fiscal year of the commission shall conform to the fiscal year of the state.

An office shall be established and maintained by the commission in the city of Charleston. In addition, the commission may establish and maintain such other offices within the state as it may deem necessary and expedient.

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; administrative and other assistants.

A director of aeronautics shall be appointed by the commission, who shall serve for an indefinite term at the pleasure of the commission. The director shall be appointed with due regard to his or her fitness, by aeronautical education and by knowledge of and recent practical experience in aeronautics, for the efficient dispatch of the powers and duties vested in and imposed upon him by this article. The director shall hold or have held an airman's license issued by the United States as described in section fourteen of this article. The director shall devote his or her time to the duties of his or her office as required and prescribed by this article and shall not have any pecuniary interest in, or any stock in, or bonds of, any civil aeronautical enterprise. The director shall receive such compensation as the commission may determine, which said compensation shall, however, conform in general to the compensation received by persons occupying positions of similar importance and responsibility with other agencies of this state. The director shall be reimbursed for all trav-
eling and other expenses incurred by him or her in the discharge of his or her official duties in accordance with state travel rules. The director shall be the executive officer of the commission and under its supervision shall administer the provisions of this article and the rules and orders established thereunder and all other laws of the state relative to aeronautics. The director shall attend, but not vote, at all meetings of the commission. The director shall act as secretary of the commission and shall be in charge of its offices and responsible to the commission for the preparation of reports and the collection and dissemination of data and other public information relating to aeronautics. At the direction of the commission the director shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized and for which funds are provided in any appropriations act. The commission may, by written order filed in its office, delegate to the director any of the powers or duties vested or imposed upon it by this article. Such delegated powers and duties may be exercised by such director in the name of the commission. The commission may also employ such administrative, engineering, technical and clerical assistance as may be required. The director and such other assistants may, under the supervision of the commission, insofar as is reasonably possible, make available the engineering and other technical services of the commission, without charge to any municipality, and with or without charge to any other person desiring them, in connection with the construction, maintenance or operation, or proposed construction, maintenance or operation of any airport.


(a) The commission is authorized to cooperate with the government of the United States, and any agency or department thereof, in the planning, acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state and is authorized to accept federal aid either outright or by way of matching the same, in whole or in part, as may be required, and when funds for matching are available to the commission, and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.
(b) The commission is authorized to accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state, or any municipality thereof, for the planning, acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder, and it is hereby designated as the agency of the state, and is authorized to and may act as agent of any municipality of this state upon the request of such municipality, in accepting, receiving and receipting for such moneys in its behalf for airports or other air navigation facility purposes, and in contracting for the planning, acquisition, construction, improvement, maintenance or operation of airports or other air navigation facilities, financed, either in whole or in part, by federal moneys; and any such municipality is authorized to and may enter into an agreement with the commission prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with this article. Such moneys as are paid over by the United States government shall be retained by the state or paid over to said municipalities under such terms and conditions as may be imposed by the United States government in making such grants.

(c) All contracts for the planning, acquisition, construction, improvement, maintenance and operation of airports, or other air navigation facilities made by the commission, either as the agent of the state or as the agent of any municipality therein, shall be made pursuant to the laws of this state governing the making of like contracts: Provided, That where the planning, acquisition, construction, improvement, maintenance and operation of any airport or other air navigation facility is financed wholly or partially with federal moneys, the commission, as agent of the state or of any municipality thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

(d) All moneys accepted for disbursement by the commission pursuant to this section shall be deposited in
the state treasury, and, unless otherwise prescribed by the
authority from which the money is received, kept in sepa-
rate funds, designated according to the purposes for which
the moneys were made available, and held by the state in
trust for such purposes. All such moneys are hereby ap-
propriated for the purposes for which the same were made
available and shall be expended in accordance with federal
laws and regulations and with the provisions of this article.
The commission is authorized, whether acting for this state
or as the agent of any municipality therein, when request-
ed by the United States government or any agency or
department thereof, or when requested by the state or
municipality for which the money has been made avail-
able, to disburse such moneys for the designated purposes,
but this shall not preclude any other authorized method of
disbursement.

(e) The state or any municipality therein is authorized
to cooperate with the government of the United States, and
any agency or department thereof, in the acquisition, con-
struction, improvement, maintenance and operation of
airports and other air navigation facilities in this state and
is authorized to accept federal aid, either by way of out-
right grant or by matching the same, in whole or in part, as
may be required, and to comply with the provisions of the
laws of the United States and any regulations made there-
under for the expenditure of federal moneys upon such
airports and other navigation facilities.

§29-2A-11. Operation of aircraft while under influence of
alcohol, controlled substances or drugs; crim-
ninal penalties.

(a) Any person who:

(1) Operates an aircraft in this state while:

(A) He is under the influence of alcohol; or

(B) He is under the influence of any controlled sub-
stance; 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 four hundredths of one percent or more, by
(2) When so operating an aircraft does any act forbidden by law or fails to perform any duty imposed by law in the operation of such aircraft, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of 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 be fined not more than five hundred dollars.

(b) Any person who:

(1) Operates an aircraft 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 four hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than five hundred dollars, or both, in the discretion of the court.

(c) Any person who:

(1) Knowingly permits his or her aircraft to be operated 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 four hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than five hundred dollars, or both, in the discretion of the court.

(d) A person violating any provision of subsection (a) of this section is, for the second offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than one year nor more than five years.

(e) A person violating any provision of subsection (b) or (c) of this section is, for the second offense under this section, guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of imprisonment of not less than one year nor more than three years.

(f) For purposes of subsections (d) and (e) of this section relating to second and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of the prior enactment of this section;

(2) Any conviction under 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) or (c) of this section.

(g) 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.

(h) The fact that any person charged with a violation
of subsection (a) or (b) of this section, or any person per-
mitted to operate an aircraft as described under subsection
(c) of this section, is or has been legally entitled to use
alcohol, a controlled substance or a drug shall not consti-
tute a defense against any charge of violating subsection
(a), (b) or (c) of this section.

(i) For purposes of this section, the term "controlled
substance" shall have the meaning ascribed to it in chapter
sixty-a of this code.

(j) When any person is convicted of violating any
provision of this section, the clerk of the court in which
such conviction is had, within seventy-two hours after
such conviction is had, transmit to the commission a certi-
fied abstract of the judgment of conviction. The commis-
sion shall, within seventy-two hours after receipt thereof,
transmit a true copy thereof to the federal aviation admin-
istration.

§29-2A-11a. Implied consent to test; administration at direc-
tion of law-enforcement officer; designation
of type of test; definition of law-enforcement
officer.

Any person who operates an aircraft in this state shall
be deemed to have given his or her consent by the opera-
tion thereof to a preliminary breath analysis and a second-
ary chemical test of either his or her blood, breath or urine
for the purposes of determining the alcoholic content of
his or her blood. A preliminary breath analysis may be
administered in accordance with the provisions of section
eleven-b of this article whenever a law-enforcement officer
has reasonable cause to believe a person to have commit-
ted an offense prohibited by section eleven of this article.
A secondary test of blood, breath or urine shall be inci-
dental 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 commit-
ted an offense prohibited by said section. 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 desig-
nate in lieu thereof either a breath or urine test to be ad-
For the purpose of this article, the term "law-enforcement officer" means and is limited to: (1) any member of the division 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; and (4) any conservation officer of the division of natural resources. 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, any member of the West Virginia state police, 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 or her 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.


When a law-enforcement officer has reason to believe a person has committed an offense prohibited by section eleven of this article, the law-enforcement officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer has a reasonable belief that the person has been operating an aircraft while under the influence of alcohol, controlled substances or drugs. Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the bureau of public health for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made. When an operator is arrested following a preliminary breath analysis, the tests as hereinafter provided
§29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic content thereof. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining the alcoholic content thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venepuncture. The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, registered nurse or trained medical technician at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. No person who administers any such test upon the request of a law-enforcement officer as herein defined, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, may be in any way criminally liable for the administration of such test or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

§29-2A-11d. Interpretation and use of chemical test.

(a) (1) Upon trial for the offense of operating an aircraft 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 operating an aircraft 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 presumption or have the following effect: Evidence that there was, at that time, four hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be prima facie evidence that the person was under the influence of alcohol.

(2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

(b) A chemical analysis of a person's blood, breath or urine, in order to give rise to the presumption or to have the effect provided for in subsection (a) of this section, must be performed in accordance with methods and standards approved by the state bureau of public 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 West Virginia state police.

(c) 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.

§29-2A-11e. Right to demand test.

Any person lawfully arrested for operating an aircraft in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his or her blood, breath or urine be taken within two hours from and after the time of arrest and that a chemical test thereof be made. The analysis disclosed by such chemical test shall be made available to such arrested person forthwith upon demand.

§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.
A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of section eleven of this article, the county having venue of such charge shall pay said fee and if said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of said county.


It shall be the duty of the commission, its members, the director, officers and such employees of the commission as may be designated by it, and every state and municipal officer charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of this article and of all rules and orders issued pursuant thereto and of all other laws of this state relating to aeronautics; and in that connection each of the aforesaid persons is authorized to inspect and examine at reasonable hours any aircraft, the credentials of any airman or other person engaged in aeronautics required by the laws of this state or of the United States to have in his or her possession credentials evidencing his or her authority or permission to engage in aeronautics, any premises and the buildings and other structures thereon, where airports, air navigation facilities or other aeronautical activities are operated or conducted.

The commission is authorized in the name of the state to enforce the provisions of this article and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of this state.


Every order of the commission requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the commission will be given or the approval granted or restored or the order modified or changed. Orders issued by the commission
pursuant to the provisions of this article shall be served
upon the persons affected either by certified mail or in the
manner provided by section one, article two, chapter
fifty-six of this code. In every case where notice and
opportunity for hearing are required under the provisions
of this article, the order of the commission shall, on not
less than ten days' notice, specify a time when and place
where the person affected may be heard, or the time within
which he may request a hearing, and such order shall
become effective upon the expiration of the time for exer-
cising such opportunity for hearing unless a hearing is
held or requested within the time provided, in which case
the order shall be suspended until the commission shall
affirm, disaffirm or modify such order after hearing held
or default by the person affected.

CHAPTER 4

(Com. Sub. for H. B. 2471—By Mr. Speaker, Mr. Chambers, and Delegate Manuel)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend article five, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
nine-b; to amend and reenact section four, article sixteen-a,
chapter nineteen of said code; and to amend article two-b,
chapter forty-nine of said code by adding thereto a new
section, designated section seventeen, all relating to commis-
ioner of agriculture promulgating rules establishing an
integrated pest management program for schools and
daycare centers; and requiring county boards of education
and daycare centers to implement the program.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virgin-
ia, one thousand nine hundred thirty-one, as amended, be
amended by adding thereto a new section, designated section nine-b; that section four, article sixteen-a, chapter nineteen of said code be amended and reenacted; and that article two-b, chapter forty-nine of said code be amended by adding thereto a new section, designated section seventeen, all to read as follows:

Chapter

18. Education.
19. Agriculture.
49. Child Welfare

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 By the fifteenth day of August, one thousand nine hundred ninety-five, the board shall implement the integrated pest management program promulgated under rules by the department of agriculture under authority of section four, article sixteen-a, chapter nineteen of this code.

CHAPTER 19. AGRICULTURE.

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-4. Powers and duties of the commissioner.

1 The commissioner of agriculture has the power and duty to carry out the provisions of this article and is authorized to:

(a) Delegate to employees of the department of agriculture the authority vested in the commissioner by virtue of the provisions of this article;

(b) Cooperate, receive grants in aid and enter into agreements with any other agency of the state, the United States department of agriculture, United States environmental protection agency or any other federal agency or any other state or agency thereof for the purpose of carry-
(c) Contract for research projects;

(d) Require that pesticides used in this state are adequately tested and are safe for use under local conditions;

(e) Require that individuals who sell, store, dispose or apply pesticides are adequately trained and observe appropriate safety practices;

(f) Promulgate rules pursuant to chapter twenty-nine-a of this code, including, but not limited to, the following:

(1) Licensing of businesses that sell, store, recommend for use, mix or apply pesticides;

(2) Registration of pesticides for manufacture, distribution, sale, storage or use in this state;

(3) Requiring reporting and recordkeeping related to licensing and registration;

(4) Establishing training, testing and standards for certification of commercial application, public application, registered technician and private applicator;

(5) Revoking, suspending or denying licenses, registration and certification or certificate or permits;

(6) Creating advisory committees made up of both pesticide industry representatives and consumers as considered necessary to implement this article;

(7) Establishing a fee structure for licenses, registration and certificate to defray the costs of implementing this article;

(8) Classifying or subclassifying certificate or certificates to be issued under this article. The classification may include, but not be limited to, agricultural, forest, ornamental, aquatic, right-of-way, industrial, institutional, structural or health-related pest control;

(9) Restricting or prohibiting the sale or use and dis-
posal of any pesticide, pesticide container or residue which is extremely hazardous;

(10) Coordinating and supporting pesticide monitoring programs;

(11) Developing a program for registration of persons with health sensitivity to pesticide drift;

(12) Establishing guidelines and requirements, as deemed necessary, for licenses, certificate holders and permittees for the identification of pests and their methods of inspection of property to determine the presence of pests;

(13) Establishing procedures for reporting spills, accidents or incidents; and

(14) Such other rules necessary or convenient to carry out the purpose of this article;

(g) Design and conduct an appropriate educational program on the use of pesticides and the necessity for care when applying the same; and

(h) Only after consultation with the state board of education, division of human services for child welfare, representatives from the environmental community, and representatives of school and daycare employees, by the first day of July, one thousand nine hundred ninety-five, promulgate emergency rules, pursuant to article three, chapter twenty-nine-a of this code, establishing an integrated pest management program. The emergency and legislative rules for the program established in this subsection shall include, but are not limited to, the following:

(1) The use of least hazardous materials;

(2) That pesticides shall only be applied when monitoring indicates that pest infestations are present;

(3) That students and school and daycare employees, except school, board of education or daycare employees that are certified applicators, shall not be present during
application and provide for appropriate reentry times, except that pesticides may be applied to a localized area of infestation when students or school and daycare employees are present if the infestation causes an imminent threat of bodily harm;

(4) A definition of pesticides; and

(5) A system for prior notification to parents and school and daycare employees.

CHAPTER 49. CHILD WELFARE.

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-17. Implementation of the integrated pest management program.

By the fifteenth day of August, one thousand nine hundred ninety-five, the commissioner shall implement the integrated pest management program promulgated under rules by the department of agriculture under authority of section four, article sixteen-a, chapter nineteen of this code.

CHAPTER 5

[Com. Sub. for H. B. 2425—By Delegates Beach and Michael]

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten and eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the regulation of poultry as well as meat; allowing the commissioner of agriculture to elect where a hearing will be held for grievances filed under this article; increasing the penalties for violating this article; and new violation and penalties.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.


§19-2B-3. Commissioner to enforce article; rules; cooperation with federal agencies, etc.

§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

§19-2B-5. Access to establishments, records, etc.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examination; rejection tags.


§19-2B-10. Additional prohibitions.


§19-2B-1. Purpose and construction; continuation of meat and poultry inspection program.

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

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the
meat inspection program should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the meat and poultry inspection program shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.


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

(a) "Department" means the department of agriculture of the state of West Virginia;

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and duly authorized representatives;

(c) "Person" means any individual, partnership, corporation, association, or other entity;

(d) "Contract veterinarian" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association who provides services for the department under contract;

(e) "Veterinary supervisor" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association, employed by the department and authorized by the commissioner to perform on his or her behalf any inspection and supervisory functions under this article;

(f) "Inspector" means an individual employed by the department and authorized by the commissioner to perform on his or her behalf any inspection and supervisory functions under this article;

(g) "State inspection" means inspection services conducted by the department at or in connection with establishments required to be licensed by this article;

(h) "W. Va. condemned," or abbreviation thereof, means the animal or poultry so marked has been inspected and found to be in a dying condition, or to be affected
with any other condition or disease that would require condemnation of its carcass;

(i) "W. Va. inspected and condemned," or abbreviation thereof, means that the carcass, meat product or poultry product, so marked or so identified, is adulterated and shall be disposed of in the manner prescribed by the commissioner;

(j) "W. Va. retained" means that the carcass, meat product or poultry product or any ingredient used in processing, or any direct or indirect container used for meat products or poultry products so identified is held for further examination by a veterinary supervisor or contract veterinarian to determine its disposal;

(k) "W. Va. suspect" means that the animal or poultry so marked and identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by a contract veterinarian or veterinary supervisor to determine its disposal;

(l) "W. Va. inspected and passed," or abbreviation thereof, means that the carcass, meat product or poultry product so marked or so identified, was at the time it was so marked or so identified found to be wholesome;

(m) "Country" when used in the name of a meat product or poultry product means that such meat product or poultry product was actually prepared on a farm;

(n) "Federal inspection" means the meat and poultry inspection service conducted by the food safety and inspection service of the United States department of agriculture;

(o) "Federal Meat Inspection Act" means the act so entitled, approved March four, one thousand nine hundred seven, as amended by the Wholesome Meat Act.

(p) "Federal Poultry Products Inspection Act" means the act of Congress approved August twenty-eighth, one thousand nine hundred fifty-seven, as amended;

(q) "Inspection legend" means a mark or a statement
on a carcass, meat product or poultry product indicating the same has been inspected and passed in this state under the provisions of this article;

(r) "Label" means a display of written, printed or graphic matter on a container indicating the carcass, meat product or poultry product contained therein has been inspected and passed in this state under the provisions of this article;

(s) "Official inspection mark" means any symbol prescribed by the commissioner for the purpose of identifying the inspection status of any meat product or poultry product so inspected;

(t) "Establishment number" means an official number assigned by the commissioner to each establishment and included on the inspection legend and label to identify all inspected and passed carcasses, meat product or poultry product handled in that establishment;

(u) "Container" and "package" shall include, but not be limited to, any box, can, tin, cloth, plastic or any other receptacle, wrapper or cover;

(v) "Sell" means offer for sale, expose for sale, have in possession for sale, exchange, barter or trade;

(w) "Animals" mean cattle, swine, sheep and goats;

(x) "Carcass" means all or any part of a slaughtered animal or poultry, including viscera, which is capable of being used for human consumption;

(y) "Meat" means the edible part of the muscle of animals or poultry, which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying or overlying fat, and the portions of bone, skin, sinew nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing; it does not include the muscle found in the lips, snout or ears;

(z) "Meat food product" means any article of food for human consumption or any article which enters into the
composition of food for human consumption, which is
derived or prepared in whole or in part from any portion
of any animal or poultry, except organotherapeutic sub-
stances, meat juices, meat extract and the like which are
only for medicinal purposes and are advertised only to the
medical profession; any edible part of the carcass which
has been manufactured, cured, smoked, processed or oth-
erwise treated shall be considered a meat food product;

(aa) "Meat by-product" means any edible part of an
animal or poultry other than meat or meat food product;

(bb) "Meat product" means any meat, meat food prod-
uct, and meat by-product capable of use as human food;

(cc) "Poultry" means any domesticated bird which is
used or intended to be used for human consumption;

(dd) "Poultry meat" means the carcass or parts of such
carcass of any poultry;

(ee) "Poultry food product" means any product of
poultry, other than eggs, capable of use as human food
which is made wholly or in part from any poultry meat or
other portion of the carcass of poultry;

(ff) "Poultry by-product" means any part or parts of
poultry, other than eggs, capable of use as human food,
other than poultry carcass which have been derived from
one or more birds;

(gg) "Poultry product" means any poultry meat, poul-
try food product, and poultry by-product capable of use
as human food;

(hh) "Process" means to cut up, bone, chop, mix, grind,
slice, cook, smoke, cure, salt, marinate, dry, can, or other-
wise manufacture, process, or package any meat product
or poultry product;

(ii) "Denature" means the uniform application of suffi-
cient quantities of crude carbolic acid, cresylic disinfec-
tant, or any other agent approved by the commissioner
upon and into the freely slashed flesh of any carcass or
product condemned;
"Decharacterization" means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, or any other agent approved by the commissioner, upon and into the freely slashed flesh of carcasses or meat not being rendered, so as to unequivocally preclude its use for human food;

"Inedible" means the carcass, meat product or poultry product derived from 4-D or condemned animals or poultry, or meat products or poultry products which have deteriorated or are otherwise unfit for human consumption;

"4-D animal" means an animal that is dead, dying, down or diseased on arrival at the slaughterhouse;

"Commercial slaughterer" means a person engaged for profit in this state in the business of slaughtering animals or poultry for human consumption which are to be sold or offered for sale through a commercial outlet or establishment, and shall include a person who in addition to such commercial slaughtering also engages in the business of a custom slaughterer;

"Custom slaughterer" means a person engaged for profit in this state in the business of slaughtering animals or poultry for human consumption which are not to be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual, and shall include the boning or cutting up of carcasses of such animals or poultry and the grinding, chopping and mixing of the carcasses thereof;

"Slaughterhouse" shall include, but not be limited to, all buildings, structures and facilities used in the slaughtering of animals or poultry for human consumption;

"Distributor" means a person engaged for profit in this state in the business where carcasses, meat products or poultry products are received from state inspected establishments, or establishments inspected by the United States department of agriculture;

"Processor" means a person who engages for profit in this state in the business of processing carcasses,
(rr) "Commercial processor" means a processor for commercial outlets or distributors and shall include the business of custom processing;

(ss) "Custom processor" means a processor in which the carcass, meat products or poultry products derived through processing cannot be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual;

(tt) "Processing plant" shall include, but not be limited to, all buildings, structures, chill rooms, aging rooms, processing rooms, sanitary facilities, other facilities, and utensils, used by or in connection with the operations of a processor;

(uu) "Establishment" means any slaughterhouse, processing plant or distributor in this state;

(vv) "Related industries" means rendering plants, refrigerated meat warehouses, food lockers, meat and poultry wholesalers, brokers, pet food manufacturers, other animal food manufacturers, animal impoundments whose main source of food supply is derived from the raw meats, transportation firms and private carriers;

(ww) "Commercial outlet" means a place of business in this state and shall include all retail stores and public eating places in which carcasses, meat products or poultry products are stored, sold or offered for sale for human consumption by the purchaser or other individual consumers;

(xx) "Commercial dealer" means any person who operates one or more commercial outlets and who sells or offers for sale thereat any carcasses, meat products or poultry products for human consumption, and who does not can, cook, cure, dry, smoke or render any carcass, meat products or poultry products at such outlets and who conducts no slaughtering or preparing of carcasses, meat products or poultry products at such outlets other than boning or cutting up of carcasses, and other than grinding.
chopping and mixing operations at such outlets with respect to trim or meat derived only from such boning or cutting up operations;

(yy) "Custom slaughtered carcass, meat or poultry" or "custom processed meat products or poultry products" mean, respectively, carcasses, meat products or poultry products which were slaughtered, or processed by a custom slaughterer;

(zz) "Wholesome" means sound, healthful, clean, and otherwise fit for human consumption;

(aaa) "Adulterated" means and shall apply to any carcass, part thereof, meat product or poultry product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such carcass, meat product or poultry product shall not be considered adulterated under this clause if the quantity of such substance in or on such carcass, meat product or poultry product does not ordinarily render it injurious to health;

(2) (A) If it bears or contains (by reason of administration of any substance to the live animal or poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the commissioner make such carcass, meat product or poultry product unfit for human food;

(B) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of the federal Food, Drug and Cosmetic Act;

(C) If it bears or contains any food additive which is unsafe within the meaning of the federal Food, Drug and Cosmetic Act;

(D) If it bears or contains any color additive which is unsafe within the meaning of the federal Food, Drug and
Cosmetic Act: Provided, That a carcass, meat product or poultry product which is not adulterated under paragraph (B), (C) or (D) of this subsection, shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such carcass, meat product or poultry product is prohibited by rules in establishments at which inspection is maintained;

(3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) If it has been processed, packed, or held under insanitary conditions whereby it may have become contaminated with filth or pathogenic microorganisms, or whereby it may have been rendered injurious to health;

(5) If it is, in whole or in part, the product of an animal or poultry which has died otherwise than by slaughter;

(6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to the federal Food, Drug and Cosmetic Act;

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(bbb) "Antemortem" means before death;

(ccc) "Postmortem" means after death;

(ddd) "Reinspection" means inspection of the processing of carcass, meat products and poultry products, as well as a reexamination of products previously inspected;
§19-2B-3. Commissioner to enforce article; rules; cooperation with federal agencies, etc.

(a) The commissioner shall administer and enforce the provisions of this article and for this purpose is hereby authorized and empowered to promulgate reasonable rules and to employ or contract with such persons as may be appropriate. All rules shall be promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Such rules shall, insofar as practicable, be in conformity with the rules and regulations issued under the federal Meat Inspection Act and the federal Poultry Products Inspection Act.

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

§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

(a) No commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor shall operate an establishment unless he or she shall first have obtained a license from the commissioner, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the fee required in this section.

When such a person operates as a commercial slaughterer and also operates as a commercial processor, whether such operations are located on the same or different pre-
mises in this state, each such operation shall be licensed. When such a person operates two or more slaughterhouses not on the same premises in this state, or operates two or more processing plants not on the same premises in this state, a separate license shall be required for each such slaughterhouse and each such processing plant. Each license shall expire on the thirtieth day of June next following its issuance, and the annual fee for each such license shall be based upon the average number of animals slaughtered per year and upon the average finished product poundage processed per year, as set forth in the following table, except that the annual fee for the license of a person who operates solely as a custom slaughterer shall be ten dollars or as a custom processor shall be five dollars or as a distributor shall be five dollars.

<table>
<thead>
<tr>
<th>Class</th>
<th>Average Number of Animals Slaughtered Per Year</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>1-500</td>
<td>$10.00</td>
</tr>
<tr>
<td>Medium</td>
<td>501-1000</td>
<td>$25.00</td>
</tr>
<tr>
<td>Large</td>
<td>1001-5000</td>
<td>$50.00</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 5000</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Average Finished Product Poundage Processed Per Year</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>1-25,000</td>
<td>$10.00</td>
</tr>
<tr>
<td>Medium</td>
<td>25,001-250,000</td>
<td>$25.00</td>
</tr>
<tr>
<td>Large</td>
<td>250,001-1,000,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 1,000,000</td>
<td>$75.00</td>
</tr>
</tbody>
</table>

Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's establishment and if the commissioner is satisfied that the establishment is clean and sanitary, is properly equipped, and is in conformity with the provisions of this article and any reasonable rules promulgated by the commissioner, and if he or she is further satisfied that the carcasses, meat products or poultry products to be sold or offered for sale therefrom through commercial outlets will be wholesome and unadulterated, he or she shall issue the license. Each license shall specify the location of the
establishment at which the licensee shall carry on his or her operations. The license shall also contain the establishment number assigned by the commissioner.

(b) When a licensee changes the location of his or her establishment, he or she shall not operate at such new location unless and until his or her establishment at such new location has been inspected by the commissioner and a new license has been issued, or when a licensee leases, sells, changes name, incorporates or in any other way changes the status of his or her establishment with relationship to issuance of current license, the new lessee, owner, etc., shall not operate at the location unless and until the establishment at such location has been inspected and approved by the commissioner and a new license has been issued in accordance with the provisions of subsection (a) of this section: Provided, That a fee shall not be charged for such new license during the license year in which the change in location or change in ownership, name or leasing was made.

(c) The commissioner may refuse to grant a license or may suspend or revoke a license issued under the provisions of this section whenever he or she finds that the applicant's or licensee's establishment, as the case may be, is not clean or sanitary, or is not properly equipped, or is not in conformity with the provisions of this article or any reasonable rules promulgated by the commissioner, or if he or she finds that the carcasses, meat products or poultry products to be sold or offered for sale therefrom through commercial outlets are or will be adulterated.

Upon the refusal to grant a license, the commissioner shall furnish a written statement to the applicant specifying the grounds for such refusal. No such revocation or suspension of a license shall be effective until the licensee has received written notice thereof, which notice shall specify the grounds for such revocation or suspension.

Whenever there is sufficient cause for the revocation or suspension of a license as hereinabove specified, the commissioner may in lieu of such revocation or suspension, suspend inspections at the establishment. Immediately upon suspension of such inspections the commissioner
shall give the licensee written notice thereof, and such notice shall contain a recitation of the deficiencies which must be fully and completely corrected before inspections shall be resumed.

Upon receipt of a written statement advising that a license has been refused or upon receipt of a written notice of the revocation or suspension of a license, or upon the suspension of inspections at the licensee's establishment, the applicant or licensee, as the case may be, may, in writing, demand a hearing. The commissioner shall hold such a hearing within ten days after receipt of such written demand, in accordance with the provisions of section nine of this article.

§19-2B-5. Access to establishments, records, etc.

The commissioner may at any time enter upon and inspect any establishment, place, premises or conveyance, either private or public, where animals or poultry are slaughtered or carcasses, meat products or poultry products are processed, handled, stored, transported, distributed, sold or offered for sale, for the purpose of examining such animals or poultry, carcasses, meat products or poultry products. Any person engaged in the business of operating an establishment shall maintain such records as the commissioner may require directly pertaining to the movement, storage and distribution or other disposition of animals or poultry, carcasses, meat products and poultry products, and such records shall be open to inspection by the commissioner at any time during the normal working hours at such establishment.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examination; rejection tags.

(a) The commissioner shall provide antemortem and postmortem inspection of all animals and poultry which are to be sold or offered for sale through a commercial outlet, establishment or distributor.

(b) The commissioner shall provide reinspection of
(c) All inspections under the provisions of this article shall be performed in accordance with reasonable rules promulgated by the commissioner.

(d) The commissioner shall inspect all establishments under state inspection to make certain that they are operating in accordance with the provisions of this article and all reasonable rules promulgated by the commissioner.

(e) When one inspector is assigned to make inspections at two or more establishments where few animals or poultry are slaughtered, or where small quantities of carcasses, meat products or poultry products are processed, or where the operations at such establishments are sporadic, and such establishments in any of such cases are in reasonable close proximity to one another, the commissioner, giving full consideration to the convenience of the licensees of such establishments and considering the available inspection work force, may by written notice to such licensees specify a reasonable schedule for such operations: Provided, That the commissioner may not require operations other than during normal working hours.

(f) Every conveyance used by any establishment under state inspection, and, notwithstanding the provisions of section seven of this article, every conveyance used by any slaughterhouse, processing plant or distributor inspected by the United States department of agriculture, for the transportation of carcasses, meat products or poultry products shall be maintained in a clean and sanitary condition and may be inspected in accordance with the provisions of this article and reasonable rules promulgated by the commissioner.

(g) The commissioner shall require such quarantine and segregation of animals or poultry, carcasses, meat products or poultry products in establishments as is deemed necessary to effectuate the provisions of this article.

(h) The head, tongue, tail, thymus glands, viscera,
blood and other parts of any slaughtered animal shall be retained in such a manner as to preserve their identity until after the postmortem inspection has been completed.

(i) Each licensee shall pay for such devices for the affixing of marks, brands, or stamps and for such labels as may be prescribed for his or her establishment by the commissioner. Such devices and labels shall be under the exclusive control and supervision of the commissioner. The label used by any licensee shall be of the form and size prescribed by reasonable rules promulgated by the commissioner.

(j) Each animal or poultry carcass that has been inspected and passed in this state by the commissioner shall be marked at the time of inspection with the inspection legend. Any animal or poultry carcass which is not passed shall be marked conspicuously by the commissioner at the time of inspection in the following manner: "W. Va. inspected and condemned," or any abbreviation thereof.

(k) Each primal part of an animal or poultry carcass that has been inspected and passed shall be marked with the inspection legend, and each liver, beef heart and beef tongue that has been inspected and passed shall be branded with the inspection legend at the time of final inspection. Meat that has been boned out, cut from primal parts or otherwise changed so that the inspection legend is no longer plainly visible, and meat products and poultry products that are too small to be marked with the inspection legend shall be packed in closed containers to which shall be affixed the label indicating that the meat products or poultry products contained therein have been inspected and passed. Upon removal of the contents of such containers bearing such label, the label shall be defaced to prevent its reuse.

(l) All carcasses, meat products and poultry products which have been derived from an animal or poultry slaughtered by a custom slaughterer or processed by a custom slaughterer or custom processor shall be marked "W. Va. custom slaughtered" in letters not less than three eighths of an inch in height.
(m) Each official inspection mark shall contain the establishment number of the establishment involved, unless otherwise authorized by rules promulgated by the commissioner.

(n) The commissioner is hereby authorized and empowered to seize and destroy (1) any animal or poultry to be slaughtered in this state and thereafter sold or offered for sale through a commercial outlet or distributor which cannot be made fit for human consumption; (2) any animal or poultry, carcass, meat product or poultry product slaughtered or processed in this state in violation of the provisions of this article or any reasonable rules promulgated by the commissioner; (3) any carcass, meat product or poultry product that does not bear an inspection legend or meat label provided for by this article or which has not been inspected and passed under inspection provided by the United States department of agriculture and which is intended to be sold or offered for sale through a commercial outlet or distributor; and (4) any animal or poultry, carcass, meat product or poultry product which is adulterated.

Where appropriate the commissioner may in lieu of destruction as aforesaid denature, decharacterize, mutilate or slash any carcass, meat product or poultry product intended to be sold or offered for sale through a commercial outlet or distributor. The commissioner is also authorized and empowered to seize and retain under a retained tag any animal or poultry, carcass, meat product or poultry product until the commissioner determines to destroy, denature, decharacterize, mutilate, slash or release the same. Whenever the commissioner is authorized or empowered to take any of the actions specified in this subsection, he or she may order and direct the person having custody or possession of such animal or poultry, carcass, meat product or poultry product, or the licensee of the establishment in which it is found, to be responsible for the disposition thereof, as well as any necessary storage, handling or other incidentals related thereto. Such disposition shall be carried out only under the direction and supervision of the commissioner.
(o) Whenever practicable, the commissioner shall forego the actions authorized in the immediately preceding subsection and permit reprocessing if such reprocessing will correct or eliminate the conditions which would have justified any of such actions. Any such reprocessing in this state shall be under the supervision of the commissioner.

(p) Whenever the commissioner has good cause to believe that any carcass, meat product or poultry product whether fresh, frozen, or processed, and which is intended to be sold or offered for sale through a commercial outlet or distributor, may be adulterated or otherwise injurious to health, he or she may inspect or reinspect the same under the provisions of this article and any reasonable rules promulgated by him or her, even though such carcass, meat product or poultry product may have been previously inspected and passed.

(q) No licensee shall employ in any establishment any person who has any communicable disease or infected wounds or who is a carrier of any communicable disease. To enforce the provisions of this subsection, the commissioner may require any employee or prospective employee to submit to a health examination by a physician and furnish to the commissioner a certificate from such physician concerning his or her findings. The cost of conducting such examination and furnishing such certificate shall be borne by the licensee concerned.

(r) Whenever the commissioner inspects any room, compartment, equipment or utensil in any establishment subject to state inspection and finds the same not to be clean and sanitary or finds the same to be otherwise unsuitable for the slaughtering or processing operations carried on in such establishment, he or she shall affix thereto a rejection tag or rejection notice. No such rejected room, compartment, equipment or utensil shall be used until the deficiencies requiring such rejection shall have been fully and completely corrected and the rejection tag or rejection notice has been removed. No person other than the commissioner shall remove any such rejection tag or notice.
(s) When any animal or poultry, carcass, meat product or poultry product has been inspected hereunder, the appropriate official inspection mark shall be affixed thereto, and no person shall remove the same unless authorized so to do by the commissioner.


(a) In order to accomplish the objectives of this article, the commissioner may by reasonable rules exempt from inspection:

(1) Any commercial dealer, provided all carcasses, meat products or poultry products sold or offered for sale by such dealer were slaughtered and/or processed in commercial establishments under state inspection or have been inspected and passed by the United States department of agriculture and shall be identified, labeled and sold in normal retail quantities as prescribed by reasonable rules promulgated by the commissioner;

(2) The slaughtering by any person of animals of his or her own raising, and the preparation by him or her of the carcasses, meat products or poultry products of such animals exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees; or custom slaughtered animals, by a custom slaughterer, delivered by the owner thereof for such slaughter and the preparation by such slaughterer or custom processor of the carcasses, meat products or poultry products of such animals, exclusively for use, in the household of such owner, by him or her and members of his or her household and his or her nonpaying guests and employees: Provided, That the custom slaughterer or custom processor is not handling adulterated carcasses, meat products and poultry products; maintains identity of carcasses, meat products and poultry products; and maintains acceptable sanitation and operational controls as prescribed by reasonable rules promulgated by the commissioner;

(3) Antemortem and postmortem inspection of a licensed custom slaughterer;
(4) Any other operations which the commissioner may determine would best be exempted to further the purposes of this article, to the extent such exemptions conform to the federal Meat Inspection Act and the federal Poultry Products Inspection Act as amended from time to time and the regulations thereunder.

(b) Any institution operated by the state requiring inspection under this article shall be exempt from the licensing fee as required by section four of said article.


(a) When any person is entitled to a hearing before the commissioner as authorized in this article, the commissioner shall hold such hearing and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection, except that the hearing shall be held in the county in which the establishment involved is located, or in which the affected person resides or has his or her principal place of business, or in Kanawha county, West Virginia, at the election of the commissioner. Any such hearing shall be held within the time limits hereinbefore specified in this article, unless there is a postponement or a continuance for good cause shown.

(b) For the purpose of any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. 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. At any such hearing, the person who demanded the same may represent himself or be represented by an attorney-at-law admitted to practice before any
(c) After such hearing and consideration of all the testimony, evidence and record in the case, the commissioner shall make and enter an order deciding the matter in question. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all the parties and their attorneys of record, if any, in person or by registered or certified mail. The commissioner shall also cause a notice to be served with a copy of such order, which notice shall advise the parties of their right to judicial review, in accordance with the provisions of subsection (d) of this section. The order of the commissioner shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of subsection (d) of this section.

(d) Any party adversely affected by a final order made and entered by the commissioner after such hearing, held in accordance with the provisions of subsections (a) through (c) of this section, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this subsection, except that the petition shall be filed in the circuit court of the county in which the hearing before the commissioner was held.

(e) 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.

§19-2B-10. Additional prohibitions.

In addition to any other prohibitions contained in this article, it shall be unlawful:

(a) For any person to operate any establishment under state inspection which is not clean and sanitary;
(b) To slaughter any adulterated animal or poultry intended to be sold or offered for sale through a commercial outlet or distributor;

(c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat product or poultry product for human consumption which is adulterated;

(d) To slaughter for human consumption any animal or poultry tagged or permanently identified as "W. Va. condemned," or abbreviation thereof;

(e) To process, sell or offer for sale for human consumption any carcass, meat product or poultry product which is mislabeled with intent to deceive or which is marked "W. Va. inspected and condemned," or abbreviation thereof;

(f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat product or poultry product intended for human consumption and derived in whole or in part from any calf, pig, kid, lamb, chicken or turkey which is so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any carcass, meat product and poultry product in any establishment under state inspection to insects, live animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or other equine meat to any animal meat, meat product or poultry product derived from animals and to be sold or offered for sale through commercial outlets or distributors for human consumption;

(i) To remove any hide, skin or any other part of an unborn or stillborn animal or poultry in the confines of a room in an establishment where any animals or poultry, carcasses, meat products or poultry products are slaughtered or processed, as the case may be, or to be sold or offered for sale through a commercial outlet or distributor;

(j) To process for human consumption in any estab-
lishment subject to state inspection any carcass, meat product and poultry product derived from any animal which died other than by slaughter;

(k) To transport to any commercial outlet or distributor for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture;

(l) For any commercial outlet or distributor to receive, for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture;

(m) To slaughter any horse, mule or other equine in any establishment under state inspection in which animals or poultry are slaughtered for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(n) To bring any kangaroo meat, horse meat, mule meat or other equine meat into any establishment under state inspection where animal or poultry carcasses, meat products or poultry products are processed for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;

(p) For any person to use an establishment number not assigned to him or her or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;

(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him or her;
(r) To remove from any room, compartment, equipment or utensil any rejection tag or rejection notice affixed by the commissioner, unless such removal is authorized by him or her;

(s) For a licensee to use any container bearing an official inspection mark unless it contains the exact carcass, meat product or poultry product which was in the container at the time such contents were inspected and passed: Provided, That such a container may be otherwise used if such official inspection mark thereon is removed, obliterated or destroyed, and such other use is authorized by reasonable rules promulgated by the commissioner;

(t) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any meat label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;

(u) For any person, with intent to deceive, to possess, keep or use any label, mark, brand or stamp similar in character or import to an official label, mark, brand or stamp prescribed by the commissioner hereunder or to an official label, mark, brand or stamp used by the United States department of agriculture;

(v) To falsely make, falsely issue, falsely publish, alter, forge, simulate or counterfeit any inspection certificate, memorandum, label, mark, brand, or stamp, or device for making an inspection mark, brand or stamp, or to possess, keep or use the same, with intent to deceive;

(w) For any person to refuse to permit the commissioner to enter and inspect at any time, upon presentation of appropriate credentials, an establishment under state inspection, or to interfere with any such lawful entry or inspection;

(x) For any person to refuse to permit the commissioner, upon presentation of appropriate credentials, to examine and copy the records described in section five of this article;

(y) For a person to prevent or fail to decharacterize or
denature carcasses, meat products or poultry products as prescribed by reasonable rules promulgated by the commissioner;

(z) For a person to transport offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries: Provided, That such products may be transported if placed in suitable containers with tight covers, or watertight tanks so as not to contaminate the public highways or private roadways while going to or from the points of pickup;

(aa) For a person to store offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries during interim transit movement in refrigerated warehouses, food lockers or other related industries: Provided, That such products may be otherwise stored if properly marked "NOT FOR HUMAN FOOD" "FOR ANIMAL FOOD ONLY" and identified as approved products to be used for animal food;

(bb) For a person knowingly to purchase or deliver, or both, a 4-D animal to an establishment in this state;

(cc) For any person to transport carcasses, meat products and poultry products that are intended for human consumption in a manner which would permit the products to become adulterated;

(dd) For any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with the commissioner or his or her representative while engaged in or on account of the performances of his or her official duties.


(a) Any person who violates any of the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not less than two hundred nor more than one thousand dollars and upon conviction of each subsequent offense shall be fined not less than four hundred nor more than two thou-
sand dollars.

(b) If such a person knowingly sells, offers for sale or distribution, or attempts to sell, offers for sale or distribution of a carcass, meat product or poultry product that is contaminated with pathogenic microorganisms or otherwise adulterated, such a person shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars upon conviction of each offense.

CHAPTER 6

(Com. Sub. for S. B. 416—By Senators Yoder, Dugan and Plymale)

[Passed March 8, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eight, article twenty-nine, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing regional airport authorities to develop industrial parks in area of public airports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. INTERGOVERNMENTAL RELATIONS—REGIONAL AIRPORTS.

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.


§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.
Each authority is hereby empowered and authorized
to acquire, establish, construct, equip, improve, finance,
maintain and operate a regional airport or landing field
and appurtenant facilities so located to best serve the
region in which they are located, including, but not limited
to, industrial parks. Each authority shall be subject to the
jurisdiction of the state aeronautics commission to the
same extent as a state or municipal airport.

PART II. GENERAL POWERS OF AUTHORITIES.


Each authority is hereby given plenary power and
authority as follows:

(1) To make and adopt all necessary bylaws and rules
for its organization and operations not inconsistent with
law;

(2) To elect its own officers, to appoint committees
and to employ and fix the compensation for personnel
necessary for its operation;

(3) To enter into contracts with any person, including
both public and private corporations, or governmental
department or agency, and generally to do any and all
things necessary or convenient for the purpose of
acquiring, establishing, constructing, equipping,
improving, financing, maintaining and operating a public
airport to best serve the region in which it is located,
including the development of an industrial park in the
same general area;

(4) To delegate any authority given to it by law to any
of its officers, committees, agents or employees;

(5) To apply for, receive and use grants-in-aid,
donations and contributions from any source or sources,
including, but not limited to, the federal government and
any department or agency thereof, and this state subject to
any constitutional and statutory limitations with respect
thereto, and to accept and use bequests, devises, gifts and
donations from any person;

(6) To acquire lands and hold title thereto in its own
name;
(7) To purchase, own, hold, sell and dispose of personal property and to sell, lease or otherwise dispose of any real property which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities or assigning or pledging the gross or net revenues therefrom;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each authority is a "governing body" as that term is used in said article only;

(10) To establish, charge and collect reasonable fees and charges for services or for the use of any part of its property or facilities, or for both services and such use;

(11) To expend its funds in the execution of the powers and authority herein given;

(12) To apply for, receive and use loans, grants, donations, technical assistance and contributions from any regional or area commissions that may be established; and

(13) To prescribe by bylaw the manner of financial participation by members.

CHAPTER 7

(H. B. 2221—By Delegates Kiss, Browning, Leach, Gallagher, Farris, Compton and Tomblin)

[Passed January 27, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two,
chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, authorizing the alcohol beverage control commission to purchase specified property for a warehouse.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.**


The alcohol beverage control commissioner shall have the following powers and duties and any and all other powers and duties reasonably necessary and convenient for the purpose of this chapter:

1. Exercise general supervision of, and make rules and regulations for, the management of his or her department;

2. Sign and execute in the name of the commissioner any contract or agreement authorized by this chapter;

3. Supervise the fiscal affairs and responsibilities of the department;

4. With the approval of the governor, acquire title to and purchase real estate containing 12.168 acres situate on River Road in the Hub Industrial Park, Nitro, in Putnam County, West Virginia, which real estate is improved by block and steel building containing approximately one hundred fifty thousand (150,000) square feet, formerly known as the Heck's warehouse, for a sale price not to exceed two million, two hundred fifty thousand dollars ($2,250,000.00);

5. Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken
23 or entered into, and assume responsibility for the custody
24 and preservation of all papers and documents pertaining
25 to the commissioner;
26 (6) Purchase or lease as provided by law all equipment
27 necessary for the conduct of the department;
28 (7) Report to the governor each year all information
29 relative to the operation and functions of the department.
30 The commissioner shall make such other reports and rec-
31 ommendations as may be required by the governor;
32 (8) Exercise any other power that may be necessary or
33 proper for the orderly conduct of the business and the
34 effective discharge of the duties of the commissioner; and
35 (9) Invoke any legal or equitable remedies for the
36 enforcement of the orders of the commissioner or the
37 provisions of this chapter.

CHAPTER 8

(Com. Sub. for H. B. 2004—By Mr. Speaker, Mr. Chambers,
and Delegate Ashley)
[By Request of the Executive]

[Passed March 17, 1995; in effect from passage. Approved by the Governor.]
TITLE I—GENERAL PROVISIONS.

Section 1. General policy.—The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year one thousand nine hundred ninety-six.

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-six" shall mean the period from the first day of July, one thousand nine hundred ninety-five, through the thirtieth day of June, one thousand nine hundred ninety-six.

"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 per-
mitted.

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 appropriat-
ed 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 expen-
diture as part of the general fund of the state.

Sec. 5. Maximum expenditures.—No authority or
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§7. Awards for claims against the state.

§8. Appropriations from surplus accrued.
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<table>
<thead>
<tr>
<th>Fund No.</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>0105</td>
<td>Auditor's Office General Administration</td>
</tr>
<tr>
<td>0116</td>
<td>Division of Corrections—Correctional Units</td>
</tr>
<tr>
<td>0450</td>
<td>Division of Forestry—Fund No. 0250</td>
</tr>
<tr>
<td>0407</td>
<td>Division of Health—Fund No. 0407</td>
</tr>
<tr>
<td>0453</td>
<td>Division of Public Safety—Fund No. 0453</td>
</tr>
<tr>
<td>0220</td>
<td>Education and State Employees Grievance Board</td>
</tr>
<tr>
<td>0253</td>
<td>Governor's Office Civil Contingent Fund</td>
</tr>
<tr>
<td>0470</td>
<td>Tax Division</td>
</tr>
</tbody>
</table>

### Special revenue appropriations.

### State improvement fund appropriations.

### Specific funds and collection accounts.

### Appropriations for refunding erroneous payment.

### Sinking fund deficiencies.

### Appropriations for local governments.

### Total appropriations.

### General school fund.

---

**TITLE II—APPROPRIATIONS.**

**ORDER OF SECTIONS**

**SECTION 1.** Appropriations from general revenue.

**SECTION 2.** Appropriations from state road fund.

**SECTION 3.** Appropriations from other funds.

**SECTION 4.** Appropriations from lottery net profits.

**SECTION 5.** Appropriations of federal funds.

**SECTION 6.** Appropriations from federal block grants.

**SECTION 7.** Awards for claims against the state.

**SECTION 8.** Appropriations from surplus accrued.
SECTION 9. Supplemental and deficiency appropriations.
SECTION 10. Special revenue appropriations.
SECTION 11. State improvement fund appropriations.
SECTION 12. Specific funds and collection accounts.
SECTION 13. Appropriations for refunding erroneous payment.
SECTION 15. Appropriations for local governments.
SECTION 16. Total appropriations.
SECTION 17. General school fund.

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-six.

LEGISLATIVE

I—Senate

Account No.

Fund 0165 FY 1996 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members (R) ... 003</td>
<td>$816,200</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees (R) . 005</td>
<td>1,560,000</td>
</tr>
<tr>
<td>Employee Benefits (R) ............ 010</td>
<td>330,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund (R) ............ 021</td>
<td>560,000</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 1994-95 are to remain in full force and effect and are hereby reappropriated to June 30, 1996. Any balances so reappropriated may be transferred and credited to the 1995-96 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 sen-
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

Account No.

Fund 0170 FY 1996 Org 2200

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>FY 96</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R)</td>
<td>$2,050,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td>521,162</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses and Contingent Fund (R)</td>
<td>1,495,427</td>
</tr>
<tr>
<td>4</td>
<td>Expenses of Members (R)</td>
<td>1,120,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$5,186,589</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1994-95 are to remain in full force and effect and are hereby reappropriated to June 30, 1996. Any balances so reappropriated may be transferred and credited to the 1995-96 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, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

For duties imposed by law and by the house of delegates, including salary allowed by law as keeper of the rolls, the clerk of the house of delegates shall be paid a monthly salary as provided in the house resolution, unless increased between sessions under the authority of the speaker, with the approval of the house committee on rules, and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.
### 3—Joint Expenses

(WV Code Chapter 4)

Account No.

**Fund 0175  FY 1996  Org 2300**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance (R)</td>
<td>104</td>
<td>$4,589,186</td>
</tr>
<tr>
<td>Legislative Printing (R)</td>
<td>105</td>
<td>910,000</td>
</tr>
<tr>
<td>Legislative Rule-Making Review Committee (R)</td>
<td>106</td>
<td>232,600</td>
</tr>
<tr>
<td>Work Force Development Council (R)</td>
<td>529</td>
<td>100,000</td>
</tr>
<tr>
<td>Legislative Computer System (R)</td>
<td>107</td>
<td>1,001,009</td>
</tr>
<tr>
<td>Joint Standing Committee on Education (R)</td>
<td>108</td>
<td>54,125</td>
</tr>
<tr>
<td>Joint Commission on Vocational-Technical-Occupational Education (R)</td>
<td>109</td>
<td>50,000</td>
</tr>
<tr>
<td>Tax Reduction and Federal Funding Increased Compliance</td>
<td>642</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$26,936,920</td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 1994-95 are to remain in full force and effect and are hereby reappropriated to June 30, 1996. Any balances so reappropriated may be transferred and credited to the 1995-96 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.
30 The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs. It is not intended as a general appropriation for expenditure by the Legislature.

JUDICIAL

4—Supreme Court—General Judicial

Account No.

Fund 0180 FY 1996 Org 2400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R)</td>
<td>001</td>
<td>$26,094,420</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment (R)</td>
<td>004</td>
<td>263,064</td>
</tr>
<tr>
<td>3</td>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>2,008,697</td>
</tr>
<tr>
<td>4</td>
<td>Public Employees' Insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Matching (R)</td>
<td>012</td>
<td>2,890,770</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees'</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Retirement Matching (R)</td>
<td>016</td>
<td>2,495,000</td>
</tr>
<tr>
<td>8</td>
<td>Other Expenses (R)</td>
<td>029</td>
<td>3,100,000</td>
</tr>
<tr>
<td>9</td>
<td>Judges' Retirement System (R)</td>
<td>110</td>
<td>5,372,931</td>
</tr>
<tr>
<td>10</td>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>2,400,000</td>
</tr>
<tr>
<td>11</td>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>250,000</td>
</tr>
<tr>
<td>12</td>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>900,000</td>
</tr>
<tr>
<td>13</td>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>100,000</td>
</tr>
<tr>
<td>14</td>
<td>Family Law Master Program (R)</td>
<td>190</td>
<td>950,000</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td></td>
<td>$46,824,882</td>
</tr>
</tbody>
</table>

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)

Account No.

**Fund 0101** FY 1996 Org 0100

<table>
<thead>
<tr>
<th>Account</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>1,456,811</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,248</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>399,520</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>
</tr>
<tr>
<td>7</td>
<td>Unclassified</td>
<td>099</td>
<td>586,772</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$2,616,663</td>
</tr>
</tbody>
</table>

*6—Governor's Office—Custodial Fund*

(WV Code Chapter 5)

Account No.

**Fund 0102** FY 1996 Org 0100

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$407,830</td>
</tr>
<tr>
<td>2</td>
<td>Capital Improvements—Mansion</td>
<td>592</td>
<td>-$</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$407,830</td>
</tr>
<tr>
<td>4</td>
<td>To be used for current general expenses, including</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
compensation of employees, household maintenance, cost
of official functions and additional household expenses
occasioned by such official functions.

7—Governor's Office

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Account No.

Fund 0104 FY 1996 Org 0100

1 Governor's Cabinet on Children
2 and Families—Total (R) ....... 116 $ 325,000

Any unexpended balance remaining in the approipa-
4 tion (fund 0104, activity 116) at the close of the fiscal
5 year 1994-95 is hereby reappropriated for expenditure
6 during the fiscal year 1995-96.

8—Governor's Office

Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1996 Org 0100

1 Civil Contingent Fund—Total (R) . 114 $ 1,450,000

2 Any unexpended balance remaining in the approipa-
3 tion (fund 0105, activity 114) at the close of the fiscal
4 year 1994-95 is hereby reappropriated for expenditure
5 during the fiscal year 1995-96.

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

10 The above appropriation is intended to provide contin-
geney 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 op-
erations of the governor's office.
### 9—Governor's Office

**Infrastructure Improvements**

(WV Code Chapter 5)

Account No.

Fund 0106 FY 1996 Org 0100

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>002</td>
<td>Salary of Auditor</td>
<td>$46,800</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$1,646,038</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$34,024</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$547,276</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>$614,733</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>519</td>
<td>Computer Disk</td>
<td>$50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>117</td>
<td>Office Automation (R)</td>
<td>$790,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0106, activity 096) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96 and is to be expended to fund grants and loans for water, sewage and soil conservation projects.

### 10—Auditor's Office

**General Administration**

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1996 Org 1200

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>002</td>
<td>Salary of Auditor</td>
<td>$46,800</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$1,646,038</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$34,024</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$547,276</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>$614,733</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>519</td>
<td>Computer Disk</td>
<td>$50,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>117</td>
<td>Office Automation (R)</td>
<td>$790,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.
11—Auditor's Office

**Family Law Masters**

**Administration Fund**

(WV Code Chapter 48A)

Account No.

**Fund 0117 FY 1996 Org 1200**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$450,000</td>
</tr>
<tr>
<td>2</td>
<td>The above appropriation shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12—Treasurer’s Office

(WV Code Chapter 12)

Account No.

**Fund 0126 FY 1996 Org 1300**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>$50,400</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>488,110</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,500</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>168,725</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>255,187</td>
</tr>
<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>320,900</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 (R)</td>
<td>441</td>
<td>-$0-</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$1,345,822</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 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.
### 13—Department of Agriculture

(WV Code Chapter 19)

Account No.

**Fund 0131 FY 1996 Org 1400**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Commissioner</td>
<td>002</td>
<td>$46,800</td>
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<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,808,859</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$43,736</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$1,011,082</td>
</tr>
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<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>$922,396</td>
</tr>
<tr>
<td>6</td>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>$773,420</td>
</tr>
<tr>
<td>7</td>
<td>Small Business Loan Program</td>
<td>587</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Farmers Markets</td>
<td>571</td>
<td>$25,000</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$5,631,293</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Gypsy Moth Program (activity 119) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

A portion of the Unclassified appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

### 14—Department of Agriculture

**Soil Conservation Committee**

(WV Code Chapter 19)

Account No.

**Fund 0132 FY 1996 Org 1400**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$375,700</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$6,912</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$110,886</td>
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</tbody>
</table>
4 Unclassified (R) ................. 099 284,758
5 Maintenance of Flood
6 Control Projects (R) ............ 522 1,548,914
7 Soil Conservation Projects (R) .... 120 2,500,000
8 Total ................................ $ 4,827,170

9 Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Infrastructure Projects—Total (fund 0538, activity 516), Maintenance of Flood Control Projects (fund 0132, activity 522) and Soil Conservation Projects (fund 0132, activity 120) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

15—Department of Agriculture

Meat Inspection

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1996 Org 1400

1 Personal Services .............. 001 $ 346,579
2 Annual Increment .............. 004 5,994
3 Employee Benefits ............. 010 119,025
4 Unclassified ................. 099 63,370
5 Total ........................... $ 534,968

6 Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

16—Department of Agriculture

Agricultural Awards

(WV Code Chapter 19)

Account No.
### APPROPRIATIONS

**Fund 0136 FY 1996 Org 1400**

<table>
<thead>
<tr>
<th></th>
<th>Agricultural Awards</th>
<th>121</th>
<th>$66,066</th>
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<tr>
<td></td>
<td>Fairs and Festivals</td>
<td>122</td>
<td>301,598</td>
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<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$367,664</strong></td>
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</table>

### 17—Attorney General

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

**Account No.**

**Fund 0150 FY 1996 Org 1500**

<table>
<thead>
<tr>
<th></th>
<th>Salary of Attorney General</th>
<th>002</th>
<th>$50,400</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Personal Services</td>
<td>001</td>
<td>2,047,690</td>
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<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>20,052</td>
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<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>585,056</td>
</tr>
<tr>
<td></td>
<td>Unclassified (R)</td>
<td>099</td>
<td>595,648</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,298,846</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0150, activity 099) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

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.
18—Secretary of State
(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1996 Org 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Secretary of State</td>
<td>002</td>
<td>$43,200</td>
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<tr>
<td>2 Personal Services</td>
<td>001</td>
<td>$509,891</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>004</td>
<td>$6,588</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>010</td>
<td>$186,191</td>
</tr>
<tr>
<td>5 Administrative Law</td>
<td>617</td>
<td>$38,000</td>
</tr>
<tr>
<td>7 Unclassified (R)</td>
<td>099</td>
<td>$300,408</td>
</tr>
<tr>
<td>8 Total</td>
<td></td>
<td>$1,084,278</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0155, activity 099) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

19—State Elections Commission
(WV Code Chapter 3)

Account No.

Fund 0160 FY 1996 Org 1601

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$12,000</td>
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</tbody>
</table>

DEPARTMENT OF ADMINISTRATION

20—Department of Administration
Office of the Secretary
(WV Code Chapter 5F)

Account No.

Fund 0186 FY 1996 Org 0201

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
<td>$237,072</td>
</tr>
</tbody>
</table>
21—Consolidated Public Retirement Board

(WV Code Chapter 5)

Account No.

Fund 0195 FY 1996 Org 0205

1 The division of highways, division of motor vehicles,
2 bureau of employment programs, public service commis-
3 sion and other departments or divisions operating from
4 special revenue funds and/or federal funds shall pay their
5 proportionate share of the retirement costs for their re-
6 spective divisions. When specific appropriations are not
7 made, such payments may be made from the balances in
8 the various special revenue funds in excess of specific
9 appropriations.

22—Division of Finance

(WV Code Chapter 5A)

Account No.

Fund 0203 FY 1996 Org 0209

1 Personal Services .................. 001 $ 507,454
2 Annual Increment .................. 004 7,409
3 Employee Benefits ............... 010 141,903
4 Unclassified ....................... 099 549,752
5 GAAP Project (R) ............... 125 1,265,746
6 Total .......................... $ 2,472,264

7 Any unexpended balance remaining in the appropria-
8 tion for GAAP Project (fund 0203, activity 125) at the
9 close of the fiscal year 1994-95 is hereby reappropriated
10 for expenditure during the fiscal year 1995-96.

23—Division of General Services

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1996 Org 0211
### Ch. 8]

#### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>001</th>
<th>$444,840</th>
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<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,004</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>201,678</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>699,675</td>
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<td>5</td>
<td>Fire Service Fee</td>
<td>126</td>
<td>13,440</td>
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<tr>
<td>6</td>
<td>Capitol Building Preservation (R)</td>
<td>503</td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>Capital Improvements -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Capitol Complex</td>
<td>593</td>
<td>-0-</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$1,373,637</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 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

### 24—Division of Purchasing

(WV Code Chapter 5A)

**Account No.**

**Fund 0210 FY 1996 Org 0213**

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>001</th>
<th>$543,223</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,156</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>156,698</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>57,342</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$766,419</td>
</tr>
</tbody>
</table>

The division of highways shall reimburse the Unclassified appropriation (fund 0210, 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.
25—Commission on Uniform State Laws
(WV Code Chapter 29)

Account No.
Fund 0214 FY 1996 Org 0217

1 Unclassified—Total .............. 096 $ 20,000
2 To pay expenses of members of the commission on uniform state laws.

26—Board of Risk and Insurance Management
(WV Code Chapter 29)

Account No.
Fund 0217 FY 1996 Org 0218

1 Unclassified ..................... 099 $ 10,454,116
2 Retro Payments ................... 523 4,850,000
3 County Boards of
4 Education Premium
5 and Retro Payments ............. 648 2,000,000
6 Total ............................. $ 17,304,116

The above Unclassified 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.
From the above appropriation for County Boards of Education Premium and Retro Payments, one million dollars shall be expended to reduce the unfunded liability in the insurance fund and one million dollars shall be allocated to the county boards of education to defray the increased cost of premiums.

27—Education and State Employees

Grievance Board

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1996 Org 0219

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1996</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$642,270</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$5,532</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$182,524</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$166,690</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$997,016</td>
</tr>
</tbody>
</table>

28—Ethics Commission

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1996 Org 0220

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1996</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$163,215</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>756</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$43,094</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$153,292</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$360,357</td>
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</tbody>
</table>
**29—Public Defender Services**  
(WV Code Chapter 29)

Account No.

Fund 0226 FY 1996 Org 0221

<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>$244,047</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,844</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>75,278</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>98,455</td>
</tr>
<tr>
<td>5</td>
<td>Appointed Counsel Fees and Public Defender</td>
<td>127</td>
<td>$14,210,905</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Corporations (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$14,631,529</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0226, activity 099) and Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

**30—Committee for the Purchase of Commodities and Services from the Handicapped**  
(WV Code Chapter 5A)

Account No.

Fund 0233 FY 1996 Org 0224

<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>$4,656</td>
</tr>
</tbody>
</table>

**31—Public Employees Insurance Agency**  
(WV Code Chapter 5)

Account No.

Fund 0200 FY 1996 Org 0225

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The division of highways, division of motor vehicles,</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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 public employees health insurance cost for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

DEPARTMENT OF EDUCATION

32—State Department of Education

School Lunch Program

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1996 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
<td>004</td>
<td>1,921</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>47,034</td>
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<td>Unclassified</td>
<td>099</td>
<td>1,694,608</td>
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<tr>
<td>Nutrition Program</td>
<td>594</td>
<td>$0</td>
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<tr>
<td>Total</td>
<td></td>
<td>$1,898,563</td>
</tr>
</tbody>
</table>

33—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1996 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$97,985</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,102</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>48,633</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>157,287</td>
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# Appropriations

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Budget</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
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<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$688,371</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$5,110,750</td>
</tr>
<tr>
<td>138</td>
<td>WV Education Information System (WVEIS)</td>
<td>$2,645,842</td>
</tr>
<tr>
<td>139</td>
<td>34/1000 Waiver</td>
<td>$500,000</td>
</tr>
<tr>
<td>140</td>
<td>Increased Enrollment</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>141</td>
<td>Coordinator—Educational</td>
<td>$61,065</td>
</tr>
<tr>
<td>145</td>
<td>Medical Services</td>
<td>$0</td>
</tr>
<tr>
<td>478</td>
<td>Governor’s Honors Academy</td>
<td>$30,000</td>
</tr>
<tr>
<td>482</td>
<td>WVGC Writing Project</td>
<td>$25,000</td>
</tr>
<tr>
<td>506</td>
<td>Micro Computer Network</td>
<td>$150,000</td>
</tr>
<tr>
<td>547</td>
<td>Inclusion</td>
<td>$0</td>
</tr>
<tr>
<td>596</td>
<td>Technology and Telecommunications Initiative</td>
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<tr>
<td>615</td>
<td>Professional Certification</td>
<td>$25,000</td>
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<tr>
<td>621</td>
<td>Adult Advisory Council</td>
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<tr>
<td>622</td>
<td>Pickens School Support and Hacker Valley School Support</td>
<td>$300,000</td>
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<tr>
<td>649</td>
<td>Principals Mentorship</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

---

**34—State Department of Education**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

---

5 Dam Repairs .................................. 595 25,000
6 Total ........................................... $332,007
23 Assistance for Funded Positions Errors .................. 650 150,000
25 Total ................................................. $ 16,268,675
26 The above appropriation includes the state board of education and their executive office.
28 Any unexpended balance remaining in the appropriation for Computer Basic Skills (fund 0313, activity 145) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

35—State Department of Education

Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Account No.
Fund 0314 FY 1996 Org 0402
1 Special Education—Counties .... 159 $ 7,336,561
2 Special Education—Institutions .. 160 2,574,660
3 Education of Institutionalized
4 Juveniles .......................... 161 3,464,948
5 Total ............................................... $ 13,376,169

36—State Department of Education

State Aid to Schools
(WV Code Chapters 18 and 18A)
Account No.
Fund 0317 FY 1996 Org 0402
1 Professional Educators ............ 151 $ 655,801,717
2 Service Personnel .................... 152 203,087,527
3 Fixed Charges .......................... 153 74,637,473
4 Transportation ........................ 154 28,546,855
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$683,000</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$9,666</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$214,057</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$546,220</td>
</tr>
<tr>
<td>146</td>
<td>Wood Products—Forestry Vocational Program (R)</td>
<td>$63,024</td>
</tr>
<tr>
<td>147</td>
<td>Albert Yanni Vocational Program</td>
<td>$139,300</td>
</tr>
<tr>
<td>148</td>
<td>Vocational Aid</td>
<td>$10,632,831</td>
</tr>
<tr>
<td>149</td>
<td>Adult Basic Education</td>
<td>$2,085,524</td>
</tr>
<tr>
<td>150</td>
<td>Equipment Replacement</td>
<td>$1,019,750</td>
</tr>
</tbody>
</table>

### 37—State Board of Education

#### Vocational Division

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Fund 0390 FY 1996 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$683,000</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$9,666</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$214,057</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$546,220</td>
</tr>
<tr>
<td>146</td>
<td>Wood Products—Forestry Vocational Program (R)</td>
<td>$63,024</td>
</tr>
<tr>
<td>147</td>
<td>Albert Yanni Vocational Program</td>
<td>$139,300</td>
</tr>
<tr>
<td>148</td>
<td>Vocational Aid</td>
<td>$10,632,831</td>
</tr>
<tr>
<td>149</td>
<td>Adult Basic Education</td>
<td>$2,085,524</td>
</tr>
<tr>
<td>150</td>
<td>Equipment Replacement</td>
<td>$1,019,750</td>
</tr>
</tbody>
</table>
12 Program Modernization ........ 598 — 0-
13 Total ............................. $15,393,372
14 Any unexpended balance remaining in the appropriation for Wood Products—Forestry Vocational Program (fund 0390, activity 146) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

38—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Account No.

Fund 0320 FY 1996 Org 0403

1 Personal Services ............... 001 $5,524,085
2 Annual Increment ............... 004 4,140
3 Employee Benefits ............... 010 1,827,055
4 Unclassified ..................... 099 1,039,048
5 School Bus Purchase ............. 599 — 0-
6 Total ............................. $8,394,328

DEPARTMENT OF EDUCATION AND THE ARTS

39—Department of Education and the Arts

Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 0294 FY 1996 Org 0431

1 Unclassified (R) ............... 099 $694,881
2 Center for Professional Development (R) ........ 115 800,000
3 Technical Preparation Program (R) .............. 440 832,397
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Arts Programs</td>
<td>500</td>
</tr>
<tr>
<td></td>
<td>WV Humanities Council</td>
<td>168</td>
</tr>
<tr>
<td></td>
<td>Community Schools/Mini Grants</td>
<td>530</td>
</tr>
<tr>
<td></td>
<td>Marshall and West Virginia University Faculty and Course Development International Study Projects</td>
<td>549</td>
</tr>
<tr>
<td></td>
<td>Hospitality Education</td>
<td>600</td>
</tr>
<tr>
<td></td>
<td>Hospitality Training</td>
<td>659</td>
</tr>
<tr>
<td></td>
<td>MA Public Health Program</td>
<td>623</td>
</tr>
<tr>
<td></td>
<td>Hospitality ABE Jobs</td>
<td>663</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$3,487,278</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), except fiscal year 1992-93, Center for Professional Development (fund 0294, activity 115), except fiscal year 1992-93, Technical Preparation Program (fund 0294, activity 440) and Rural Health Initiative Site Support (fund 0294, activity 295) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

40—Division of Culture and History
(WV Code Chapter 29)

Account No.

Fund 0293 FY 1996 Org 0432

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>001</th>
<th>$1,436,585</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>24,354</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>474,160</td>
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<tr>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>1,705,962</td>
</tr>
</tbody>
</table>
Ch. 8] APPROPRIATIONS

5 Capital Outlay, Repairs and Equipment (R) ............. 589 -0-
6 Capitol Tourism Programs ...... 601 150,000
7 Grants for Competitive Arts Programs .............. 624 1,000,000
8 Total ................................ $ 4,791,061
9
10 Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

11 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.

12 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.

41—Library Commission

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1996 Org 0433

1 Personal Services .............. 001 $ 1,014,982
2 Annual Increment .............. 004 27,000
3 Employee Benefits ............. 010 348,532
4 Unclassified .................. 099 230,984
5 Books and Films .............. 179 150,000
### Appropriations

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Services to State Institutions</td>
<td>180</td>
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<tr>
<td>Services to Blind and Handicapped</td>
<td>181</td>
</tr>
<tr>
<td>Grants to Public Libraries</td>
<td>182</td>
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<tr>
<td>Libraries—Special Projects</td>
<td>625</td>
</tr>
<tr>
<td>Total</td>
<td>$8,684,421</td>
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</tbody>
</table>

**42—Educational Broadcasting Authority**

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0300</td>
<td></td>
<td>0439</td>
<td>Personal Services</td>
<td>001 $3,054,536</td>
</tr>
<tr>
<td></td>
<td>0300</td>
<td></td>
<td>0439</td>
<td>Annual Increment</td>
<td>004 $49,166</td>
</tr>
<tr>
<td></td>
<td>0300</td>
<td></td>
<td>0439</td>
<td>Employee Benefits</td>
<td>010 $899,504</td>
</tr>
<tr>
<td></td>
<td>0300</td>
<td></td>
<td>0439</td>
<td>Unclassified</td>
<td>099 $1,232,647</td>
</tr>
<tr>
<td></td>
<td>0300</td>
<td></td>
<td>0439</td>
<td>Total</td>
<td>$5,235,853</td>
</tr>
</tbody>
</table>

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

**43—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Central Office**

(WV Code Chapters 18B and 18C)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0333</td>
<td></td>
<td>0452</td>
<td>Unclassified</td>
<td>099 $1,217,409</td>
</tr>
<tr>
<td></td>
<td>0333</td>
<td></td>
<td>0452</td>
<td>Higher Education Grant</td>
<td>164 $6,062,050</td>
</tr>
<tr>
<td></td>
<td>Tuition Contract Program</td>
<td>165</td>
<td>$599,940</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>--------------------------------</td>
<td>-----</td>
<td>----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
<td>$100,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Underwood-Smith Scholarship</td>
<td>167</td>
<td>$255,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Program—Student Awards</td>
<td>167</td>
<td>$2,117,072</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>WVNET</td>
<td>169</td>
<td>$171,258</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Faculty and Staff Salaries</td>
<td>573</td>
<td>$573,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$10,522,726</td>
<td></td>
<td></td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Higher Education Grant Program (fund 0333, activity 164) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96; and from this reappropriated unexpended balance, $50,000 shall be transferred to Concord college for the Bonner scholars program.

44—Board of Trustees of the University System of West Virginia

Control Account

(WV Code Chapter 18B)

Account No.

<table>
<thead>
<tr>
<th></th>
<th>Fund 0327 FY 1996 Org 0461</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
</tr>
<tr>
<td>2</td>
<td>Marshall University—</td>
</tr>
<tr>
<td>3</td>
<td>Southern WV Community</td>
</tr>
<tr>
<td>4</td>
<td>College 2+2 Program (R)</td>
</tr>
<tr>
<td>5</td>
<td>Marshall University—</td>
</tr>
<tr>
<td>6</td>
<td>Autism Training Center</td>
</tr>
<tr>
<td>7</td>
<td>Marshall University—</td>
</tr>
<tr>
<td>8</td>
<td>Forensic Lab</td>
</tr>
<tr>
<td>9</td>
<td>Faculty and Staff Salaries</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Marshall University-Southern WV Community College 2+2 Program (fund 0327, activity 170) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

45—Board of Trustees of the University System of West Virginia

University of West Virginia

Health Sciences Account

Control Account

(WV Code Chapter 18B)

Account No.

Fund 0323  FY 1996  Org 0478

<table>
<thead>
<tr>
<th>Account</th>
<th>FY Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Education</td>
<td>$0</td>
</tr>
<tr>
<td>School of Osteopathic Medicine</td>
<td>5,543,642</td>
</tr>
<tr>
<td>Marshall Medical School</td>
<td>9,803,370</td>
</tr>
<tr>
<td>WVU—School of Health Sciences</td>
<td>34,419,264</td>
</tr>
<tr>
<td>WVU—School of Health Sciences—Charleston Division</td>
<td>3,494,301</td>
</tr>
<tr>
<td>WVU Charleston Division—Poison Control Hot Line</td>
<td>280,000</td>
</tr>
<tr>
<td>Health Sciences Scholarship Fund</td>
<td>148,500</td>
</tr>
<tr>
<td>Primary Health Education Program Support (R)</td>
<td>3,960,000</td>
</tr>
<tr>
<td>Rural Health Initiative Site Support (R)</td>
<td>1,980,000</td>
</tr>
<tr>
<td>Faculty and Staff Salaries and Benefits</td>
<td>2,881,078</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
</tbody>
</table>

Total: $63,680,929

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 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

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

Account No.

Fund 0330 FY 1996 Org 0481

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>Organization</th>
<th>Fiscal Year</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>0481</td>
<td>1996</td>
<td>78,927,509</td>
</tr>
<tr>
<td>2</td>
<td>Faculty and Staff Salaries and Benefits</td>
<td>573</td>
<td>0481</td>
<td>1996</td>
<td>4,621,407</td>
</tr>
<tr>
<td>4</td>
<td>Program Enhancements</td>
<td>643</td>
<td>0481</td>
<td>1996</td>
<td>0</td>
</tr>
</tbody>
</table>

Total: $83,548,916

From the above appropriation for Program Enhancements (activity 643), the board of directors shall distribute
the funds to those institutions with the greatest need as
determined by the board and without these funds being
distributed through, or impacting on, the resource alloca-
tion model or policies.

47—State Board of Rehabilitation

Division of Rehabilitation Services
(WV Code Chapter 18)

Account No.

Fund 0310 FY 1996 Org 0932

| 1 | Personal Services .................. 001 $ 4,014,517 |
| 2 | Annual Increment .................. 004 89,970 |
| 3 | Employee Benefits .................. 010 1,298,453 |
| 4 | Unclassified .................. 099 151,165 |
| 5 | Case Services .................. 162 2,757,289 |
| 6 | Workshop Development .................. 163 $ 1,449,000 |
| 7 | Total .................. $ 9,760,394 |

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

48—Department of Health and Human Resources

Office of the Secretary
(WV Code Chapter 5F)

Account No.

Fund 0400 FY 1996 Org 0501

| 1 | Unclassified—Total .................. 096 $ 145,442 |

49—Division of Health

Central Office
(WV Code Chapter 16)

Account No.

Fund 0407 FY 1996 Org 0506
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$6,276,419</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>95,368</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>2,253,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>4,246,437</td>
</tr>
<tr>
<td>5</td>
<td>Corporate Nonprofit Community</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Health Centers—F.M.H.A.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Mortgage Finance</td>
<td>167,968</td>
</tr>
<tr>
<td>8</td>
<td>Appalachian States Low Level</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Radioactive Waste</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Commission</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td>Safe Drinking Water Program</td>
<td>-0-</td>
</tr>
<tr>
<td>12</td>
<td>State Aid to Local Agencies</td>
<td>7,517,204</td>
</tr>
<tr>
<td>13</td>
<td>Women, Infants and Children</td>
<td>-0-</td>
</tr>
<tr>
<td>14</td>
<td>Maternal and Child Health</td>
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</tr>
<tr>
<td>15</td>
<td>Clinics, Clinicians and</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Medical Contracts and Fees</td>
<td>4,423,043</td>
</tr>
<tr>
<td>17</td>
<td>Pediatric Dental Services</td>
<td>100,000</td>
</tr>
<tr>
<td>18</td>
<td>Vaccine for Children</td>
<td>-0-</td>
</tr>
<tr>
<td>19</td>
<td>Adult Influenza Vaccine</td>
<td>-0-</td>
</tr>
<tr>
<td>20</td>
<td>Tuberculosis Control</td>
<td>308,534</td>
</tr>
<tr>
<td>21</td>
<td>Wellness Institute</td>
<td>-0-</td>
</tr>
<tr>
<td>22</td>
<td>Primary Care Uncompensated</td>
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<tr>
<td>23</td>
<td>Care Fund</td>
<td>-0-</td>
</tr>
<tr>
<td>24</td>
<td>Equipment and Capital Costs</td>
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</tr>
<tr>
<td>25</td>
<td>Primary Care Support</td>
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</tr>
<tr>
<td>26</td>
<td>Program</td>
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</tr>
<tr>
<td>27</td>
<td>Epidemiology Research</td>
<td>-0-</td>
</tr>
<tr>
<td>28</td>
<td>Epidemiology Support</td>
<td>438,376</td>
</tr>
<tr>
<td>29</td>
<td>EMS Area Entity</td>
<td>756,320</td>
</tr>
</tbody>
</table>
30 Rural Non-Profit EMS .......................... 493 -0-
31 Equipment ............................... 460,000
32 Rural EMS Equipment and Training ........... 627
33 Regional EMS Entities .................. 557 630,000
34 Early Intervention ....................... 223 2,018,357
35 Cancer Registry .......................... 225 -0-
36 Primary Care Support ..................... 628 6,510,156
37 Total .................................... $ 36,201,182
38
39 Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account, including transfers to personal services. Such transfers, not to exceed six hundred twenty one thousand, four hundred sixty three dollars, will be for the sole purpose of funding the office of health facilities licensure and certification for the licensure cost-share to inspect nursing homes, hospitals and other health care facilities which are licensed by the State of West Virginia and which participate in the Medicaid/Medicare reimbursement programs.

50—Consolidated Medical Service Fund

Account No.

Fund 0525 FY 1996 Org 0506

1 Personal Services ...................... 001 $ 1,189,539
2 Annual Increment ....................... 004 14,241
3 Employee Benefits ..................... 010 14,587,978
4 Foster Grandparents ......................
5 Stipends/Travel ......................... 205 -0-
6 Special Olympics ......................... 208 26,074
7 Behavioral Health Program—
8 Community Centers ...................... 220 -0-
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 1996, 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 335), on July 1, 1995, the sum of two hundred thousand dollars shall be transferred to the department of agriculture — land division 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.
51—Commission on Aging

(WV Code Chapter 29)

Account No.

Fund 0420 FY 1996 Org 0508

<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>$113,655</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,228</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>51,551</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>437,412</td>
</tr>
<tr>
<td>5</td>
<td>Local Programs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Service Delivery Costs</td>
<td>200</td>
<td>2,475,250</td>
</tr>
<tr>
<td>7</td>
<td>Senior Citizens Centers—Land</td>
<td>201</td>
<td>250,000</td>
</tr>
<tr>
<td>8</td>
<td>Acquisition, Construction and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Repairs and Alterations (R)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>14,400</td>
</tr>
<tr>
<td>11</td>
<td>Area Agencies Administration</td>
<td>203</td>
<td>87,429</td>
</tr>
<tr>
<td>12</td>
<td>Ombudsman</td>
<td>204</td>
<td>-0-</td>
</tr>
<tr>
<td>13</td>
<td>Foster Grandparents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Stipends and Travel</td>
<td>205</td>
<td>57,734</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td></td>
<td>$3,489,659</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 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

52—Human Rights Commission

(WV Code Chapter 5)

Account No.

Fund 0416 FY 1996 Org 0510

<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>$515,453</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>158,395</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>148,323</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$829,271</td>
</tr>
</tbody>
</table>

#### 53—Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Account No.**

**Fund 0403 FY 1996 Org 0511**

<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>$17,865,449</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>356,331</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>6,128,101</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>11,979,583</td>
</tr>
<tr>
<td>5</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,158,211</td>
</tr>
<tr>
<td>6</td>
<td>Medical Services</td>
<td>189</td>
<td>162,045,670</td>
</tr>
<tr>
<td>7</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>700,000</td>
</tr>
<tr>
<td>8</td>
<td>Women's Commission</td>
<td>191</td>
<td>40,000</td>
</tr>
<tr>
<td>9</td>
<td>Grants for Domestic Violence Shelters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Commission on</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Hearing Impaired</td>
<td>192</td>
<td>150,000</td>
</tr>
<tr>
<td>12</td>
<td>Public Assistance</td>
<td>193</td>
<td>30,231,418</td>
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<td>13</td>
<td>Emergency Assistance</td>
<td>194</td>
<td>1,510,216</td>
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<td>14</td>
<td>Social Services</td>
<td>195</td>
<td>19,651,180</td>
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<tr>
<td>15</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
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<tr>
<td>16</td>
<td>JOBS Program</td>
<td>197</td>
<td>3,730,069</td>
</tr>
<tr>
<td>17</td>
<td>Education Medical Services</td>
<td>198</td>
<td>-0-</td>
</tr>
</tbody>
</table>
Notwithstanding the provisions of title one, section two 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.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

Account No.

Fund 0430 FY 1996 Org 0601

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0601</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$125,098</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Federal Court Judgement</td>
<td>-</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Rum Creek</td>
<td>614</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$125,098</td>
<td></td>
</tr>
</tbody>
</table>

55—Adjutant General—State Militia
(WV Code Chapter 15)
### Ch. 8] APPROPRIATIONS

Account No.

<table>
<thead>
<tr>
<th>Fund 0433 FY 1996 Org 0603</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
<td>$271,477</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
<td>7,056</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
<td>98,697</td>
</tr>
<tr>
<td>4 Unclassified .............. 099</td>
<td>3,176,695</td>
</tr>
<tr>
<td>5 College Education Fund ...... 232</td>
<td>798,400</td>
</tr>
<tr>
<td>6 Total .......................</td>
<td>$4,352,325</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.

### 56—Board of Probation and Parole

(WV Code Chapter 62)

Account No.

<table>
<thead>
<tr>
<th>Fund 0440 FY 1996 Org 0605</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
<td>$-0-</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
<td>-0-</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
<td>-0-</td>
</tr>
<tr>
<td>4 Unclassified .............. 099</td>
<td>-0-</td>
</tr>
<tr>
<td>5 Salaries of Members of Members of Board</td>
<td>227 -0-</td>
</tr>
<tr>
<td>6 Total .......................</td>
<td>$-0-</td>
</tr>
</tbody>
</table>
### 57—West Virginia Board of Parole

(WV Code Chapter 62)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0605</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$47,448</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$936</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$71,665</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$38,751</td>
</tr>
<tr>
<td>5</td>
<td>Salaries of Members of the West Virginia Board of Parole</td>
<td>$200,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$358,800</td>
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</tbody>
</table>

### 58—Office of Emergency Services

(WV Code Chapter 15)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0606</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$152,797</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$3,249</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$57,687</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>$11,546</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$225,279</td>
</tr>
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</table>

### 59—Division of Corrections

Central Office

(WV Code Chapters 25, 28, 49 and 62)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0608</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$346,044</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,840</td>
</tr>
</tbody>
</table>
**Ch. 8] 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>106,500</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>110,442</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>569,826</td>
</tr>
</tbody>
</table>

**60—Division of Corrections**

**Correctional Units**

*(WV Code Chapters 25, 28, 49 and 62)*

Account No.

Fund 0450 FY 1996 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>$10,812,103</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>4,148,450</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>6,367,692</td>
</tr>
<tr>
<td>5</td>
<td>Salary and Benefit Increase</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Probation</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>and Parole Officers</td>
<td>631</td>
<td>83,790</td>
</tr>
<tr>
<td>6</td>
<td>Payment to Counties and/or 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>222,400</td>
</tr>
<tr>
<td>9</td>
<td>Mt. Olive Correctional Complex</td>
<td>533</td>
<td>15,200,000</td>
</tr>
<tr>
<td>10</td>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>4,808,834</td>
</tr>
<tr>
<td>11</td>
<td>Inmate Medical Expense</td>
<td>535</td>
<td>3,679,100</td>
</tr>
<tr>
<td>12</td>
<td>Capital Improvements</td>
<td>338</td>
<td>0</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td></td>
<td>$47,871,311</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 appropriation. The Commissioner shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment.

From the above appropriation to Unclassified, on July 1, 1995, the sum of two hundred thousand dollars shall be transferred to the department of agriculture — land division 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.

61—Division of Public Safety
(WV Code Chapter 15)

Account No.
Fund 0453 FY 1996 Org 0612

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$17,656,040</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>98,244</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,388,576</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>5,164,803</td>
</tr>
<tr>
<td>Barracks Maintenance and Construction (R)</td>
<td>494</td>
<td>113,947</td>
</tr>
<tr>
<td>Communications and Other</td>
<td>558</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Overtime and Wage Court Awards</td>
<td>568</td>
<td>-0-</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>5,560,660</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$35,982,270</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 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

62—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Account No.

Fund 0456 FY 1996 Org 0613

<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>$660,539</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$13,284</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$286,733</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$15,919</td>
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<tr>
<td>Veterans' Field Offices</td>
<td>228</td>
<td>$129,692</td>
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<td>Total</td>
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<td>$1,106,167</td>
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</table>

63—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Account No.

Fund 0536 FY 1996 Org 0615

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regional Jail—Capital Outlay</td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>Total (R)</td>
<td>577</td>
<td>$0</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation (fund 0536, activity 577) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

64—Division of Veterans' Affairs

Veterans' Home

(WV Code Chapter 9A)
### 65—Fire Commission
(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Fund 0460 FY 1996 Org 0618</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td></td>
<td>$536,699</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>10,764</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>235,789</td>
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<tr>
<td>4</td>
<td>Total</td>
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</table>

### 66—Division of Criminal Justice and Highway Safety
(Executive Order)

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Fund 0436 FY 1996 Org 0619</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td></td>
<td>$473,169</td>
</tr>
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<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>7,740</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
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<td>136,724</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>771,582</td>
</tr>
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</table>

### 66—Division of Criminal Justice and Highway Safety
(Executive Order)

<table>
<thead>
<tr>
<th>Account Number</th>
<th>Description</th>
<th>Fund 0546 FY 1996 Org 0620</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$91,102</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>1,620</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td>27,782</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td></td>
<td>40,913</td>
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<tr>
<td>5</td>
<td>Statistical Analysis Program</td>
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<td>50,000</td>
</tr>
<tr>
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<td>Total</td>
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</tbody>
</table>
### DEPARTMENT OF TAX AND REVENUE

#### 67—Department of Tax and Revenue

**Office of the Secretary**
(WV Code Chapter 5F)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0465</td>
<td>1996</td>
<td>0701</td>
<td>Unclassified—Total</td>
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<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$161,908</td>
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</tbody>
</table>

#### 68—Tax Division
(WV Code Chapter 11)

<table>
<thead>
<tr>
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<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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<td>0470</td>
<td>1996</td>
<td>0702</td>
<td>Personal Services</td>
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<tr>
<td>1</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>Employee Benefits</td>
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</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>$5,982,889</td>
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<tr>
<td>4</td>
<td></td>
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<td>Total</td>
<td>$18,548,507</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Automation Project (fund 0470, activity 442) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

#### 69—Division of Professional and Occupational Licenses

**State Athletic Commission**
(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0523</td>
<td>1996</td>
<td>0933</td>
<td>Unclassified—Total</td>
<td>$4,719</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### DEPARTMENT OF TRANSPORTATION

#### 70—Department of Transportation

**Office of the Secretary**

(WV Code Chapter 5F)

Account No.

**Fund 0500 FY 1996 Org 0801**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$153,490</td>
</tr>
<tr>
<td>2</td>
<td>Civil Air Patrol</td>
<td>234</td>
<td>$86,952</td>
</tr>
<tr>
<td>3</td>
<td>Port Authority (R)</td>
<td>443</td>
<td>$268,200</td>
</tr>
<tr>
<td>4</td>
<td>Potomac Highlands</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Airport Authority</td>
<td>444</td>
<td>$150,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$658,642</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Port Authority (fund 0500, activity 443) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

#### 71—State Rail Authority

(WV Code Chapter 29)

Account No.

**Fund 0506 FY 1996 Org 0804**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Improvement and Equipment</td>
<td>632</td>
<td>$35,000</td>
</tr>
<tr>
<td>2</td>
<td>Duffield Station</td>
<td>559</td>
<td>$25,000</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>099</td>
<td>$355,373</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$415,373</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 0506, activity 309) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.
### 72—Division of Public Transit
(WV Code Chapter 17)

Account No.

<table>
<thead>
<tr>
<th>Fund 0510 FY 1996 Org 0805</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Unclassified—Total</strong> 096</td>
<td><strong>$ 872,680</strong></td>
</tr>
</tbody>
</table>

### BUREAU OF COMMERCE

#### 73—Division of Forestry
(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund 0250 FY 1996 Org 0305</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Personal Services</strong> 001</td>
<td><strong>$ 1,150,152</strong></td>
</tr>
<tr>
<td><strong>2 Annual Increment</strong> 004</td>
<td><strong>$ 22,852</strong></td>
</tr>
<tr>
<td><strong>3 Employee Benefits</strong> 010</td>
<td><strong>$ 416,938</strong></td>
</tr>
<tr>
<td><strong>4 Unclassified</strong> 099</td>
<td><strong>$ 510,058</strong></td>
</tr>
<tr>
<td><strong>5 Total</strong></td>
<td><strong>$ 2,100,000</strong></td>
</tr>
</tbody>
</table>

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

#### 74—Geological and Economic Survey
(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 0253 FY 1996 Org 0306</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1 Personal Services</strong> 001</td>
<td><strong>$ 1,140,476</strong></td>
</tr>
<tr>
<td><strong>2 Annual Increment</strong> 004</td>
<td><strong>$ 21,503</strong></td>
</tr>
<tr>
<td><strong>3 Employee Benefits</strong> 010</td>
<td><strong>$ 349,992</strong></td>
</tr>
<tr>
<td><strong>4 Unclassified</strong> 099</td>
<td><strong>$ 160,000</strong></td>
</tr>
<tr>
<td><strong>5 Capital Outlay and Equipment</strong> 542</td>
<td><strong>$ 0</strong></td>
</tr>
<tr>
<td><strong>6 Total</strong></td>
<td><strong>$ 1,671,971</strong></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.

75—West Virginia Development Office

(WV Code Chapter 5B)

Account No.

Fund 0256 FY 1996 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,882,036</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>22,239</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>509,400</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,665,684</td>
</tr>
<tr>
<td>Partnership Grants (R)</td>
<td>131</td>
<td>3,600,000</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>132</td>
<td>200,000</td>
</tr>
<tr>
<td>Local Economic Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Partnerships (R)</td>
<td>133</td>
<td>1,000,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>136</td>
<td>127,602</td>
</tr>
<tr>
<td>Guaranteed Work</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Force Grant (R)</td>
<td>242</td>
<td>1,450,000</td>
</tr>
<tr>
<td>Leverage Technology and Small Business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Program</td>
<td>525</td>
<td>800,000</td>
</tr>
<tr>
<td>WV Film Development Office</td>
<td>498</td>
<td>100,000</td>
</tr>
<tr>
<td>WV Economic Development Authority</td>
<td>633</td>
<td>-0-</td>
</tr>
<tr>
<td>Industrial Modernization</td>
<td>634</td>
<td>-0-</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$11,356,961</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropria-
tions for Partnership Grants (fund 0256, activity 131),
Competitive Grants (fund 0256, activity 130), Guaranteed
Work Force Grant (fund 0256, activity 242), Local Eco-
nomics Development Partnerships (fund 0256, activity
133) and Infrastructure (fund 0256, activity 524) at the
close of the fiscal year 1994-95 are hereby reappropriated
for expenditure during the fiscal year 1995-96.

The above appropriation to Local Economic Develop-
ment Partnerships shall be used by the West Virginia de-
velopment 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 provi-
sions of section three, article two, chapter five-b of the
code and based upon a formula whereby funding assist-
tance may not exceed twenty-five thousand dollars per
county served by a regional economic development cor-
poration or authority.

From the reappropriation 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.

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

Account No.

Fund 0260  FY 1996  Org 0308

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services       001</td>
<td>$ 874,063</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment        004</td>
<td>13,879</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits       010</td>
<td>328,984</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified             099</td>
<td>634,849</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 1,851,775</td>
<td></td>
</tr>
</tbody>
</table>
### 77—Division of Natural Resources

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0265 FY 1996 Org 0310</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 Non-Game Wildlife</td>
<td>527</td>
</tr>
<tr>
<td>6 Upper Mud River Flood Control Project</td>
<td>654</td>
</tr>
<tr>
<td>7 Total</td>
<td></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 natural resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

### 78—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0277 FY 1996 Org 0314</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
</tr>
</tbody>
</table>
### 79—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Account No. 0280 FY 1996 Org 0319

<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>$75,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>828</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>25,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>36,516</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$137,344</td>
</tr>
</tbody>
</table>

### 80—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Account No. 0285 FY 1996 Org 0320

<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>$71,303</td>
</tr>
</tbody>
</table>

### BUREAU OF ENVIRONMENT

### 81—Environmental Quality Board

(WV Code Chapter 20)

Account No. 0270 FY 1996 Org 0311

<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>$61,932</td>
</tr>
<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>5</td>
<td>Total</td>
<td></td>
<td>$113,856</td>
</tr>
</tbody>
</table>
### Appropriations

#### 82—Interstate Commission on Potomac River Basin

(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>0263</td>
<td>1996</td>
<td>0313</td>
</tr>
</tbody>
</table>

1. West Virginia's Contribution to the Interstate Commission on Potomac River: Total $38,557

#### 83—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>0264</td>
<td>1996</td>
<td>0313</td>
</tr>
</tbody>
</table>

1. West Virginia's Contribution to the Ohio River Valley Water Sanitation Commission: Total $106,200

#### 84—Division of Environmental Protection

(WV Code Chapter 22)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>0273</td>
<td>1996</td>
<td>0313</td>
</tr>
</tbody>
</table>

1. Personal Services: $4,027,782
2. Annual Increment: $53,537
3. Employee Benefits: $1,263,070
4. Unclassified: $675,372
5. Black Fly Control: $240,000
6. Dam Safety: $123,000
7. Total: $6,382,761
### 85—Air Quality Board
(WV Code Chapter 16)

Account No.

Fund 0547 FY 1996 Org 0313

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$75,000</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

### 86—Board of Investments
(WV Code Chapter 12)

Account No.

Fund 0513 FY 1996 Org 0920

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,176,013</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>14,832</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>383,213</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>2,188,086</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$3,762,144</td>
</tr>
</tbody>
</table>

### 87—Board of Investments—
School Building Sinking Fund
(WV Code Chapter 12)

Account No.

Fund 0526 FY 1996 Org 0920

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service—Total (R)</td>
<td>$10,670,000</td>
</tr>
</tbody>
</table>

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 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

Total TITLE II, Section 1—

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>General Revenue</td>
<td>$2,282,867,972</td>
</tr>
</tbody>
</table>
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-six.

DEPARTMENT OF TRANSPORTATION

88—Division of Motor Vehicles

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

Account No.

Fund 9007 FY 1996 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,192,776</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>52,812</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>1,483,743</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>12,351,400</td>
</tr>
<tr>
<td>5 Optic Scan System</td>
<td>1,000,000</td>
</tr>
<tr>
<td>6 Electronic Photo Operator</td>
<td></td>
</tr>
<tr>
<td>7 and License System</td>
<td>750,000</td>
</tr>
<tr>
<td>8 International Fuel Tax Agreement</td>
<td>620,000</td>
</tr>
<tr>
<td>9 License Plate—Reissue</td>
<td>736,618</td>
</tr>
<tr>
<td>10 Total</td>
<td>$21,187,349</td>
</tr>
</tbody>
</table>

89—Division of Highways

(WV Code Chapters 17 and 17C)

Account No.

Fund 9017 FY 1996 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$45,000,000</td>
</tr>
<tr>
<td>Item</td>
<td>Appropriation</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>136</td>
</tr>
<tr>
<td>Maintenance, Expressway,</td>
<td>170</td>
</tr>
<tr>
<td>Trunkline and Feeder</td>
<td></td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>271</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road</td>
<td></td>
</tr>
<tr>
<td>Maintenance</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>Total</td>
<td></td>
</tr>
<tr>
<td>$580,045,000</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.

90—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Account No.

Fund 9018 FY 1996 Org 0803

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interstate Construction</td>
<td>$12,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Appalachian Program</td>
<td>$80,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Other Federal Aid Programs</td>
<td>$170,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$262,000,000</td>
</tr>
</tbody>
</table>

Total TITLE II, Section 2—

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Appropriations</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total TITLE II</td>
<td>$863,232,349</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-six.

LEGISLATIVE

91—Crime Victims Compensation Fund

(WV Code Chapter 14)

Account No.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$145,096</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>1,044</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>46,461</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>39,000</td>
</tr>
<tr>
<td>5 Economic Loss Claim Payment</td>
<td>2,520,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$2,751,601</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

EXECUTIVE

92—Auditor's Office—

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Account No.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$25,000</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>10,836</td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>64,250</td>
</tr>
<tr>
<td>4 Total</td>
<td>$100,086</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.
### 93—Auditor's Office—
**Securities Regulation Fund**
(WV Code Chapter 32)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1225</td>
<td>1996</td>
<td>1200</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 216,000</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>3,400</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>61,657</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>168,943</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td></td>
<td>$ 450,000</td>
</tr>
</tbody>
</table>

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

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1401</td>
<td>1996</td>
<td>1400</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 344,091</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>2,052</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>109,819</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>849,235</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td></td>
<td>$ 1,305,197</td>
</tr>
</tbody>
</table>

### 95—Department of Agriculture—
**West Virginia Rural Rehabilitation Program**
(WV Code Chapter 19)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1408</td>
<td>1996</td>
<td>1400</td>
<td></td>
</tr>
<tr>
<td>1 Student and Farm Loans—Total</td>
<td>.235</td>
<td>$ 487,937</td>
<td></td>
</tr>
</tbody>
</table>

### 96—General John McCausland Memorial Farm
(WV Code Chapter 19)
### Ch. 8] APPROPRIATIONS

Account No.

Fund 1409 FY 1996 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$20,084</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$936</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$11,113</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$51,493</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$83,626</td>
</tr>
</tbody>
</table>

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

### 97—Department of Agriculture—

**Farm Operating Fund**

(WV Code Chapter 19)

Account No.

Fund 1412 FY 1996 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$895,064</td>
</tr>
</tbody>
</table>

### 98—Attorney General—

**Anti-Trust Enforcement**

(WV Code Chapter 47)

Account No.

Fund 1507 FY 1996 Org 1500

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$210,400</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$673</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$60,892</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$177,882</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$449,847</td>
</tr>
</tbody>
</table>
DEPARTMENT OF ADMINISTRATION

99—Division of Information Services and Communications
(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1996 Org 0210

1 Personal Services .................. 001 $ 4,082,348
2 Annual Increment .................. 004 57,150
3 Employee Benefits ................. 010 1,239,453
4 Unclassified ......................... 099 1,755,767
5 Total ................................. $ 7,134,718

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.

100—Division of Purchasing—

Revolving Fund

(WV Code Chapter 5A)

Account No.
### Fund 2320 FY 1996 Org 0216

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$696,816</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$23,351</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$259,278</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$746,223</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,725,668</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 and document services and for the purchase of supplies for resale to user agencies. These services include, but are not limited to, offset printing, electronic duplication/copying, microfilming, records storage and the sale of general office supplies.

### 101—Division of Personnel

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,039,638</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$42,408</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$640,539</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$708,772</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$3,431,357</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 EDUCATION

102—State Department of Education—

School Building Authority

(WV Code Chapter 18)

Account No.

Fund 3959 FY 1996 Org 0402

1 Personal Services ............... 001 $ 389,880
2 Annual Increment ............... 004 3,420
3 Employee Benefits ............. 010 104,603
4 Unclassified .................. 099 216,637
5 Total .......................... $ 714,540

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.

103—State Department of Education—

FFA-FHA Conference Center

(WV Code Chapter 18)

Account No.

Fund 3960 FY 1996 Org 0402

1 Personal Services ............... 001 $ 682,560
2 Annual Increment ............... 004 9,894
3 Employee Benefits ............. 010 278,609
4 Unclassified .................. 099 910,215
5 Total .......................... $ 1,881,278
DEPARTMENT OF EDUCATION AND THE ARTS

104—Department of Education and the Arts—

Office of the Secretary
Health Care Reform Studies

Account No.

Fund 4009 FY 1996 Org 0431

1 Personal Services ............... 001 $ -0-
2 Annual Increment ............... 004 -0-
3 Employee Benefits ............... 010 -0-
4 Unclassified ................... 099 -0-
5 Total .......................... $ -0-

105—State College and University Systems—

State System Registration Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1996 Org 0453

1 Any unexpended balances remaining in the prior years' and the 1994-95 appropriations are hereby reappropriated for expenditure during the fiscal year 1995-96.
2 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.

106—State College and University Systems—

State Systems Tuition Fee—

Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Account No.
Marshall University—New Library

Construction—Total ........ 644  $  15,000,000

Any unexpended balances remaining in the prior years' and the 1994-95 appropriations are hereby reappropriated for expenditure during the fiscal year 1995-96.

The above appropriation is to be financed from the sale of up to fifteen million dollars in revenue bonds authorized under article twelve-b, chapter eighteen of the code and shall be used in conjunction with other available funding to design, construct and equip a new library facility on the campus of Marshall university in Huntington, West Virginia. Bonds sold for this purpose shall be redeemed through the pledge of existing tuition fees and other available revenues from students at Marshall university in accordance with said Article.

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.

107—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)

Account No.

Fund 4007 FY 1996 Org 0461

1 Debt Service (R) ................. 040  $  3,879,386
2 Capital Repairs and Alterations (R) ................. 251  3,417,209
3 Miscellaneous Projects (R) ................. 252  400,000
Any unexpended balances remaining in the prior years' and the 1994-95 appropriations are hereby reappropriated for expenditure during the fiscal year 1995-96.

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.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

108—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)

Account No.

Fund 4008 FY 1996 Org 0461

1 Debt Service (R) ................. 040 $ 5,079,897
2 Building and Campus
3 Renewal (R) ..................... 258 12,855,216
4 Facilities Planning and
5 Administration (R) ............. 386 190,000
6 Computer and Telecommunica-
7 tions Technology (R) .......... 438 779,146
8 Total .......................... $ 18,904,259
9 Any unexpended balances remaining in the prior years'
and the 1994-95 appropriations are hereby reappropriated for expenditure during the fiscal year 1995-96.

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.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

109—State University System—

West Virginia University Health Sciences Center

Spending Authority

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1996 Org 0463

1 Unclassified—Total ............ 096 $ 14,974,000

2 Any unexpended balance remaining in the fiscal year 1994-95 appropriation for the West Virginia university health sciences center is hereby reappropriated for expenditure during the fiscal year 1995-96.

110—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)

Account No.

Fund 4289 FY 1996 Org 0481

1 Debt Service (R) ................. 040 $ 2,071,699
Capital Repairs and Alterations (R) ....... 251 $1,500,000

Total .................. $3,571,699

Any unexpended balances remaining in the prior years' and 1994-95 appropriations except activity 345, fiscal year 1977-78; activity 345, fiscal year 1981-82; activity 347, fiscal year 1976-77; and activity 348, fiscal year 1976-77 are hereby reappropriated for expenditure during the fiscal year 1995-96.

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.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

111—State College System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Account No.

Fund 4290 FY 1996 Org 0481

1 Debt Service (R) .............. 040 $2,629,184
2 Capital Improvements
3 (New) (R) .................. 259 1,052,492
4 Building and Campus
5 Renewal and
6 Facilities Planning
7 and Administration (R) .... 538 $2,690,000
Capital Contingencies and Emergencies (R) .................. 537  250,000
Total .................................. $ 6,621,676


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.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

112—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center
Special Account
(WV Code Chapter 18)
Account No.
Fund 8664 FY 1996 Org 0932
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>350,000</td>
</tr>
<tr>
<td>2</td>
<td>Workshop Development</td>
<td>163</td>
<td>450,000</td>
</tr>
<tr>
<td>3</td>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>50,000</td>
</tr>
<tr>
<td>4</td>
<td>Medical Services Trust Fund—Transfer</td>
<td>512</td>
<td>2,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>2,850,000</td>
</tr>
</tbody>
</table>

#### Department of Health and Human Resources

**113—Board of Barbers and Cosmetologists**

(WV Code Chapters 16 and 30)

Account No.

Fund 5425 FY 1996 Org 0505

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>164,120</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,356</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>56,149</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>103,550</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>327,175</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.

**114—Division of Health—Vital Statistics**

(WV Code Chapter 16)

Account No.

Fund 5144 FY 1996 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>202,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,690</td>
</tr>
</tbody>
</table>
3 Employee Benefits .................. 010 95,180
4 Unclassified. ....................... 099 82,650
5 Total ................................ $ 385,520

115—Division of Health—

Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)

Account No.

Fund 5156 FY 1996 Org 0506

1 Debt Service (R) ................... 040 $ 2,740,000
2 Broad Based Provider Tax (R) ... 566 2,750,000
3 Institutional Facilities
4 Operations (R) ..................... 335 36,875,683
5 Medical Services Trust
6 Fund—Transfer (R) ............... 512 23,300,000
7 Total .............................. $ 65,665,683

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96, except for fund 5156, activity 335 (fiscal year 1992-93), and fund 5156, activity 040, activity 512 and activity 566 (fiscal year 1993-94), which shall expire on June 30, 1995.

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. 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.

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 1996, 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, 1995, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division 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.

116—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Account No.

Fund 5163 FY 1996 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0506</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$419,768</td>
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</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,372</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>139,040</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>300,000</td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$865,180</td>
<td></td>
</tr>
</tbody>
</table>

117—Division of Health—

Health Facility Licensing

(WV Code Chapter 16)

Account No.

Fund 5172 FY 1996 Org 0506
### Appropriations

<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>$161,152</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$900</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$58,750</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$85,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$306,002</strong></td>
</tr>
</tbody>
</table>

#### 118—Division of Health—

*Hepatitis B Vaccine*

(WV Code Chapter 16)

Account No. 5183 FY 1996 Org 0506

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$31,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$612</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$11,551</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>Vaccine for Volunteer Squads</td>
<td>565</td>
<td>$50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,293,163</strong></td>
</tr>
</tbody>
</table>

#### 119—Health Care Cost Review Authority

(WV Code Chapter 16)

Account No. 5375 FY 1996 Org 0507

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,143,477</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$7,956</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$384,742</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,088,157</td>
</tr>
<tr>
<td>Vice Chancellor for Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sciences Health Care</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reform Studies—Transfer</td>
<td>513</td>
<td>$0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,624,332</strong></td>
</tr>
</tbody>
</table>
The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

120—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Account No.

Fund 5090 FY 1996 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$126,000,000</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.

121—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Account No.

Fund 5185 FY 1996 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligibility Expansion</td>
<td>$13,447,692</td>
</tr>
<tr>
<td>State Institutions DPSH Payments</td>
<td>$6,190,810</td>
</tr>
<tr>
<td>Hospice Services</td>
<td>$413,466</td>
</tr>
<tr>
<td>Match Drop</td>
<td>$5,400,000</td>
</tr>
<tr>
<td>Total</td>
<td>$25,451,968</td>
</tr>
</tbody>
</table>

The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services fund.
services in the Medical services line item (fund 0403, activity 189).

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

122—State Armory Board—
General Armory Fund
(WV Code Chapter 15)

Account No.
Fund 6102 FY 1996 Org 0604

1 Unclassified—Total .............. 096 $ 310,000

123—West Virginia Division of Corrections

Parolee Supervision Fee Fund
(WV Code Chapters 25, 28, 49 & 62)

Account No.
Fund 6362 FY 1996 Org 0608

1 Personal Services .................. 001 $ 82,928
2 Employee Benefits .................. 010 35,664
3 Current Expenses .................. 020 115,408
4 Total .................................. $ 234,000

124—Division of Public Safety—
Motor Vehicle Inspection Fund
(WV Code Chapter 17C)

Account No.
Fund 6501 FY 1996 Org 0612

1 Personal Services .................. 001 $ 547,944
2 Annual Increment .................. 004 1,872
3 Employee Benefits .................. 010 147,975
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account No.</th>
<th>FY 1996</th>
<th>Org 0612</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>380,965</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Capital Outlay and Equipment</td>
<td>542</td>
<td>900,000</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$1,978,756</td>
<td></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

#### 125—Division of Public Safety—

**Drunk Driving Prevention Fund**

(WV Code Chapter 15)

Account No.

Fund 6513 FY 1996 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th>096</th>
<th>742,052</th>
</tr>
</thead>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

#### 126—Division of Public Safety—

**Surplus Real Property Proceeds Fund**

(WV Code Chapter 15)

Account No.

Fund 6516 FY 1996 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th>096</th>
<th>300,000</th>
</tr>
</thead>
</table>

#### 127—Division of Public Safety

**Surplus Transfer Account**

(WV Code Chapter )

Account No.

Fund 6364 FY 1996 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Unclassified—Total</th>
<th>096</th>
<th>114,400</th>
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</table>
128—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)
Account No.

Fund 6675 FY 1996 Org 0615

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$429,113</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,860</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>146,305</td>
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<tr>
<td>Debt Service</td>
<td>040</td>
<td>10,000,000</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>239,950</td>
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<tr>
<td>Total</td>
<td></td>
<td>$10,820,228</td>
</tr>
</tbody>
</table>

From the above Unclassified appropriation, the executive director of the regional jail and correctional facility authority is hereby authorized to expend not more than three hundred dollars per affected employee for relocation expenses incurred when a former correctional officer with the division of corrections at the West Virginia penitentiary in Moundsville accepts a position as a correctional officer at the central regional jail. Further, the executive director shall formulate guidelines covering the method and those expenses eligible for reimbursement.

129—Division of Veterans' Affairs—Veterans' Home
(WV Code Chapter 19A)
Account No.

Fund 6754 FY 1996 Org 0618

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$280,000</td>
</tr>
</tbody>
</table>

130—Fire Commission—Fire Marshal Fees
(WV Code Chapter 29)
Account No.

Fund 6152 FY 1996 Org 0619

1 Personal Services .................. 001 $ 367,285
2 Annual Increment ................... 004 3,348
3 Employee Benefits .................. 010 110,694
4 Unclassified ......................... 099 296,616
5 Total .............................. $ 777,943

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1994-95 is hereby available for expenditure as part of the fiscal year 1995-96 appropriation.

DEPARTMENT OF TAX AND REVENUE

131—Division of Banking—

Lending and Credit Rate Board
(WV Code Chapter 47A)

Account No.

Fund 3040 FY 1996 Org 0303

1 Personal Services .................. 001 $ 10,586
2 Employee Benefits .................. 010 4,411
3 Unclassified ......................... 099 10,648
4 Total .............................. $ 25,645

132—Division of Banking
(WV Code Chapter 31A)

Account No.

Fund 3041 FY 1996 Org 0303

1 Personal Services .................. 001 $ 1,100,653
2 Annual Increment ................... 004 8,496
3 Employee Benefits .................. 010 330,196
### 133—Tax Division—

**Office of Chief Inspector**

(WV Code Chapter 6)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal Services</strong></td>
<td>001</td>
<td>$1,449,000</td>
<td></td>
</tr>
<tr>
<td><strong>Annual Increment</strong></td>
<td>004</td>
<td>17,028</td>
<td></td>
</tr>
<tr>
<td><strong>Employee Benefits</strong></td>
<td>010</td>
<td>450,837</td>
<td></td>
</tr>
<tr>
<td><strong>Unclassified</strong></td>
<td>099</td>
<td>483,135</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$2,400,000</td>
<td></td>
</tr>
</tbody>
</table>

### 134—Tax Division—

**Cemetery Company Account**

(WV Code Chapter 35)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0702</th>
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</thead>
<tbody>
<tr>
<td><strong>Personal Services</strong></td>
<td>001</td>
<td>$16,116</td>
<td></td>
</tr>
<tr>
<td><strong>Employee Benefits</strong></td>
<td>010</td>
<td>4,964</td>
<td></td>
</tr>
<tr>
<td><strong>Unclassified</strong></td>
<td>099</td>
<td>10,920</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$32,000</td>
<td></td>
</tr>
</tbody>
</table>

### 135—Tax Division—

**Special Audit and Investigative Unit**

(WV Code Chapter 11)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Personal Services</strong></td>
<td>001</td>
<td>$591,846</td>
<td></td>
</tr>
</tbody>
</table>
### 136—Insurance Commissioner—

**Examination Revolving Fund**

(WV Code Chapter 33)

Account No.

<table>
<thead>
<tr>
<th>Fund 7150 FY 1996 Org 0704</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001</td>
<td>$254,000</td>
</tr>
<tr>
<td>2 Annual Increment 004</td>
<td>1,440</td>
</tr>
<tr>
<td>3 Employee Benefits 010</td>
<td>71,113</td>
</tr>
<tr>
<td>4 Unclassified 099</td>
<td>181,500</td>
</tr>
<tr>
<td>5 Total</td>
<td>$508,053</td>
</tr>
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</table>

### 137—Insurance Commissioner—

**Consumer Advocate**

(WV Code Chapter 33)

Account No.

<table>
<thead>
<tr>
<th>Fund 7151 FY 1996 Org 0704</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001</td>
<td>$73,500</td>
</tr>
<tr>
<td>2 Annual Increment 004</td>
<td>288</td>
</tr>
<tr>
<td>3 Employee Benefits 010</td>
<td>29,226</td>
</tr>
<tr>
<td>4 Unclassified 099</td>
<td>117,557</td>
</tr>
<tr>
<td>5 Total</td>
<td>$220,571</td>
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</table>

### 138—Insurance Commissioner

(WV Code Chapter 33)

Account No.
## Appropriations

**Fund 7152 FY 1996 Org 0704**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,479,088</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>18,360</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>562,517</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>923,954</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,983,919</strong></td>
</tr>
</tbody>
</table>

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

### 139—Racing Commission

**Relief Fund**

*(WV Code Chapter 19)*

Account No.

**Fund 7300 FY 1996 Org 0707**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses—Total</td>
<td>245</td>
<td>$57,000</td>
</tr>
</tbody>
</table>

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

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

### 140—Racing Commission

**Administration and Promotion**

*(WV Code Chapter 19)*

Account No.

**Fund 7304 FY 1996 Org 0707**

<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>$53,700</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>576</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>22,947</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<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>124,631</td>
</tr>
</tbody>
</table>

**141—Racing Commission**

**General Administration**

(WV Code Chapter 19)

Account No.

Fund 7305 FY 1996 Org 0707

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,007,000</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>10,728</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>90,082</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,381,153</td>
</tr>
</tbody>
</table>

**142—Racing Commission**

**Administration, Promotion and Education Fund**

(WV Code Chapter 19)

Account No.

Fund 7307 FY 1996 Org 0707

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$35,000</td>
</tr>
</tbody>
</table>

**143—Alcohol Beverage Control Administration**

**Wine License Special Fund**

(WV Code Chapter 60)

Account No.

Fund 7351 FY 1996 Org 0708

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$198,908</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>936</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>42,472</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>188,906</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>431,222</td>
</tr>
</tbody>
</table>
### 144—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>7352</td>
<td>1996</td>
<td>0708</td>
</tr>
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</table>

<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>$2,427,656</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>50,688</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
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<td>4,432,350</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$8,211,812</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

#### 145—Division of Motor Vehicles

**Driver's License Reinstatement Fund**

(WV Code Chapter 17B)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8213</td>
<td>1996</td>
<td>0802</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>$180,068</td>
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<td>Annual Increment</td>
<td>004</td>
<td>2,916</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>68,795</td>
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<td>4</td>
<td>Unclassified</td>
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<td>170,000</td>
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<tr>
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<td>Total</td>
<td></td>
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</table>
146—Division of Motor Vehicles

Driver Rehabilitation

(WV Code Chapter 17C)

Account No.

Fund 8214 FY 1996 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>FY 1996</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>648</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>23,447</td>
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<td>4</td>
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<td>099</td>
<td>762,506</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 837,601</td>
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</tbody>
</table>

147—Division of Motor Vehicles

Insurance Certificate Fees

(WV Code Chapter 20)

Account No.

Fund 8215 FY 1996 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>FY 1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 550,000</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>243,000</td>
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<td>Unclassified</td>
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</tbody>
</table>

148—Division of Motor Vehicles

Motorboat Licenses

(WV Code Chapter 20)

Account No.

Fund 8216 FY 1996 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account</th>
<th>FY 1996</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,163</td>
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### Appropriations

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<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>29,695</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>41,915</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$145,273</td>
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</tbody>
</table>

#### Division of Motor Vehicles

**Returned Check Fees**

(WV Code Chapter 17)

- Account No.
- Fund 8217 FY 1996 Org 0802

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$15,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>252</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>5,369</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$26,121</td>
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</table>

### Bureau of Commerce

#### Division of Forestry

(WV Code Chapter 19)

- Account No.
- Fund 3081 FY 1996 Org 0305

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$216,788</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,520</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
<td>099</td>
<td>311,172</td>
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</tbody>
</table>

#### Division of Forestry

Timberland Enforcement Operations

(WV Code Chapter 19)

- Account No.
Fund 3082 FY 1996 Org 0305

1 Unclassified—Total ............... 096 $ 200,000

**152—Division of Forestry**

*Severance Tax Operations*

(WV Code Chapter 11)

Account No.

Fund 3084 FY 1996 Org 0305

1 Unclassified—Total ............... 096 $ 2,000,000

**153—Geological and Economic Survey**

(WV Code Chapter 29)

Account No.

Fund 3100 FY 1996 Org 0306

1 Personal Services ................. 001 $ 30,380
2 Annual Increment ................. 004 291
3 Employee Benefits ............... 010 5,678
4 Unclassified ..................... 099 177,983
5 Total ............................ $ 214,332

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

**154—West Virginia Development Office**

(WV Code Chapter 5B)

Account No.

Fund 3144 FY 1996 Org 0307

1 Any unexpended balance remaining in the appropriation for Energy Assistance (fund 3144, activity 099) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.
### Appropriations

**155—Division of Labor**

*Contractor Licensing Board Fund*

(WV Code Chapter 21)

Account No.

Fund 3187 FY 1996 Org 0308

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Budget</th>
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<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>281,012</td>
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<td>099</td>
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<td>Total</td>
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</table>

**156—Division of Labor**

*Elevator Safety Act*

Account No.

Fund 3188 FY 1996 Org 0308

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>183,000</td>
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<tr>
<td>004</td>
<td>Annual Increment</td>
<td>1,589</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>66,058</td>
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<td>099</td>
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**157—Division of Natural Resources**

(WV Code Chapter 20)

Account No.

Fund 3200 FY 1996 Org 0310

<table>
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<tr>
<th>Account</th>
<th>Description</th>
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<td>001</td>
<td>Personal Services</td>
<td>5,984,054</td>
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<td>004</td>
<td>Annual Increment</td>
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<td>2,350,377</td>
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<td>099</td>
<td>Unclassified</td>
<td>4,225,202</td>
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</table>
5 Capital Improvements and Land Purchase (R) .... 248 $1,128,684
6 Total .................................. $ 13,787,879

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

Any unexpended balances remaining in the appropriations for Renovation of Dams (fund 3200, activity 414) and Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

158—Division of Natural Resources
Game, Fish and Aquatic Life Fund
(WV Code Chapter 20)
Account No.
Fund 3202 FY 1996 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>FY 1996</th>
<th>Org 0310</th>
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</thead>
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<tr>
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<td>096</td>
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<td>$50,000</td>
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159—Division of Natural Resources
Nongame Fund
(WV Code Chapter 20)
Account No.
Fund 3203 FY 1996 Org 0310

<table>
<thead>
<tr>
<th>Description</th>
<th>Account</th>
<th>FY 1996</th>
<th>Org 0310</th>
<th>Total</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td></td>
<td>$82,922</td>
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<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Total</td>
<td></td>
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<td>$142,966</td>
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</table>
### 160—Division of Natural Resources

**Planning and Development Division**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3205</td>
<td>1996</td>
<td>0310</td>
<td>001</td>
<td>Personal Services</td>
<td>$176,768</td>
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<td></td>
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<td>004</td>
<td>Annual Increment</td>
<td>$3,492</td>
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<td></td>
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<td></td>
<td>010</td>
<td>Employee Benefits</td>
<td>$67,623</td>
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<td>$306,060</td>
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<td>Total</td>
<td>$553,943</td>
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</table>

### 161—Division of Natural Resources

**Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3253</td>
<td>1996</td>
<td>0310</td>
<td>096</td>
<td>Unclassified—Total</td>
<td>$95,000</td>
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### 162—Division of Natural Resources

**Recycling Assistance Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3254</td>
<td>1996</td>
<td>0310</td>
<td>001</td>
<td>Personal Services</td>
<td>$99,912</td>
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<td>004</td>
<td>Annual Increment</td>
<td>$1,422</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>099</td>
<td>Unclassified (R)</td>
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<td></td>
<td>Total</td>
<td>$2,798,030</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Any unexpended balance remaining in the appropriation</td>
<td></td>
</tr>
</tbody>
</table>
7 Appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

163—Division of Natural Resources

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Account No.

Fund 3256 FY 1996 Org 0310

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Fund 3256</td>
<td>FY 1996 Org 0310</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unclassified—Total</td>
<td>$20,000</td>
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</table>

BUREAU OF EMPLOYMENT PROGRAMS

164—Bureau of Employment Programs

Workers’ Compensation Fund

(WV Code Chapter 23)

Account No.

Fund 3440 FY 1996 Org 0322

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 3440</td>
<td>FY 1996 Org 0322</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>$14,960,357</td>
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<tr>
<td></td>
<td>Annual Increment</td>
<td>$222,282</td>
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<tr>
<td></td>
<td>Employee Benefits</td>
<td>$5,440,907</td>
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<tr>
<td></td>
<td>Unclassified (R)</td>
<td>$33,743,395</td>
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<td>Capital Outlay</td>
<td>$0</td>
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<tr>
<td></td>
<td>Total</td>
<td>$54,366,941</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3440, activity 099) and Program Performance Initiative (fund 3440, activity 540) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

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
16 shall be transferred to the board of risk and insurance management.

**BUREAU OF ENVIRONMENT**

**165—Solid Waste Management Board**

(WV Code Chapter 20)

Account No.

Fund 3288 FY 1996 Org 0312

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 96</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,908</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>88,850</td>
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<tr>
<td>Unclassified</td>
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<td>1,971,931</td>
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<td>$2,333,973</td>
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</table>

**166—Division of Environmental Protection**

**Special Reclamation Fund**

(WV Code Chapter 22A)

Account No.

Fund 3321 FY 1996 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 96</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$287,000</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,968</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>95,992</td>
</tr>
<tr>
<td>Unclassified</td>
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<td>12,422,040</td>
</tr>
<tr>
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<td>$12,810,000</td>
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</tbody>
</table>

**167—Division of Environmental Protection**

**Oil and Gas Reclamation Trust**

(WV Code Chapter 22B)

Account No.

Fund 3322 FY 1996 Org 0313
1 Unclassified—Total ............. 096  $ 465,000

168—Division of Environmental Protection

Oil and Gas Operating Permits

(WV Code Chapter 22B)

Account No.

Fund 3323 FY 1996 Org 0313

<p>| | | | | |</p>
<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services ............. 001</td>
<td>$ 205,000</td>
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<td></td>
</tr>
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<td>Annual Increment .............. 004</td>
<td>2,088</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ............. 010</td>
<td>65,904</td>
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<td></td>
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<td>4</td>
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169—Division of Environmental Protection

Mines and Minerals Operations Fund

(WV Code Chapter 22)

Account No.

Fund 3324 FY 1996 Org 0313

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>$ 2,232,351</td>
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<tr>
<td>2</td>
<td>Annual Increment .............. 004</td>
<td>24,755</td>
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<td>Employee Benefits ............. 010</td>
<td>687,965</td>
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<tr>
<td>4</td>
<td>Unclassified ................. 099</td>
<td>954,929</td>
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<td>5</td>
<td>Total .................................</td>
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</tbody>
</table>

170—Division of Environmental Protection

Leaking Underground Storage Tanks

Administrative Fund

(WV Code Chapter 20)

Account No.

Fund 3325 FY 1996 Org 0313
156 **APPROPRIATIONS**  

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>.......</td>
<td>001</td>
<td>$309,500</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>2,700</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>99,848</td>
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<td>........</td>
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<td>143,179</td>
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</table>

**171—Division of Environmental Protection**

*Groundwater Planning*

(WV Code Chapter 20)

Account No.

Fund 3330 FY 1996 Org 0313

<p>| | | | | |</p>
<table>
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<tbody>
<tr>
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</table>

**172—Division of Environmental Protection**

*Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Account No.

Fund 3331 FY 1996 Org 0313

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1</td>
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<td>.......</td>
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</table>

**173—Division of Environmental Protection**

*Solid Waste Reclamation and Environmental Response Fund*

(WV Code Chapter 20)

Account No.

Fund 3332 FY 1996 Org 0313
174—Division of Environmental Protection

Solid Waste Enforcement Fund

(WV Code Chapter 20)

Account No.

Fund 3333  FY 1996  Org 0313

<table>
<thead>
<tr>
<th></th>
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<th>Org 0313</th>
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<tr>
<td>1</td>
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<td>001</td>
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<td>3</td>
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<td>4</td>
<td>Unclassified</td>
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<td>1,458,710</td>
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<tr>
<td>5</td>
<td>Litter Control-Conservation Officers</td>
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<tr>
<td>6</td>
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175—Division of Environmental Protection

Fees and Operating Expenses

(WV Code Chapter 16)

Account No.

Fund 3336  FY 1996  Org 0313

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1996</th>
<th>Org 0313</th>
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</thead>
<tbody>
<tr>
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176—Oil and Gas Conservation Commission
(WV Code Chapter 22)

Account No.

Fund 3371  FY 1996  Org 0315

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<th>Description</th>
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<td>$148,435</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>792</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>26,680</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>49,074</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$224,981</td>
</tr>
</tbody>
</table>

MISCELLANEOUS BOARDS AND COMMISSIONS

177—Hospital Finance Authority
(WV Code Chapter 16)

Account No.

Fund 5475  FY 1996  Org 0509

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$49,619</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>144</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>15,126</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>67,116</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$132,005</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

178—Municipal Bond Commission
(WV Code Chapter 13)

Account No.

Fund 7253  FY 1996  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>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,836</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>37,190</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>50,591</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>195,887</td>
</tr>
</tbody>
</table>

**179—West Virginia Cable Television Advisory Board**

*(WV Code Chapter 5)*

Account No.

**Fund 8609 FY 1996 Org 0924**

<table>
<thead>
<tr>
<th>Account</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>176,200</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,600</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>49,529</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>60,268</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>289,597</td>
</tr>
</tbody>
</table>

**180—Public Service Commission**

*(WV Code Chapter 24)*

Account No.

**Fund 8623 FY 1996 Org 0926**

<table>
<thead>
<tr>
<th>Account</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>5,559,220</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>60,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,819,806</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,027,000</td>
</tr>
<tr>
<td>5</td>
<td>750 KV Transmission</td>
<td></td>
<td>175,000</td>
</tr>
<tr>
<td>6</td>
<td>Line Study</td>
<td>608</td>
<td>175,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>9,641,026</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

181—Public Service Commission—

Gas Pipeline Division

(WV Code Chapter 24B)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8624</td>
<td>1996</td>
<td>0926</td>
<td>$128,613</td>
<td>$3,000</td>
<td>$37,345</td>
<td>$93,500</td>
<td>$262,458</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.

182—Public Service Commission

Motor Carrier Division

(WV Code Chapter 24A)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Personal Services</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>8625</td>
<td>1996</td>
<td>0926</td>
<td>$1,272,204</td>
<td>$22,000</td>
<td>$399,616</td>
<td>$670,500</td>
<td>$2,364,320</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.

**183—Public Service Commission**

*Consumer Advocate*

(WV Code Chapter 24)

Account No.

Fund 8627 FY 1996 Org 0926

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$336,195</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,412</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>106,332</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>366,784</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$811,723</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.

**184—Real Estate Commission**

(WV Code Chapter 47)

Account No.

Fund 8635 FY 1996 Org 0927

<table>
<thead>
<tr>
<th>Description</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>2,376</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>91,206</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>269,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$630,314</td>
</tr>
</tbody>
</table>

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

185—West Virginia Board of Examiners for Speech-Language Pathology and Audiology
(WV Code Chapter 30)

Account No

Fund 8646 FY 1996 Org 0930

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$ 60,000</td>
</tr>
</tbody>
</table>

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

Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery, not to exceed forty-nine million, five 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. 3067, 3267, 3951, 3963, 4030, 5405 and 5063 in the proportion the appropriation for each account bears to the total of the appropriations for the seven accounts.

186—Division of Tourism
(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1996 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified (R)</td>
<td>$ -0-</td>
</tr>
<tr>
<td>2 Advertising</td>
<td>$ -0-</td>
</tr>
<tr>
<td>3 Total</td>
<td>$ -0-</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3067, activity 099) and Advertising — Total (fund 3073, activity 541) at the close of the fiscal year 1994-95 are hereby reappropriated to the
West Virginia development office—tourism section, Tourism — Unclassified (fund 3067, activity 099) and Tourism — Advertising (fund 3067, activity 618) for expenditure during the fiscal year 1995-96.

**187—West Virginia Development Office**

**Tourism Section**

(WV Code Chapter 5B)

Fund 3067 FY 1996 Org 0307

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tourism—Unclassified</td>
<td>662</td>
<td>$ 2,906,092</td>
</tr>
<tr>
<td>2</td>
<td>Tourism—Advertising</td>
<td>618</td>
<td>2,240,000</td>
</tr>
<tr>
<td>3</td>
<td>State Parks and Recreation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Advertising</td>
<td>619</td>
<td>560,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 5,706,092</td>
</tr>
</tbody>
</table>

**188—Division of Natural Resources**

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1996 Org 0310

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$ 0</td>
</tr>
<tr>
<td>2</td>
<td>Capital Outlay—Parks (R)</td>
<td>288</td>
<td>2,500,000</td>
</tr>
<tr>
<td>3</td>
<td>Coopers Rock—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Land Acquisition (R)</td>
<td>439</td>
<td>200,000</td>
</tr>
<tr>
<td>5</td>
<td>Parks Operations—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Unclassified</td>
<td>645</td>
<td>1,473,908</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$ 4,173,908</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, activity 099), Capital Outlay — Parks (fund 3267, activity 288) and Coopers Rock — Land Acquisition (fund 3267, activity 439) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.
### 189—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.

**Fund 3951 FY 1996 Org 0402**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Computer Basic Skills—</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Total (R)</td>
<td>567</td>
</tr>
<tr>
<td>3</td>
<td>Any unexpended balances remaining in the appropriation for Elementary Computer Education (fund 3951, activity 285), Computer Basic Skills — Total (fund 3951, activity 567) and Computer Basic Skills — Total (fund 3964, activity 567) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.</td>
<td>$ 9,000,000</td>
</tr>
</tbody>
</table>

### 190—State Department of Education
School Building Authority
(WV Code Chapter 18)

Account No.

**Fund 3963 FY 1996 Org 0402**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service—Total</td>
<td>310</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>$ 18,000,000</td>
</tr>
</tbody>
</table>

### 191—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)

Account No.

**Fund 4030 FY 1996 Org 0453**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>$ 3,520,000</td>
</tr>
</tbody>
</table>
192—Commission on Aging
(WV Code Chapter 29)
Account No.
Fund 5405 FY 1996 Org 0508

1 In-Home Services for
2 Senior Citizens—Total ........ 286 $ 600,000

193—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Account No.
Fund 5063 FY 1996 Org 0511

1 Health Care and Title
2 XIX Waiver for
3 Senior Citizens—Total ........ 434 $ 8,500,000

The above appropriation shall be used to expand the
5 title XIX waiver program statewide but not to increase the
6 rates of reimbursement for services provided by title XIX
7 providers.

1 Total TITLE II, Section 4—
2 Lottery Funds ................. $ 49,500,000

Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from
3 federal funds there are hereby appropriated conditionally
4 upon the fulfillment of the provisions set forth in article
5 two, chapter five-a of the code the following amounts, as
6 itemized, for expenditure during the fiscal year one thousand ninety-six.

LEGISLATIVE
194—Crime Victims Compensation Fund
(WV Code Chapter 14)
Account No.
Fund 8738 FY 1996 Org 2300
<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total . . . . . . . . . . . 096</td>
<td>$ 730,000</td>
</tr>
</tbody>
</table>

**JUDICIAL**

195—Supreme Court

General Judicial

Account No.

Fund 8805 FY 1996 Org 2400

1 Unclassified—Total . . . . . . . . . . . 096 | $ 123,584 |

**EXECUTIVE**

196—Governor's Office

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Account No.

Fund 8792 FY 1996 Org 0100

1 Unclassified—Total . . . . . . . . . . . 096 | $ 387,350 |

197—Governor's Office

Governor's Cabinet on Children and Families

Office of Economic Opportunity

(WV Code Chapter 5)

Account No.

Fund 8797 FY 1996 Org 0100

1 Unclassified—Total . . . . . . . . . . . 096 | $ 4,228,397 |

198—Governor's Office

Commission for National and Community Service

(WV Code Chapter 5)

Account No.
Fund 8800 FY 1996 Org 0100
1 Unclassified—Total ......... 096 $ 800,000

199—Department of Agriculture
(WV Code Chapter 19)

Account No.
Fund 8736 FY 1996 Org 1400
1 Unclassified—Total ......... 096 $ 2,742,879

200—Department of Agriculture
Meat Inspection
(WV Code Chapter 19)

Account No.
Fund 8737 FY 1996 Org 1400
1 Unclassified—Total ......... 096 $ 598,748

DEPARTMENT OF EDUCATION

201—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.
Fund 8712 FY 1996 Org 0402
1 Unclassified—Total ......... 096 $ 7,141,500

202—State Department of Education
School Lunch Program
(WV Code Chapters 18 and 18A)

Account No.
Fund 8713 FY 1996 Org 0402
1 Unclassified—Total ......... 096 $ 54,345,000

203—State Board of Education
Vocational Division
(WV Code Chapters 18 and 18A)
Account No.
Fund 8714 FY 1996 Org 0402
1 Unclassified—Total ............ 096 $ 15,003,695

204—State Department of Education
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Account No.
Fund 8715 FY 1996 Org 0402
1 Unclassified—Total ............ 096 $ 27,300,000

DEPARTMENT OF EDUCATION AND THE ARTS

205—Division of Culture and History
(WV Code Chapter 29)
Account No.
Fund 8718 FY 1996 Org 0432
1 Unclassified—Total ............ 096 $ 2,997,280

206—Library Commission
(WV Code Chapter 10)
Account No.
Fund 8720 FY 1996 Org 0433
1 Unclassified—Total ............ 096 $ 4,155,613

207—Educational Broadcasting Authority
(WV Code Chapter 10)
Account No.
Fund 8721 FY 1996 Org 0439
1 Unclassified—Total ............ 096 $ 1,050,689
208—State Board of Rehabilitation
Division of Rehabilitation Services
(WV Code Chapter 18)
Account No.

Fund 8734 FY 1996 Org 0932
1 Unclassified—Total ............ 096 $ 38,360,894

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

209—Consolidated Medical Service Fund
(WV Code Chapter 16)
Account No.

Fund 8723 FY 1996 Org 0506
1 Unclassified—Total ............ 096 $ 2,687,290

210—Division of Health
Central Office
(WV Code Chapter 16)
Account No.

Fund 8802 FY 1996 Org 0506
1 Unclassified—Total ............ 096 $ 46,017,161

211—Commission on Aging
(WV Code Chapter 29)
Account No.

Fund 8724 FY 1996 Org 0508
1 Unclassified—Total ............ 096 $ 12,000,000

212—Human Rights Commission
(WV Code Chapter 5)
Account No.
### Division of Human Services
(WV Code Chapters 9, 48 and 49)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$151,352</td>
</tr>
<tr>
<td>2</td>
<td>OSCAR and RAPIDS</td>
<td>$515</td>
</tr>
<tr>
<td>3</td>
<td>Medical Services</td>
<td>$852,909,126</td>
</tr>
<tr>
<td>4</td>
<td>Behavioral Health</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Medical Services</td>
<td>$161,173,050</td>
</tr>
<tr>
<td>6</td>
<td>Family Law Masters</td>
<td>$190</td>
</tr>
<tr>
<td>7</td>
<td>Public Assistance</td>
<td>$98,100,000</td>
</tr>
<tr>
<td>8</td>
<td>JOBS Program</td>
<td>$14,900,000</td>
</tr>
<tr>
<td>9</td>
<td>Education Medical Services</td>
<td>$198</td>
</tr>
<tr>
<td>10</td>
<td>Child Advocate</td>
<td>$602</td>
</tr>
<tr>
<td>11</td>
<td>Child Welfare System</td>
<td>$603</td>
</tr>
<tr>
<td>12</td>
<td>Child Protective Services</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>and Medicaid Auditing</td>
<td>$-0-</td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>$1,225,936,304</td>
</tr>
</tbody>
</table>

### Department of Military Affairs
AND PUBLIC SAFETY

214—Adjutant General—State Militia
(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$7,553,467</td>
</tr>
</tbody>
</table>
215—Office of Emergency Services  
(WV Code Chapter 15)  
Account No.  
Fund 8727 FY 1996 Org 0606  
1 Unclassified—Total . . . . . . . . 096 $ 1,716,231

216—Division of Public Safety  
(WV Code Chapter 15)  
Account No.  
Fund 8741 FY 1996 Org 0612  
1 Unclassified—Total . . . . . . . . 096 $ 5,116,740

217—Division of Veterans' Affairs  
Veterans' Home  
(WV Code Chapter 9A)  
Account No.  
Fund 8728 FY 1996 Org 0618  
1 Unclassified—Total . . . . . . . . 096 $ 454,400

218—Division of Criminal Justice  
and Highway Safety  
(Executive Order)  
Account No.  
Fund 8803 FY 1996 Org 0620  
1 Unclassified—Total . . . . . . . . 096 $ 9,692,000

DEPARTMENT OF TAX AND REVENUE  
219—Tax Division  
(WV Code Chapter 11)  
Account No.
DEPARTMENT OF TRANSPORTATION

220—Department of Transportation

Office of the Secretary

(WV Code Chapter 5F)

Account No.

Fund 8782 FY 1996 Org 0801

1 Unclassified—Total ............. 096 $ 913,000

221—State Rail Authority

(WV Code Chapter 29)

Account No.

Fund 8733 FY 1996 Org 0804

1 Unclassified—Total ............. 096 $ 600,000

222—Division of Public Transit

(WV Code Chapter 17)

Account No.

Fund 8745 FY 1996 Org 0805

1 Unclassified—Total ............. 096 $ 10,321,742

BUREAU OF COMMERCE

223—Division of Forestry

(WV Code Chapter 19)

Account No.

Fund 8703 FY 1996 Org 0305

1 Unclassified—Total ............. 096 $ 1,708,650
224—Geological and Economic Survey
(WV Code Chapter 29)
Account No.
Fund 8704 FY 1996 Org 0306
1 Unclassified—Total ............... 096 $ 518,656

225—West Virginia Development Office
(WV Code Chapter 5B)
Account No.
Fund 8705 FY 1996 Org 0307
1 Unclassified—Total ............... 096 $ 11,229,611

226—Division of Labor
(WV Code Chapters 21 and 47)
Account No.
Fund 8706 FY 1996 Org 0308
1 Unclassified—Total ............... 096 $ 317,883

227—Division of Natural Resources
(WV Code Chapter 20)
Account No.
Fund 8707 FY 1996 Org 0310
1 Unclassified—Total ............... 096 $ 5,832,737

228—Division of Miners' Health,
Safety and Training
(WV Code Chapter 22)
Account No.
Fund 8709 FY 1996 Org 0314
1 Unclassified—Total ............... 096 $ 420,564
BUREAU OF ENVIRONMENT

229—Division of Environmental Protection
(WV Code Chapter 22)

Account No.
Fund 8708 FY 1996 Org 0313

<table>
<thead>
<tr>
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<tbody>
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</table>

MISCELLANEOUS BOARDS AND COMMISSIONS

230—Public Service Commission

Motor Carrier Division
(WV Code Chapter 24A)

Account No.
Fund 8743 FY 1996 Org 0926

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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231—Public Service Commission—

Gas Pipeline Division
(WV Code Chapter 24B)

Account No.
Fund 8744 FY 1996 Org 0926

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<td>3</td>
<td>Federal Funds</td>
<td>$1,615,473,417</td>
</tr>
</tbody>
</table>

Sec. 6. Appropriations from federal block grants.—
The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1995-96.
232—Governor's Office

Governor's Cabinet on Children and Families

Account No.

Fund 8799 FY 1996 Org 0100

1 Unclassified—Total ............. 096 $ 7,136,077

233—West Virginia Development Office

Community Development

Account No.

Fund 8746 FY 1996 Org 0307

1 Unclassified—Total ............. 096 $ 24,000,000

234—Bureau of Employment Programs

Job Training Partnership Act

Account No.

Fund 8749 FY 1996 Org 0323

1 Unclassified—Total ............. 096 $ 49,670,429

235—State Department of Education

Education Grant

Account No.

Fund 8748 FY 1996 Org 0402

1 Unclassified—Total ............. 096 $ 70,000,000

236—Division of Health

Maternal and Child Health

Account No.

Fund 8750 FY 1996 Org 0506

1 Unclassified—Total ............. 096 $ 7,243,979
### Division of Health

#### Preventive Health

<table>
<thead>
<tr>
<th>Account No.</th>
<th>FY 1996</th>
<th>Org 0506</th>
<th>Unclassified—Total</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
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#### Substance Abuse Prevention and Treatment

<table>
<thead>
<tr>
<th>Account No.</th>
<th>FY 1996</th>
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<td>$6,449,292</td>
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#### Community Mental Health Services

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<thead>
<tr>
<th>Account No.</th>
<th>FY 1996</th>
<th>Org 0506</th>
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<th>Total</th>
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### Division of Human Services

#### Energy Assistance

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<tr>
<th>Account No.</th>
<th>FY 1996</th>
<th>Org 0511</th>
<th>Unclassified—Total</th>
<th>Total</th>
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#### Child Care and Development

<table>
<thead>
<tr>
<th>Account No.</th>
<th>FY 1996</th>
<th>Org 0511</th>
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<th>Total</th>
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</thead>
<tbody>
<tr>
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<td>096</td>
<td>$6,900,000</td>
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</tbody>
</table>
242—Division of Human Services
Social Services
Account No.
Fund 8757 FY 1996 Org 0511
1 Unclassified—Total ............. 096 $ 22,000,000

243—Division of Human Services
Family Preservation/Family Support
Account No.
Fund 8801 FY 1996 Org 0511
1 Unclassified—Total ............. 096 $ -0-

244—Division of Human Services
Empowerment Zone and Enterprise Community Program
Fund 8806 FY 1996 Org 0511
1 Unclassified—Total ............. 096 $ 8,842,104
1 Total TITLE II, Section 6—
2 Federal Block Grants ........... $ 222,924,470

Sec. 7. Awards for claims against the state.—There are hereby appropriated for the remainder of the fiscal year 1994-1995 and to remain in effect until the thirtieth day of June, one thousand nine hundred ninety-six, from the fund as designated, in the amounts as specified and for the claimants named in enrolled senate bill no. 354, regular session, one thousand nine hundred ninety-five, crime victims compensation funds of $197,500.00 for payment of claims against the state.

There are hereby appropriated for the fiscal year 1995-1996 from the funds as designated in Title II, section eight, appropriations from surplus accrued, in the amounts as specified and for the claimants as named in enrolled house bill no. 2518, regular session, one thousand nine hundred ninety-five, and enrolled senate bill no. 366, regular session, one thousand nine hundred
ninety-five, general revenue funds in the amount of $2,626,347.40

The total of general revenue funds from surplus accrued does not include payment for claims in the amount of $5,760.06 from the supreme court—general judicial, account no. fund 0180, FY 1995, org 2400, specifically made payable from the appropriation for fiscal year 1994-1995.

There are hereby appropriated for the fiscal year 1995-1996 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled house bill no. 2518, regular session, one thousand nine hundred ninety-five, special revenue funds in the amount of $217,182.69; state road funds in the amount of $230,000.57; workers' compensation funds in the amount of $20,503.18; and federal funds in the amount of $20,261.30.

Sec. 8. Appropriations from surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 1995-96 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-five.

In the event that surplus revenues available on the thirty-first day of July, one thousand nine hundred ninety-five, are not sufficient to meet all of the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available as of the date mandated and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section; and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.
Any surplus balance remaining, after the allocation to meet the appropriations set forth in this section, and after compliance with section twenty, article two, chapter five-a, of the code, shall be transferred and made available to the school building authority for expenditure in accordance with the provisions of this section.

245—State Department of Education

(WV Code Chapters 18 and 18A)
Account No.
Fund 0313 FY 1996 Org 0402

School Building Authority—Total 665 $ 20,000,000

It is the intent of the Legislature that, to the extent possible, funding continue to be made available from current sources for projects submitted to the school building authority for funding grants. The Legislature finds that amounts to be deposited in the school construction fund exceed the funds needed therein. Therefore, in accordance with the provisions of subsection (c), section six, article nine-d, chapter eighteen of the code, any funds deposited to the school construction fund pursuant to subdivision (1), subsection (c), section thirty, article fifteen, chapter eleven of the code on or before the thirtieth day of June, one thousand nine hundred ninety-six, shall be transferred to a special segregated funding account within the school building authority, which will be known as the "1995 Construction Account". In addition, the above twenty million dollar appropriation to the state department of education, plus any interest earnings thereon, shall be transferred to the school building authority to be deposited to the credit of the "1995 Construction Account". Interest earnings accrued by the authority for school construction shall also be deposited to the credit of the "1995 Construction Account". Moneys deposited in the "1995 Construction Account" shall only be used to fund county projects from the school building authority's 1994 needs projects funding requirements list as revised on the eighth day of December, one thousand nine hun-
dred ninety-four, which shall be known as the prioritized projects. The school building authority shall consider prioritized projects, which have not been funded or have been funded only in part, for funding from the "1995 Construction Account" in their original staff prioritized rating. Any prioritized project which is not funded from the "1995 Construction Account" shall be considered for funding from the "1996 Construction Account" and the dollar amount necessary to fully fund the prioritized project which is being passed over for funding shall be transferred to the "1996 Construction Account" from the "1995 Construction Account". Any prioritized project which has been conditionally funded but is unable to meet the conditions of funding may resubmit the original project for funding from the "1995 Construction Account" or may modify the original project and submit the modified project for consideration for funding from the "1995 Construction Account".

The Legislature finds that amounts deposited in the school construction fund exceed the funds needed therein. Therefore, in accordance with the provisions of subsection (c), section six, article nine-d, chapter eighteen of the code, funds deposited to the school construction fund between the first day of July, one thousand nine hundred ninety-six and the thirtieth day of June, one thousand nine hundred ninety-seven, pursuant to subdivision (2), subsection (c), section thirty, article fifteen, chapter eleven of the code, plus any interest earnings on said funds shall be transferred to a special segregated funding account within the school building authority, which will be known as the "1996 Construction Account". There shall also be deposited in the "1996 Construction Account" all surplus accrued which is in addition to those surplus general revenue funds which are necessary to meet all other surplus appropriations herein enacted and in addition to those surplus general revenue funds which are necessary to comply with the provisions of section twenty, article two, chapter five-a of the code. In addition, moneys transferred from the "1995 Construction Account" as a result of a prioritized project being passed over for funding from the "1995
Construction Account" shall be deposited to the credit of the "1996 Construction Account". The school building authority shall expend moneys from the "1996 Construction Account" to fund prioritized projects which were passed over for funding from the "1995 Construction Account": Provided, That these prioritized projects shall retain their original priority staff rating when considered for funding from the "1996 Construction Account". The school building authority may also accept new projects for funding: Provided, That these new projects may only be funded from moneys available in the "1996 Construction Account": Provided, however, That all new projects which are submitted must be given a staff rating in the same manner as projects submitted prior to the enactment of this bill. Projects which were passed over for funding from the "1995 Construction Account" and are modified and resubmitted for funding from the "1996 Construction Account" shall also be given a new staff rating in the manner as projects submitted prior to the enactment of this bill. In considering and approving projects, the school building authority may not approve any project for funding from either the "1995 Construction Account" or the "1996 Construction Account" which is ranked in the bottom fifty percent of the staff rating on the 1994 needs projects funding requirements list as revised on the eighth day of December, one thousand nine hundred ninety-four, or as that list is modified to add new or modified projects. The school building authority shall identify and announce those projects to be funded from the "1995 Construction Account" on or before the first day of August, one thousand nine hundred ninety-five, and shall identify and announce those projects to be funded from the "1996 Construction Account" on or before the thirty first day of December, one thousand nine hundred ninety-five.

246—Claims Against the General Revenue Fund

1 Claims Against the State .............. 666 $ 2,626,348
247—Division of Public Safety
(WV Code Chapter 15)

Account No.

Fund 0453 FY 1996 Org 0612

1 Overtime and Wage Court
2 Awards—Total ............ 667 $ 2,821,000

248—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.

Fund 0313 FY 1996 Org 0402

1 County Boards of Education
2 Lawsuits—Total ............ 655 $ 1,500,000

249—State Department of Education
(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1996 Org 0402

1 Program Modernization—Total .. 598 $ 500,000

250—Treasurer's Office
(WV Code Chapter 12)

Account No.

Fund 0126 FY 1996 Org 1300

1 Check Encoder ............... 668 $ 125,000

251—Adjutant General—State Militia
(WV Code Chapter 15)

Account No.

Fund 0433 FY 1996 Org 0603

1 Armory Construction—
2 Capital Outlay—Total ........ 669 $ 300,000
252—State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)
Account No.

Fund 0306 FY 1996 Org 0402
1 Cedar Lakes—Total ............... 638 $ 400,000

253—Board of Trustees of the
University System of West Virginia
Control Account
(WV Code Chapter 18B)
Account No.

Fund 0327 FY 1996 Org 0461
1 Litter to Energy Demonstration Project—Total ........... 656 $ 150,000

254—Department of Agriculture
(WV Code Chapter 19)
Account No.

Fund 0131 FY 1996 Org 1400
1 Mingo County Surface
2 Mine Development
3 Project—Total ................. 657 $ 75,000

255—Department of Agriculture
(WV Code Chapter 19)
Account No.

Fund 0131 FY 1996 Org 1400
1 Small Business
2 Loans—Total (R) .............. 670 $ 100,000
3 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.
<table>
<thead>
<tr>
<th>Account Number</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Total</th>
<th>Amount</th>
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<td>256-Department of Agriculture</td>
<td>0131</td>
<td>1996</td>
<td>1400</td>
<td>Charleston Capitol</td>
<td>1</td>
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<td>257-Governor's Office</td>
<td>0105</td>
<td>1996</td>
<td>0100</td>
<td>Unclassified—Surplus</td>
<td>1</td>
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<tr>
<td>258-State Department of Education</td>
<td>0313</td>
<td>1996</td>
<td>0402</td>
<td>Mingo County Board of Education</td>
<td>2</td>
<td>$400,000</td>
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<tr>
<td>259-Division of General Services</td>
<td>0230</td>
<td>1996</td>
<td>0211</td>
<td>Capitol Complex</td>
<td>1</td>
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260—Educational Broadcasting Authority
(WV Code Chapter 10)

Account No.
Fund 0300 FY 1996 Org 0402
1 Capital Improvements—Total .... 672 $ 250,000

261—Tax Division
(WV Code Chapter 11)

Account No.
Fund 0470 FY 1996 Org 0702
1 Automation Project—Total .... 673 $ 800,000
2 Any unexpended balance remaining in the appropriation for Personal and Business Tax Automation Project (fund 0470, activity 613) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

262—Division of Human Services
(WV Code Chapters 9, 48 and 49)

Account No.
Fund 0403 FY 1996 Org 0511
1 Medical Service Contracts and Office of Managed Care—Total ................. 658 $ 1,500,000
4 Any surplus balance remaining, after the allocation to meet the appropriations set forth in this section, and after compliance with section twenty, article two, chapter five-a of the code, shall be transferred and made available to the school building authority for expenditure in accordance with the provisions of this section.

1 Total TITLE II, Section 8—Surplus Accrued ................. $ 32,997,348
Sec. 9. Supplemental and deficiency appropriation.—
From the state fund, general revenue, except as otherwise
provided, there are hereby appropriated the following
amounts, as itemized, for expenditure during the fiscal
year 1994-95 to supplement the appropriations for such
fiscal year and to be available for expenditure upon date
of passage.

263—Governor's Office
Civil Contingent Fund
(WV Code Chapter 5)
Account No.
Fund 0105 FY 1995 Org 0100
1 Civil Contingent Fund—Total . . . . . . . . . . . 114 $ -0-

264—Auditor's Office
General Administration
(WV Code Chapter 12)
Account No.
Fund 0116 FY 1995 Org 1200
1 Data Center Air Conditioner and
2 Uninterruptible Power Supply . . 609 $ -0-

265—Education and State Employees
Grievance Board
(WV Code Chapter 18)
Account No.
Fund 0220 FY 1995 Org 0219
1 Personal Services . . . . . . . . . . . . . . . 001 $ -0-
2 Employee Benefits . . . . . . . . . . . . . 010 $ -0-
3 Unclassified . . . . . . . . . . . . . . . . . 099 $ -0-
4 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . $ -0-
266—Division of Forestry
(WV Code Chapter 19)
Account No.
Fund 0250 FY 1995 Org 0305

1 Unclassified—Total ........... 096 $ -0-

267—Geological and Economic Survey
(WV Code Chapter 29)
Account No.
Fund 0253 FY 1995 Org 0306

1 Mineral Mapping System (R) .... 610 $ -0-
2 Geographic Information System (R)611 -0-
3 Total .......................... $ -0-

4 Any unexpended balances remaining in the appropriation for Mineral Mapping System (fund 0253, activity 610) and Geographic Information System (fund 0253, activity 611) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

268—Division of Health
(WV Code Chapter 16)
Account No.
Fund 0407 FY 1995 Org 0506

1 Health Facility Licensure
2 and Certification ............... 612 $ -0-

269—Division of Corrections
Correctional Units
(WV Code Chapters 25, 28, 49 and 62)
Account No.
Fund 0450 FY 1995 Org 0608

1 Northern Correctional Facility ... 534 $ -0-
270—Division of Public Safety

(WV Code Chapter 15)

Account No.

Fund 0453 FY 1995 Org 0612

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<th>Description</th>
<th>Amount</th>
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271—Tax Division

(WV Code Chapter 11)

Account No.

Fund 0470 FY 1995 Org 0702

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<th>Description</th>
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<tr>
<td>Personal and Business Tax</td>
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<td>Automation Project</td>
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<td>$0</td>
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<td>Total TITLE II, Section 9—</td>
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<tr>
<td>Supplemental and Deficiency</td>
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</table>

Sec. 10. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-six appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.
Sec. 11. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety-six, 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-six to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 13. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he shall issue his 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. 14. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing devel-
opment fund which is under the supervision and control
of the municipal bond commission as provided by section
twenty-b, article eighteen, chapter thirty-one of the code,
or in the funds of the municipal bond commission be-
cause 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 de-
velopment fund or from any state agency or local taxing
district for which the governor advanced funds, with inter-
est at the rate carried by the bonds for security or payment
of which the advance was made.

Sec. 15. Appropriations for local governments.—
There are hereby appropriated for payment to counties,
districts and municipal corporations such amounts as will
be necessary to pay taxes due counties, districts and mu-
nicipal corporations and which have been paid into the
treasury:

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

Sec. 16. Total appropriations.—Where only a total
sum is appropriated to a spending unit, the total sum shall
include personal services, annual increment, employee
benefits, current expenses, repairs and alterations, equip-
ment and capital outlay, where not otherwise specifically
provided and except as otherwise provided in TITLE
1—GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund.—The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is appro-
priated for expenditure in accordance with section sixteen,
article nine-a, chapter eighteen of the code.
TITLE III—ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

CHAPTER 9
(H. B. 2794—By Delegates Doyle, Evans, Pettit, Warner, Gallagher, Leach and Kelley)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]
and unencumbered accounts of the special fund, insurance commission fund, "former" account no. 8016-99, "WVFIMS" account no. fund 7152-999, fiscal year 1995, organization no. 0704 and making a supplementary appropriation from the balance of all general revenue funds remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, and from the amounts expired to the state fund, general revenue, to the division of culture and history, "former" account no. 3510, "WVFIMS", account no. fund 0293, fiscal year 1995, organization no. 0432, increasing item five, designated capital outlay, repairs and equipment, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-five, known as the "Budget Bill".

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has therefore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the governor's executive budget document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That the sum of two hundred thousand dollars of the balances in "former" account no. 1110, "WVFIMS" account no. fund 0180, fiscal year 1995, organization no. 2400, supreme court, general judicial; the sum of seven thousand two hundred forty dollars from "former" account no. 8016-99, "WVFIMS" account
no. fund 7152-999 fiscal year 1995, organization no. 0704, insurance commission fund, and that "former" account no. 3510 "WVFIMS" account no. fund 6293, fiscal year 1995, organization no. 0432 be supplemented and amended from balances made available herein from expirations to the state fund, general revenue and from the balance of all general revenue funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, all supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, to thereafter read as follows:

1 64—Division of Culture and History

(WV Code Chapter 29)

"Former" Account No. 3510

"WVFIMS" Account No.

Fund 0293 FY 1995 Org 0432

1  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21

1  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21

The purpose of this supplementary appropriations bill is to expire two hundred thousand dollars from "former" account no. 1030, "WVFIMS" account no. fund 0180, fiscal year 1995, organization no. 2400 and to expire seven thousand two hundred forty dollars from "former" account no. 8016-99, "WVFIMS" account no. fund 7152-999, fiscal year 1995, organization no. 0704, insurance commission fund, to the state fund, general revenue and in addition to five hundred forty-one thousand nine
An Act supplementing, amending, reducing and causing to expire in the state fund, general revenue of the state, certain unexpended amounts from "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Activity No. 524, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line nine, "Infrastructure", as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 5120, "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400, Department of Agriculture - Soil Conservation Committee, line seven, "Soil Conservation Projects"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1240, "WVFIMS" Account No. Fund 0105, FY 1995, Org. 0100, Governor's Office - Civil Contingent Fund, line one, Activity No. 114, "Civil Contingent Fund"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line fifteen, Activity No. 242, "Guaran-
ted Work Force Grant"; transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, and creating therein a new line item, line nineteen-a, "West Virginia Economic Development Authority", and transferring, reappropriating and making available for expenditure a portion of such funds to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, creating therein a new line item, line nineteen-b, "Industrial Modernization Program," Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, creating therein a new line item, line nineteen-c, "Infrastructure Fund - Transfer" and creating a new account, "WVFIMS" Account No. Fund 3384, FY 1995, Org. 0316, West Virginia Development Office, creating and establishing therein a new line item, line one, "Infrastructure Fund" and transferring, appropriating and making available for expenditure a portion of such expired funds under the newly created account.

Be it enacted by the Legislature of West Virginia:

That the sum of ten million four hundred thousand dollars be expired from "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Activity No. 524, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, line nine, Activity No. 524, "Infrastructure," as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill" be supplemented, amended, reduced and caused to expire to the general revenue fund and that such sums be transferred and reappropriated as set forth herein.

That the sum of two million two hundred fifty thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" Account No. Fund 1240, "WVFIMS" Account No. Fund 0105, FY 1995, Org. 0100, chapter one, acts of the Legislature, one thousand nine hundred
ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line item:

1

TITLE II—APPROPRIATIONS.

2

Section 1. Appropriations from general revenue.

3

6—Governor's Office—Civil Contingent Fund

4

(WV Code Chapter 5)

5

"Former" Account No. 1240

6

"WVFIMS" Account No.

7

Fund 0105 FY 1995 Org 0100

8

1 Civil Contingent Fund—Total (R) 114 $ 2,250,000.00

9

Any unexpended balances remaining in the appropriation for Civil Contingent Fund (fund 0105, activity no. 114) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

14

That the sum of two million six hundred thousand dollars be transferred, reappropriated, made available for expenditure, and increasing "former" Account No. 5120, "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400, chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line item:

22

TITLE II—APPROPRIATIONS.

23

Section 1. Appropriations from general revenue.

24

19—Department of Agriculture

25

Soil Conservation Committee

26

(WV Code Chapter 19)

27

"Former" Account No. 5120

28

"WVFIMS" Account No.

29

Fund 0132 FY 1995 Org 1400
30 7 Soil Conservation Projects . . . 120 $ 2,600,000.00

Any unexpended balances remaining in the appropriation for Soil Conservation Projects (fund 0132, activity no. 120) at the close of the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

That the sum of four million two hundred twenty-five thousand dollars be transferred, reappropriated and made available for expenditure, and increasing "former" Account No. Fund 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

35—West Virginia Development Office (WV Code Chapter 5B)

"Former" Account No. 1210

"WVFIMS" Account No.

Fund 0256 FY 1995 Org 0307

15 Guaranteed Work Force

Grant (R) 242 $ 650,000.00

19a West Virginia Economic Development Authority . . . 633 3,400,000.00

19b Industrial Modernization

Program . . . . . . . . . . . . . 634 175,000.00

19c Infrastructure Fund-Transfer . . 646 1,325,000.00

Any unexpended balances remaining in the appropriations for West Virginia Economic Development Authority (fund 0256, activity no. 618) and Industrial Modernization Program (fund 0256, activity no. 619) at the close of
the fiscal year 1994-95 are hereby reappropriated for expenditure during the fiscal year 1995-96.

The above line item, "Infrastructure Fund - Transfer" shall be transferred, appropriated and made available for expenditure to "WVFIMS" Account No. Fund 3384, FY 1995, Org. 0316, in chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the Budget Bill, and that the sum of one million three hundred twenty-five thousand dollars be appropriated and added thereto to the designated line items:

TITLE II—APPROPRIATIONS.

Section 3. Appropriations from other funds.

109A—West Virginia Development Office

(WV Code Chapter 31)

"Former" Account No.

"WVFIMS" Account No.

Fund 3384 FY 1995 Org 0316

1 Infrastructure Fund ............ 620 $ 1,325,000.00

Any unexpended balances remaining in the appropriation for West Virginia Development Office (fund 3384, activity no. 620) at the close of the FY 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

The purpose of this supplementary appropriation is to supplement, amend, reduce and cause to expire the sum of $10,400,000.00 from the aforesaid infrastructure line item and transfer and reappropriate $2,600,000.00 to the Department of Agriculture, Soil Conservation Committee, Soil Conservation Projects line item, transfer and reappropriate the sum of $2,250,000.00 to the Governor's Civil Contingent Liability Fund, transfer and reappropriate the sum of $3,400,000.00 to the West Virginia Economic Development Office, transferring and reappropriating the sum of $650,000.00 to the Governor's Work Force Grant, transferring and reappropriating the sum of $175,000.00
to the Industrial Modernization, transferring and reappropriating the sum of $1,324,000.00 to Infrastructure Fund Transfer and creating a new item in the Budget Bill, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, as item one hundred nine, West Virginia Development Office, and transferring and appropriating the sum of one million three hundred twenty-five thousand dollars thereto, thereby leaving a total appropriated amount of six million one hundred thousand dollars in "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Activity No. 524 "Infrastructure," increasing the amount appropriated for expenditure in activity 120 of "former" Account No. 5120, "WVFIMS" Account No. Fund 0132, FY 1995, Org. 1400, Activity No. 120, Department of Agriculture - Soil Conservation Committee, line seven, "Soil Conservation Projects, to a total amount available for expenditure of five million six hundred thousand dollars, increasing the amount appropriated for expenditure in Activity No. 114 of "former" Account No. 1240, "WVFIMS" Account No. Fund 0105, FY 1995, Org. 0100, Governor's Office - Civil Contingent Fund to a total amount available for expenditure of three million five hundred thousand dollars, increasing the amount appropriated for expenditure in Activity No. 242 of "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, "Guaranteed Workforce Grant" to two million one hundred thousand dollars, increasing and making available for expenditure the amount appropriated to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Activity No. 633, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, "West Virginia Development Authority" to three million four hundred thousand dollars, increasing and making available for expenditure the amount appropriated to "former" Account No. 1210, "WVFIMS" Account No. Fund 0256, FY 1995, Org. 0307, Activity No. 634, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, "Industrial Modernization Program" to one hundred seventy-five
thousand dollars, Department of Commerce, Labor and Environmental Resources - West Virginia Development Office, "Infrastructure Fund - Transfer" to one million three hundred twenty-five thousand dollars and creating a new account, the West Virginia Development Office, "WVFIMS" Account No. Fund 3384, FY 1995, Org. 0316, Activity No. 620, West Virginia Development Office, and appropriating, transferring, making available for expenditure and adding to a line item, designated "Infrastructure Fund" a sum of one million three hundred twenty-five thousand dollars, thereby making available for expenditure the total sum of one million five hundred twenty-five thousand dollars for the fiscal year.

CHAPTER 11

(H. B. 2220—By Delegates Kiss, Pettit, Gallagher, Leach, Farris, Wallace and Miller)

[Passed February 3, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Auditor's Office, Account No. Fund 0116 FY 1995 Org 1200, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a budget bill for fiscal year
1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0116 FY 1995 Org 1200, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 12—Auditor's Office

4 General Administration

5 (WV Code Chapter 12)

6 "Former" Account No. 1500

7 "WVFIMS" Account No.

8 Fund 0116 FY 1995 Org 1200

9 7a Data Center Air Conditioner and

10 7b Uninterruptible Power Supply . . . 609 $105,000

11 The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of $3,833,871.00.
CHAPTER 12

(H. B. 2507—By Delegates Kiss, Warner, Leach, Pettit, Wallace, Border and Miller)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Tax Division, Account No. Fund 0470 FY 1995 Org 0702, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0470 FY 1995 Org 0702, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

85—Tax Division

(WV Code Chapter 11)

"Former" Account No. 1800

"WVFIMS" Account No.

Fund 0470 FY 1995 Org 0702

7a Personal and Business Tax

7b Automation Project ........ 613 $1,000,000

The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of $19,798,507.00. Any unexpended balance remaining in the appropriation for Personal and Business Tax Automation Project (fund 0470, activity 613), at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

CHAPTER 13

(H. B. 2575—By Delegates Burke, Browning, Warner, Doyle, Miller, Walters and Wallace)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, transferring and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the school building debt service fund "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402 and making a supplementary appropriation
from the state fund, general revenue in a like amount to the
department of military affairs and public safety, regional jail
and correctional facility authority, and supplementing,
amending, reducing and transferring between items of the
existing appropriations within the department of military
affairs and public safety, division of corrections, correctional
units, "former" account no. 3770, "WVFIMS" account no.
fund 0450, fiscal year 1995, organization no. 0608, all sup-
plementing and amending chapter one, acts of the Legisla-
ture, one thousand nine hundred ninety-four, known as the
"Budget Bill".

WHEREAS, The Legislature has heretofore enacted a Budget
Bill for fiscal year 1993-94 and certain supplementary appropri-
ation bills for such fiscal year, all well within the governor's esti-
mates of available revenues, thereby leaving revenues for further
appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Gov-
ernor's Executive Budget Document that a sufficient balance of
general revenue is available for further supplementary appro­
priation for the fiscal year ending June thirtieth, one thousand nine
hundred ninety-four; therefore,

Be it enacted by the Legislature of West Virginia:

That the amount of two million dollars of the unencumbered
and unexpended balance in the special fund, the school building
debt service fund, "WVFIMS" account no. fund 3962, fiscal year
1995, organization 0402, be transferred and caused to expire to
the state fund general revenue and be available for further appro­
priation upon the effective date of this bill and that the
amount of five hundred thousand dollars from the balance of all
revenues remaining unappropriated for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-four; and
the items of the total appropriations within the department of
military affairs and public safety, division of corrections, correc­
tional units, "former" account no. 3770, "WVFIMS" account no.
fund 0450 fiscal year 1995 organization no. 0608, be supple­
mented, amended and transferred; all amending chapter one, acts
of the Legislature, first extraordinary session, one thousand nine
hundred ninety-four, to thereafter read as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

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<th>Item</th>
<th>Description</th>
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<th>Org</th>
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<td>448</td>
<td>Regional Jails</td>
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<td>Denmar Facility</td>
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<td>WV Penitentiary Transition</td>
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<td>Mt. Olive Correctional Complex</td>
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<td>Northern Correctional Facility</td>
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<td>53a</td>
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<td>Inmate Medical Expense</td>
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The purpose of this bill is to supplement, amend, reduce and transfer between existing line items in the aforesaid account for the designated spending unit, and to further supplement and amend the aforesaid account by making a supplementary appropriation in the amount of two million dollars from amounts expired from the unexpended and unencumbered balance in the school building debt service fund and five hundred thousand dollars from the balance of general revenue remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four.
CHAPTER 14

(H. B. 2658—By Delegates Compton, Tomblin, Kelley, Burke, Seacrist, Leggett and Clements)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, transferring and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special fund, the school building debt service fund "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402 and making a supplementary appropriation from the state fund, general revenue in a like amount to the department of military affairs and public safety, regional jail and correctional facility authority, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the sum of ten million dollars of the balances in "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402, be supplemented, amended and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation as provided herein upon the effective date of this bill and that chapter one, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill" be supplemented and amended by increasing the appropriation to "Former" Account No. 6010, "WVFIMS" account no. fund 0536, fiscal year 1995, organization no. 0615, in the amount of ten million dollars, to thereafter read as follows:

TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from general revenue.
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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 1 Regional Jail—Capital
2 2 Outlay—Total .................. $20,000,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue the sum of ten million dollars from "WVFIMS" account no. fund 3962, fiscal year 1995, organization 0402. The amount shall, upon the effective date of this bill, be immediately expired into the state fund, general revenue, and be available for appropriation to supplement, amend and increase the items of total appropriation in "Former" Account No. 6010, "WVFIMS" account no. fund 0536, fiscal year 1995, organization no. 0615 by ten million dollars. Such amount shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 15
(H. B. 2576—By Delegates Kiss, Warner, Doyle, Pettit, Miller, Wallace and Walters)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five,
to the Division of Health, Account No. Fund 0407 FY 1995 Org 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0407 FY 1995 Org 0506, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 66—Division of Health
4 (WV Code Chapter 16)
5 "Former" Account No. 4000
6 "WVFIMS" Account No.
7 Fund 0407 FY 1995 Org 0506
Ch. 16]  

APPROPRIATIONS

<table>
<thead>
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<th>No.</th>
<th>Description</th>
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<tr>
<td>8</td>
<td>Health Facility Licensure and Certification</td>
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The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of $36,161,182.00.

CHAPTER 16

(H. B. 2508—By Delegates Kiss, Leech, Farris, Browning, Doyle, Wallace and Miller)

[Passed March 11, 1995; 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-four, to the Division of Rehabilitation Services, "former" Account No. 4405, "WVFIMS" Account No. Fund 0310, FY 1995, Org 0932, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenue for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first
extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriations; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; 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-four, known as the "Budget Bill", be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 57—State Board of Rehabilitation—

4 Division of Rehabilitation Services

5 (WV Code Chapter 18)

6 "Former" Account No. 4405

7 "WVFIMS" Account No.

8 Fund 0310 FY 1995 Org 0932

9 1 Personal Service . . . . . . . 001 $ 3,773,985

10 3 Employee Benefits . . . . . . 010 1,253,813

11 The purpose of this supplementary appropriation bill is to supplement and amend this account in the budget act for the fiscal year 1994-1995 from the unappropriated surplus balance by increasing the appropriation to the line item entitled personal services by one hundred sixteen thousand eight hundred fifty-eight dollars and increase the appropriation to the line item entitled employee
benefits by nineteen thousand nine hundred eighty-three dollars to the employee benefits line item, for a total increase in authorized spending of one hundred thirty-six thousand eight hundred forty-one dollars to be available for expenditure on the first day of April, one thousand nine hundred ninety-five.

CHAPTER 17

(H. B. 2219—By Delegates Kiss, Mezzatesta, Warner, Browning, Farris, Wallace and Miller)

[Passed February 3, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Division of Forestry, Account No. Fund 0250 FY 1995 Org 0305, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the
Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0250 FY 1995 Org 0305, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 38—Division of Forestry

4 (WV Code Chapter 19)

5 "Former" Account No. 4650

6 "WVFIMS" Account No.

7 Fund 0250 FY 1995 Org 0305

8 1 Unclassified . . . . . . 096 $ 200,000

9 The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of $2,300,000.00.

CHAPTER 18

(H. B. 2655—By Delegates Kiss, Warner, Leach, Pettit, Wallace, Border and Miller)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended amounts from "WVFIMS" account no. 5174, fiscal year 1995, organization 0506, health and human resources; "WVFIMS" account no. 5405, fiscal year 1995, organization 0508, commission on aging; "WVFIMS" account no. 4030, fiscal year 1995, organization 0453, higher education central office; "WVFIMS" account no. 4182, fiscal year 1995, organization 0463, West Virginia University; "WVFIMS" account no. 4256, fiscal year 1995, organization 0471, Marshall University; "WVFIMS" account no. 4448, fiscal year 1995, organization 0484, Fairmont State College; "WVFIMS" account no. 4679, fiscal year 1995, organization 0487, Southern Community College; and making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the state department of education, "WVFIMS" account no. fund 0313, fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:
That the sum of two hundred fifty-eight thousand six hundred fifty-eight dollars be expired from "WVFIMS" account no. 5174, fiscal year 1995, organization 0506, health and human resources; the sum of four hundred eighty-four dollars and twenty-five cents be expired from "WVFIMS" account no. 5405, fiscal year 1995, organization 0508, commission on aging; that the sum of two hundred twenty-nine thousand seven hundred twenty-five dollars and thirty-nine cents be expired from "WVFIMS" account no. 4030, fiscal year 1995, organization 0453, higher education central office; that the sum of fifty-one thousand seven hundred nineteen dollars and seventy-eight cents be expired from "WVFIMS" account no. 4182, fiscal year 1995, organization 0463, West Virginia University; that the sum of thirty-five dollars and six cents be expired from "WVFIMS" account no. 4256, fiscal year 1995, organization 0471, Marshall University; that the sum of ninety-three cents be expired from "WVFIMS" account no. 4448, fiscal year 1995, organization 0484, Fairmont State College; and that the sum of twenty-five thousand dollars be expired from "WVFIMS" account no. 4679, fiscal year 1995, organization 0487, Southern Community College, all as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and caused to expire and that the sum of five hundred sixty-five thousand six hundred twenty-three dollars and forty-one cents be transferred, reappropriated, made available for expenditure and increasing "WVFIMS" account no. fund 0313 fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and that said "WVFIMS" account no. fund 0313 fiscal year 1995, organization 0402, be further supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 50—State Department of Education

4 (WV Code Chapters 18 and 18A)

5 "Former" Account No. 2860

6 "WVFIMS" Account No.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Geological and Economic Survey, Account No. Fund 0253 FY 1995 Org 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;
WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0253 FY 1995 Org 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 46—Geological and Economic Survey

4 (WV Code Chapter 29)

5 "Former" Account No. 5200

6 "WVFIMS" Account No.

7 Fund 0253 FY 1995 Org 0306

8 4a Mineral Mapping System (R) . . . . . . . 610 $1,500,000

9 4b Geographic Information System (R) 611 500,000

10 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $2,000,000

11 The purpose of this bill is to supplement the aforesaid account and items therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of
18 $3,611,971.00. Any unexpended balances remaining in
19 the appropriation for Mineral Mapping System (fund
20 0253, activity 610) and Geographic Information System
21 (fund 0253, activity 611) at the close of the fiscal year
22 1994-95 is hereby reappropriated for expenditure during
23 fiscal year 1995-96.

CHAPTER 20

(H. B. 2793—By Delegates Browning, Frederick, Farris, Gallagher,
Miller, Leggett and Evans)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public mon­
ey out of the treasury from the balance of all general reve­
nues remaining unappropriated for the fiscal year ending
June thirtieth, one thousand nine hundred ninety-five, to the
geological and economic survey, "former" account no. 5200,
"WVFIMS" account no. fund 0253 fiscal year 1995 organi­
zation 0306, chapter one, acts of the Legislature, first ex­
traordinary session, one thousand nine hundred ninety-four,
known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Exec­
utive Budget Document, dated January 12, 1994, which included
a statement of the state fund, general revenue, setting forth there­
in the cash balance and investments as of July 1, 1994, and fur­
ther included the estimate of revenues for fiscal year 1994-95,
less net appropriation balances forwarded and regular appropria­
tions for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extra­
ordinary session, 1994, enacted a Budget Bill for fiscal year
1994-95 and certain supplementary appropriation bills for such
fiscal year, all well within the governor's estimates of available
revenues, thereby leaving revenues for further appropriation; and
WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That "former" account no. 5200, "WVFIMS" account no. fund 0253, fiscal year 1995, organization 0306, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 46—Geological and Economic Survey

4 (WV Code Chapter 29)

5 "Former" Account No. 5200

6 "WVFIMS" Account No.

7 Fund 0253 FY 1995 Org 0306

8 4a Capital Outlay and Equipment ... 542 $ 134,000

9 Any unexpended balance remaining in the appropriation for Geological and Economic Survey, Capital Outlay and Equipment (fund 0253, activity 542) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

14 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the aforesaid account the total sum of one hundred thirty-four thousand dollars and transfer, reappropriate and make available for immediate expenditure such funds upon passage of this bill.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the Division of Public Safety, Account No. Fund 0453 FY 1995 Org 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill."

WHEREAS, The governor submitted to the Legislature the Executive Budget Document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95; and

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. Fund 0453 FY 1995 Org 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented by adding thereto the following sums to the designated line items:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

80—Division of Public Safety
(WV Code Chapter 15)
"Former" Account No. 5700
"WVFIMS" Account No.
Fund 0453 FY 1995 Org 0612

12a Trooper Class ................. 231 $1,212,840.00

The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1994-95, thereby making the amount available for expenditure from the above-referenced account during said fiscal year ending June thirtieth, one thousand nine hundred ninety-five, a total of $30,338,851.00. Any unexpended balance remaining in the appropriation for Trooper Class (fund 0453, activity 231), at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

CHAPTER 22
(S. B. 593—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of military affairs and public safety, division of public safety, "former" account no. 5700, "WVFIMS" account no. fund 0453, fiscal year 1995, organization 0612, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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. 5700, "WVFIMS" account no. fund 0453, fiscal year 1995, organization 0612, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred thereafter to read as follows:

TITILE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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>Activity</th>
<th>General Revenue Fund</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>
<tr>
<td>Barracks Maintenance and</td>
<td>494</td>
</tr>
<tr>
<td>Construction (R)</td>
<td>113,947</td>
</tr>
<tr>
<td>Communications and Other</td>
<td>558</td>
</tr>
<tr>
<td>Communications Equipment</td>
<td>502</td>
</tr>
<tr>
<td>Equipment</td>
<td>070</td>
</tr>
<tr>
<td>Court Judgment</td>
<td>230</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
</tr>
<tr>
<td>Trooper Class</td>
<td>231</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>General Revenue Fund</td>
<td></td>
</tr>
</tbody>
</table>

$15,908,330
$95,076
$4,762,065
$4,246,593
$1,000,000
$1,212,840

$30,338,851
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for this account in the budget act for fiscal year 1994-1995. The amounts as now itemized shall be made available for expenditure upon passage of this bill.

CHAPTER 23

(S. B. 587—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the department of administration, ethics commission, "former" account no. 6180, "WVFIMS" account no. fund 0223, fiscal year 1995, organization 0220, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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. 6180, "WVFIMS" account no. fund 0223, fiscal year 1995, organization 0220, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

34—Ethics Commission

(WV Code Chapter 6B)

"Former" Account No. 6180

"WVFIMS" Account No.

Fund 0223 FY 1995 Org 0220
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for this account in the budget act for fiscal year 1994-1995. The amounts as now itemized shall be made available for expenditure upon passage of this bill.

CHAPTER 24

(S. B. 561—Originating in the Committee on Finance.)

[Passed March 8, 1995; 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 military affairs and public safety, division of corrections—correctional units—parolee's supervision fee fund, "WVFIMS" account no. fund 6362, fiscal year 1995, organization 0608, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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 1994-1995, 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-four, known as the "Budget Bill", be supplemented and amended by adding to title two, section three thereof, as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

157A—Division of Corrections—

Correctional Units—

Parolee's Supervision Fee Fund

(WV Code Chapters 25, 28, 49 and 62)

"WVFIMS" Account No.

Fund 6362 FY 1995 Org 0608

<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>$82,928</td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>010</td>
<td>35,664</td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>099</td>
<td>115,408</td>
</tr>
<tr>
<td>4 Total</td>
<td></td>
<td>$234,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1994-1995 by providing for new items of appropriation to be established therein to appropriate other moneys received for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-five. These moneys shall be available for expenditure upon passage of this bill.
CHAPTER 25
(S. B. 556—By Senators Helmick and Whitlow)

[Passed March 6, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund to the department of transportation, division of highways, "former" account no. 6700, "WVFIMS" account no. fund 9017, fiscal year 1995, organization 0803, and division of highways—federal aid highway matching fund, "former" account no. 6705, "WVFIMS" account no. fund 9018, fiscal year 1995, organization 0803, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to "former" account no. 6700, "WVFIMS" account no. fund 9017, fiscal year 1995, organization 0803, and to "former" account no. 6705, "WVFIMS" account no. fund 9018, fiscal year 1995, organization 0803, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and transferred to read as follows:

1 TITLE II — APPROPRIATIONS.
2 Sec. 2. Appropriations from state road fund.
3 90—Division of Highways
4 (WV Code Chapters 17 and 17C)
5 "Former" Account No. 6700
6 "WVFIMS" Account No.
7 Fund 9017 FY 1995 Org 0803
<table>
<thead>
<tr>
<th>Activity</th>
<th>Appropriations</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 Debt Service</td>
<td>040</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>9 ARC Assessment</td>
<td>136</td>
<td>700,000</td>
</tr>
<tr>
<td>10 Maintenance, Expressway Trunkline and Feeder</td>
<td>270</td>
<td>65,814,000</td>
</tr>
<tr>
<td>11 Maintenance, State Local Services</td>
<td>271</td>
<td>116,603,000</td>
</tr>
<tr>
<td>12 Maintenance, Contract Paving and Secondary Road</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13 Maintenance</td>
<td>272</td>
<td>51,500,000</td>
</tr>
<tr>
<td>14 Bridge Repair and Replacement</td>
<td>273</td>
<td>27,100,000</td>
</tr>
<tr>
<td>15 Inventory Revolving</td>
<td>275</td>
<td>1,250,000</td>
</tr>
<tr>
<td>16 Equipment Revolving</td>
<td>276</td>
<td>15,000,000</td>
</tr>
<tr>
<td>17 General Operations</td>
<td>277</td>
<td>34,400,000</td>
</tr>
<tr>
<td>18 Interstate Construction</td>
<td>278</td>
<td>40,043,000</td>
</tr>
<tr>
<td>19 Other Federal Aid Programs</td>
<td>279</td>
<td>69,000,000</td>
</tr>
<tr>
<td>20 Appalachian Programs</td>
<td>280</td>
<td>71,455,000</td>
</tr>
<tr>
<td>21 Nonfederal Aid Construction</td>
<td>281</td>
<td>37,000,000</td>
</tr>
<tr>
<td>22 Highway Litter Control</td>
<td>282</td>
<td>1,390,000</td>
</tr>
<tr>
<td>23 Total</td>
<td></td>
<td>$581,255,000</td>
</tr>
</tbody>
</table>

91—Division of Highways—

Federal Aid Highway Matching Fund
(WV Code Chapters 17 and 17C)

"Former" Account No. 6705
"WVFIMS" Account No.

Fund 9018 FY 1995 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>Appropriations</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Interstate Construction</td>
<td>278</td>
<td>$17,750,000</td>
</tr>
<tr>
<td>2 Appalachian Program</td>
<td>280</td>
<td>101,156,000</td>
</tr>
<tr>
<td>3 Other Federal Aid Programs</td>
<td>279</td>
<td>174,000,000</td>
</tr>
<tr>
<td>4 Total</td>
<td></td>
<td>$292,906,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid accounts for the designated spending unit. The amount as itemized for expenditure in fiscal year 1994-1995 shall be available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from state road funds to the department of transportation, division of motor vehicles, former account no. 6710, "WVFIMS" account no. fund 9007, fiscal year 1995, organization 0802, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to "former" account no. 6710, "WVFIMS" account no. fund 9007, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, be supplemented, amended, reduced and transferred to thereafter read as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Description</th>
<th>Account</th>
<th>Fiscal Year</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Sec. 2.</td>
<td>Appropriations from state road fund.</td>
<td>DEPARTMENT OF TRANSPORTATION</td>
<td>96—Division of Motor Vehicles</td>
<td>(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>9</td>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 3,506,056</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>47,213</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,173,750</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>11,577,400</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>5</td>
<td>Optic Scan System (R)</td>
<td>283</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>6</td>
<td>Electronic Photo Operator</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>7</td>
<td>and License System (R)</td>
<td>284</td>
<td>-0-</td>
<td></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.

The purpose of this bill is to transfer between items of  
existing appropriation increasing the unclassified line item  
and decreasing the optic scan line item and the electronic  
driver's license system line item for a total decrease in the  
appropriation of $550,000.

CHAPTER 27

(S. B. 562—Originating In the Committee on Finance.)

[Passed March 9, 1995; 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 governor's office—governor's cabinet on  
children and families—office of economic opportunity,  
"former" account no. 7755, "WVFIMS" account no. fund  
8797, fiscal year 1995, organization 0100, supplementing  
and amending chapter one, acts of the Legislature, first  
extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of  
federal funds for a new program now available for expenditure  
in fiscal year 1994-1995, which are 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. 7755, "WVFIMS" account no. fund 8797, fiscal year 1995, organization 0100, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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.

3 EXECUTIVE

4 202—Governor's Office—

5 Governor's Cabinet on Children and Families—

6 Office of Economic Opportunity

7 (WV Code Chapter 5)

8 "Former" Account No. 7755

9 "WVFIMS" Account No.

10 Fund 8797 FY 1995 Org 0100

11 Act- Federal

12 ivity Funds

13 1 Unclassified—Total ........ 096 $4,885,580

14 The purpose of this supplementary appropriation bill
15 is to supplement this account in the budget act for fiscal
16 year 1994-1995 by adding six hundred fifty-seven
17 thousand one hundred eighty-three dollars to the existing
18 appropriation for a new program to provide housing
19 opportunities for people with acquired immune deficiency
20 syndrome and for those persons having tested HIV
21 positive. These moneys shall be available for expenditure
22 upon passage of this bill.
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 education, "former" account no. 7772, "WVFIMS" account no. fund 8712, fiscal year 1995, organization 0402, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are 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. 7772, "WVFIMS" account no. fund 8712, fiscal year 1995, organization 0402, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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.
3 DEPARTMENT OF EDUCATION
4 214—State Department of Education
5 (WV Code Chapters 18 and 18A)
6 "Former" Account No. 7772
7 "WVFIMS" Account No.
8 Fund 8712 FY 1995 Org 0402
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding eight hundred thirty thousand six hundred forty dollars to the existing appropriation. The additional funds from the national science foundation for "Project CATS", a scientific/technical grant for grades 7-10. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 29

(S. B. 558—By Senators Helmick and Whitlow)

[Passed March 8, 1995; 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 commerce, labor and environmental resources, division of labor, "former" account no. 7884, "WVFIMS" account no. fund 8706, fiscal year 1995, organization 0308, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are 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. 7884, "WVFIMS" account no. fund 8706, fiscal year 1995,
organization 0308, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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.

3 DEPARTMENT OF COMMERCE, LABOR
4 AND ENVIRONMENTAL RESOURCES
5 209—Division of Labor
6 (WV Code Chapters 21 and 47)
7 "Former" Account No. 7884
8 "WVFIMS" Account No.
9 Fund 8706 FY 1995 Org 0308

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$390,733</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding seventy-two thousand eight hundred fifty dollars to the existing appropriation for the purchase of safety and communications equipment and salary increases. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 30

(S. B. 588—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minner)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]
account no. 7911, "WVFIMS" account no. 8736, fiscal year 1995, organization 1400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are 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 1995, organization 1400, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the budget bill, be supplemented and amended thereafter to read as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$2,533,569</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding four hundred forty thousand, five hundred forty-four dollars to the existing appropriation for continuing programs in pesticide analysis, public education in pest management and worker protection training and gypsy moth trapping program. These moneys shall be available for expenditure upon passage of this bill.
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 transportation, division of motor vehicles, "former" account no. 7970, "WVFIMS" account no. fund 8787, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are 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. 7970, "WVFIMS" account no. fund 8787, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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.
3 DEPARTMENT OF TRANSPORTATION
4 234—Division of Motor Vehicles
5 (WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
6 "Former" Account No. 7970
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding one hundred twelve thousand eight hundred dollars to the existing appropriation. The additional funds are from the U.S. department of transportation for use in implementing the international fuel tax agreement, a federal mandate, and the problem driver pointer system to assure the state does not issue licenses to a person whose license is suspended or remarked in another state.
new line item within said account entitled Capital Improvements—Capitol Complex, and transferring a portion of said funds into said newly created line item.

Be it enacted by the Legislature of West Virginia:

That the sum of five hundred sixty-one thousand 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 and the sum of one million four thousand dollars be expired from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended, reduced and caused to expire and that the sum of one million five hundred sixty-five thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 2130, "WVFIMS" Account No. 0230, fiscal year 1995, organization 0223, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 26—Division of General Services

4 (WV Code Chapter 5A)

5 "Former" Account No. 2130

6 "WVFIMS" Account No.

7 Fund 0230 FY 1995 Org 0223

8 6 Capitol Building Preservation (R) . . 503 $ 500,000

9 6a Capital Improvements—

10 Capitol Complex. ............... 593 $1,065,000

11 Any unexpended balance remaining in the appropria-
tion for Capitol Building Preservation (fund 0230, activity 503) and Capital Improvements-Capitol Complex (fund 0230, activity 593) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

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 five hundred sixty-five thousand dollars and transfer, reappropriate and make available for immediate expenditure such funds upon passage of this bill.

CHAPTER 33
(H. B. 2656—By Delegates Kiss, Farris, Miller, Evans, Clements, Walters and Wallace)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1995, organization 0704, Insurance Commission—cash control, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and transferring such amount to the governor's office-custodial fund, "former" account no. 1230, "WVFIMS" account no. fund 0102, fiscal year 1995, organization 0100.

Be it enacted by the Legislature of West Virginia:

That the sum of one hundred thousand dollars be expired from "former" account no. 8016-99, "WVFIMS" account no. fund 7152, fiscal year 1994, organization 0704, insurance commission—cash control as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hun-
dred ninety-four, known as the "Budget Bill" be supplemented, amended, reduced and caused to expire and that the sum of one hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 1230, "WVFIMS" account no. 0102 fiscal year 1995 organization no. 0100, acts of the Legislature, one thousand nine hundred ninety-four, known as the "Budget Bill", by adding thereto the following sums to the designated line items:

1

TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

"Former" Account No. 1230

"WVFIMS" Account No.

Fund 0102 FY 1995 Org 0100

8 1 Unclassified—Total ........ 096 $ 100,000

9 Any unexpended balance remaining in the appropriation for Governor's Office-Custodial Fund, Unclassified—Total (fund 0102, activity 096) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

14 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the aforesaid account the total sum of one hundred thousand dollars and transfer, reappropriate and make available for immediate expenditure such funds upon passage of this bill.
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 commerce, labor and environmental resources, West Virginia development office, "former" account no. 8029, "WVFIMS" account no. fund 8746, fiscal year 1995, organization 0307, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in fiscal year 1994-1995, which are 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. 8029, "WVFIMS" account no. 8746, fiscal year 1995, organization 0307, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 6. Appropriations of federal block grants.

3 DEPARTMENT OF COMMERCE, LABOR

4 AND ENVIRONMENTAL RESOURCES

5 239—West Virginia Development Office—

6 Community Development
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding two million dollars to the existing appropriation for various cities and counties for local construction projects during the months of May and June, 1995. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 35

(S. B. 560—By Senators Helmick and Whitlow)

[Passed March 8, 1995; 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, West Virginia development office, "former" account no. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, available for further appropriation during the fiscal year 1994-1995, 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. 8045, "WVFIMS" account no. fund 3144, fiscal year 1995, organization 0307, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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 COMMERCE, LABOR
4 AND ENVIRONMENTAL RESOURCES
5 109—West Virginia Development Office
6 (WV Code Chapter 5B)
7 "Former" Account No. 8045
8 "WVFIMS" Account No.
9 Fund 3144 FY 1995 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy Assistance—Total</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by inserting an item of appropriation for a continuing program. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 36

(S. B. 592—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1955; 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 tax and revenue, racing commission—general administration, "former" account no. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Whereas, The governor has established that there now remains unappropriated a balance in "former" account no. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, available for further appropriation during the fiscal year 1994-1995, 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. 8083, "WVFIMS" account no. fund 7305, fiscal year 1995, organization 0707, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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 TAX AND REVENUE

4 170—Racing Commission—

5 General Administration

6 (WV Code Chapter 19)

7 "Former" Account No. 8083

8 "WVFIMS" Account No.

9 Fund 7305 FY 1995 Org 0707

10	Activity	Other Funds

11 12 1 Personal Services ............. 001 $ 1,037,000

13 2 Annual Increment ............. 004 9,680

14 3 Employee Benefits ............. 010 279,298

15 4 Unclassified ............. 099 90,082

16 5 Total ....................... 099 $ 1,416,060
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding thirty thousand dollars to the personal services line item, six thousand dollars to the employee benefits line item, and twenty-two thousand four hundred eighty-four dollars to the unclassified line item, for a total increase of fifty-eight thousand four hundred eighty-four dollars. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 37
(S. B. 559—By Senators Helmick and Whitlow)

[Passed March 8, 1995; 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 transportation, division of motor vehicles—driver's license reinstatement fund, "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, 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 appropriations to "former" account no. 8422, "WVFIMS" account no. fund 8213, fiscal year 1995,
organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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 TRANSPORTATION

4 180—Division of Motor Vehicles—

5 Driver's License Reinstatement Fund

6 (WV Code Chapter 17B)

7 "Former" Account No. 8422

8 "WVFIMS" Account No.

9 Fund 8213 FY 1995 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services . . . . . . . . . . 001</td>
<td>$ 190,068</td>
</tr>
<tr>
<td>2 Annual Increment . . . . . . . . . . 004</td>
<td>1,944</td>
</tr>
<tr>
<td>3 Employee Benefits . . . . . . . . . . 010</td>
<td>68,775</td>
</tr>
<tr>
<td>4 Unclassified . . . . . . . . . . . . 099</td>
<td>220,520</td>
</tr>
<tr>
<td>5 Total . . . . . . . . . . . . . . . . . .</td>
<td>$ 481,307</td>
</tr>
</tbody>
</table>

17 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding ten thousand dollars to the personal services line item and one hundred thousand dollars to the unclassified line item, for a total increase of one hundred ten thousand dollars. These moneys shall be available for expenditure upon passage of this bill.
CHAPTER 38

(S. B. 585—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; 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 transportation, division of motor vehicles—insurance certificate fees, "former" account no. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, 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. 8424, "WVFIMS" account no. fund 8215, fiscal year 1995, organization 0802, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, 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 TRANSPORTATION
4 182—Division of Motor Vehicles—
5 Insurance Certificate Fees
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding fifteen thousand dollars to the personal services line item and to the total. These moneys shall be available for expenditure upon passage of this bill.

### CHAPTER 39

(S. B. 584—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; 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 transportation, division of motor vehicles—returned check fees, "former" account no. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 557,152</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>8,028</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>239,485</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>146,872</td>
</tr>
<tr>
<td>5 Total</td>
<td>$ 951,537</td>
</tr>
</tbody>
</table>

(WV Code Chapter 20)
"Former" Account No. 8424
"WVFIMS" Account No.
Fund 8215 FY 1995 Org 0802
remains unappropriated a balance in "former" account no. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, available for further appropriation during the fiscal year 1994-1995, 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. 8426, "WVFIMS" account no. fund 8217, fiscal year 1995, organization 0802, chapters one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

1 TITLE II—APPROPRIATIONS.
2
3 Sec. 3. Appropriations from other funds.
4 DEPARTMENT OF TRANSPORTATION
5
6 184—Division of Motor Vehicles—
7 Returned Check Fees
8 (WV Code Chapter 17)
9
10 "Former" Account No. 8426
11 Fund 8217 FY 1995 Org 0802
12
13 Activity Act- Other
14    ity Funds
15 1  Personal Services ......... 001 $ 16,500
16 2  Annual Increment ......... 004 216
17 3  Employee Benefits ......... 010 5,394
18 4  Unclassified .............. 099 6,500
19 5  Total .................... $ 28,610

The purpose of this supplementary appropriation bill
is to supplement this account in the budget act for fiscal
year 1994-1995 by adding one thousand dollars to the
personal services line item and to the total. These moneys
shall be available for expenditure upon passage of this
bill.
AN ACT making 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 environmental protection—mines and minerals operations fund, "former" account no. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

WHEREAS, The governor has established that there now remains unappropriated a balance in "former" account no. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, available for further appropriation during the fiscal year 1994-1995, 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. 8540, "WVFIMS" account no. fund 3324, fiscal year 1995, organization 0313, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented and amended thereafter to read as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

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>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 1,682,290</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>12,622</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>467,720</td>
</tr>
<tr>
<td>Unclassified</td>
<td>1,625,382</td>
</tr>
<tr>
<td>Total</td>
<td>$ 3,788,014</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year 1994-1995 by adding seven hundred thousand dollars to the unclassified line item. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 41

(S. B. 589—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; 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 available federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the supreme court—general judicial, "WVFIMS" account no. fund 8805, fiscal year 1995, organization 2400, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".
WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in fiscal year 1994-1995, which are 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-four, known as the "Budget Bill", be supplemented and amended by adding to title two, section five thereof, as follows:

1. TITLE II—APPROPRIATIONS.
2. Sec. 5. Appropriations of federal funds.
3. JUDICIAL
4. 200a—Supreme Court—General Judicial
5. "WVFIMS" Account No.
6. Fund 8805 FY 1995 Org 2400
7. Activity Federal
8. Unclassified-Total ........ 096 $ 83,003
9. Unclassified—Total ........ 096 $ 83,003
10. The purpose of this supplementary appropriation bill
11. is to supplement the budget act for the fiscal year
12. 1994-1995 by providing for a new item of appropriation
13. to be established therein to appropriate federal moneys
14. available in the fiscal year ending the thirtieth day of June,
15. one thousand nine hundred ninety-five, to assess the
16. management by the supreme court of abuse cases, foster
17. care and adoption. These moneys shall be available for
18. expenditure upon passage of this bill.

CHAPTER 42

(S. B. 595—By Senators Helmick,Whitlow, Bailey, Love,
Plymale, Sharpe and Minear)

{Passed March 11, 1995; 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 available federal funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four, to the department of health and human resources, division of human services, "WVFIMS" account no. fund 8806, fiscal year 1995, organization 0511, supplementing and amending chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Whereas, The governor has established the availability of federal funds for a new program now available for expenditure in fiscal year 1994-1995, which are 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-four, known as the "Budget Bill", be supplemented and amended by adding to title two, section five thereof, as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal block grants.

249a—Division of Human Services—

Empowerment Zone and Enterprise Community Program

"WVFIMS" Account No.

Fund 8806 FY 1995 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total . . . . 096</td>
<td>$8,842,104</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year 1994-1995 by providing for a new item of appropriation to be established therein to appropriate federal moneys available in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-five. Awards have been granted to two areas: The rural enterprise community grants and the urban enterprise community grants. The
grants are to be used for projects and long term strategies that seek to enhance the economic, educational and employment opportunities for their residents. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 43
(S. B. 594—By Senators Helmick, Whitlow, Bailey, Love, Plymale, Sharpe and Minear)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriation to the bureau of employment programs—workers' compensation fund, "former" account no. 9000, "WVFIMS" account no. fund 3440, fiscal year 1995, organization 0322, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of "former" account no. 9000, "WVFIMS" account no. fund 3440, fiscal year 1995, organization 0322, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", be supplemented, amended and transferred thereafter to read as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

136—Bureau of Employment Programs—Workers' Compensation Fund

(WV Code Chapter 23)
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys between items of the existing appropriation for this account in the budget act for fiscal year 1994-1995. The amounts as now itemized shall be made available for expenditure upon passage of this bill.

CHAPTER 44

(H. B. 2654—By Delegates Browning, Mezzatesta, Petersen, Leach, Tomblin, Evans and Wallace)

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 9270, "WVFIMS" account no. fund 7352, fiscal year 1995, organization 0708, alcohol beverage control administration, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the "Budget Bill", and transferring such amount to the West Virginia schools for the deaf and blind, "former" account no. 3330, "WVFIMS" account no. fund 0320, fiscal year 1995, organization 0403.
Be it enacted by the Legislature of West Virginia:

That the sum of one hundred thousand dollars be expired from "former" account no. 9270, "WVFIMS" account no. fund 7532, fiscal year 1994, organization 0708, alcohol beverage control commission, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the Budget Bill, be supplemented, amended, reduced and caused to expire and that the said sum of one hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 3330, "WVFIMS" account no. 0320 fiscal year 1995 organization no. 0403, acts of the Legislature, one thousand nine hundred ninety-four, known as the Budget Bill, by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 55—West Virginia Schools for the Deaf and Blind

4 (WV Code Chapter 18 and 18A)

5 "Former" Account No. 3330

6 "WVFIMS" Account No.

7 Fund 0320 FY 1995 Org 0403

8 Unclassified—Total .......... 099 $ 100,000

9 Any unexpended balance remaining in the appropriation for West Virginia School for the Deaf and Blind, unclassified (fund 0320, activity 099) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

14 The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the aforesaid account the total sum of one hundred thousand dollars and transfer, reappropriate and make available for immediate expenditure such funds upon passage of this bill.
AN ACT supplementing, amending, reducing and causing to expire certain unexpended amounts from "former" account no. 9270, "WVFIMS" account no. fund 7352, fiscal year 1995, organization 0708, alcohol beverage control administration, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, and making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five, to the department of military affairs and public safety, office of the secretary, "former" account no. 5354, "WVFIMS" account no. fund 0430, fiscal year 1995, organization 0601, and creating therein a new line item designated "federal court judgment-rum creek."

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 12, 1994, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1994, and further included the estimate of revenues for fiscal year 1994-95, less net appropriation balances forwarded and regular appropriations for fiscal year 1994-95;

WHEREAS, The Legislature has heretofore and during the first extraordinary session, 1994, enacted a Budget Bill for fiscal year 1994-95 and certain supplementary appropriation bills for such fiscal year, all well within the governor's estimates of available revenues, thereby leaving revenues for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the governor's executive budget document that a sufficient balance of general revenue is available for further supplementary appropriation for the fiscal year ending June thirtieth, one thousand nine hundred ninety-five; therefore
Be it enacted by the Legislature of West Virginia:

That the sum of four hundred thousand dollars be expired from "former" account no. 9270, "WVFIMS" account no. fund 7532, fiscal year 1994, organization 0708, alcohol beverage control commission, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-four, known as the Budget Bill be supplemented, amended, reduced and caused to expire and that the sum of four hundred thousand dollars be transferred, reappropriated, made available for expenditure and increasing "former" account no. 5354, "WVFIMS" account no. fund 0430, fiscal year 1995, organization 0601, acts of the Legislature, one thousand nine hundred ninety-four, known as the Budget Bill, department of military affairs and public safety, office of the secretary, by creating therein a new line item, entitled "federal court judgment-rum creek", and that said account be further supplemented by adding thereto the following sum to the designated line item:

1  TITLE II—APPROPRIATIONS.
2  Section 1. Appropriations from general revenue.
3  79—Department of Military Affairs and Public Safety—
4    Office of the Secretary
5    (WV Code Chapter 5F)
6    "Former" Account No. 5354
7    "WVFIMS" Account No.
8    Fund 0430 FY 1995 Org 0601
9  1a Federal Court Judgment—
10    Rum Creek ..................... 614   $800,000
11 Any unexpended balance remaining in the appropriation for the Department of Military Affairs and Public Safety-Office of the Secretary, Federal Court Judgment—Rum Creek (fund 0430, activity 614) at the close of the fiscal year 1994-95 is hereby reappropriated for expenditure during the fiscal year 1995-96.

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 four hundred thousand dollars and transfer, reappropriate and make available for immediate expenditure such funds upon passage of this bill, and to further supplement said account (fund 0430, activity 614) by making a supplementary appropriation out of the public treasury in the amount of four hundred thousand dollars.

CHAPTER 46

(H. B. 2059 —By Delegates Douglas, Beane and Trump)

[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five 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 consent judgments in cases involving an agency of government; stating the policy of the state as regards consent to a proposed judgment; affording an opportunity for persons to comment on proposed consent judgments; defining the terms "agency of government", "action" and "judgment"; service of copies of proposed judgment orders on the Legislature; filing of notice for publication in the state register; filing estimate of costs; receipt of comments by the attorney general; action to be taken by the attorney general upon receipt of comments; procedures to implement policy; providing for exceptions to policy; and requiring annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

§5-3-2a. Consent judgments in actions against an agency of government; notice of proposed consent judgment.
(a) It is hereby established as the policy of this state to consenting to a proposed judgment in an action against an agency of government or its officers or employees only after or on condition that an opportunity is afforded persons (natural or corporate) who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(1) For the purposes of this section, "agency of government" means:

(A) A department, division, bureau, board, commission or other agency or instrumentality within the executive branch of state government which may sue or be sued; or

(B) A political subdivision of this state or any board, department, commission, district or special district, council or other agency or instrumentality thereof whose liability or potential liability arises from a claim which is covered by property or liability insurance provided by the state board of risk and insurance management of West Virginia pursuant to the provisions of article twelve, chapter twenty-nine of this code.

(2) For the purposes of this section, "action" means a civil proceeding initiated in a court of general jurisdiction and shall not mean a proceeding initiated in or before, or an appeal taken to, an administrative agency, board or commission and shall not mean an appeal taken to a court from such an administrative proceeding or appeal.

(3) For the purposes of this section, "judgment" means a judgment, order or decree of a court the entry of which would require or otherwise mandate:

(A) An expansion of, increase in, or addition to the services, duties or responsibilities of an agency of government;

(B) An increase in the expenditures of an agency of government above the level of expenditures approved or authorized before the entry of the proposed judgment;

(C) The employment or other hiring of, or the con-
tracting with, personnel or other entities by an agency of
government in addition to the personnel or other entities
employed or otherwise hired by, or contracted with or by
the agency of government; or

(D) Payment of a claim based upon tort or contract by
an agency of government as defined in paragraph (B),
subdivision (1) of this subsection.

(b) To effectuate this policy, each proposed judgment
which is within the scope of paragraph (a) of this section
shall be lodged with the court as early as feasible but at
least sixty days before the judgment is entered by the
court, and true copies of the proposed order shall be
served upon the attorney general of the state, the president
of the West Virginia Senate and the speaker of the West
Virginia House of Delegates. When an agency of gov-
ernment proposes to consent to a judgment, it shall file
with the secretary of state, for publication in the state
register, a notice of the proposed order and include
therein a request for comment on the proposed order.
The notice shall fix a date, time and place for the receipt
of written statements and documents bearing on the
appropriateness, propriety or adequacy of the proposed
consent order. At the time of filing the notice of its action,
the agency of government shall also file with the secretary
of state a true copy of the proposed order. If alternative
draft proposals are being considered, the full text of the
additional draft proposals shall also be filed with the
secretary of state. The agency of government proposing to
consent to the entry of judgment shall also file with the
secretary of state an estimate of the cost of implementing
the proposed judgment as the cost relates to this state and
to persons affected by the proposed judgment.

(c) Prior to entry of the judgment, or some earlier
specified date, the attorney general will receive and
consider and file with the court any written comments,
views or allegations relating to the proposed judgment.

(d) The attorney general shall reserve the right (1) to
withdraw or withhold his or her consent to the proposed
judgment if the comments, views and allegations received
concerning the proposed judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate or (2) to support or oppose an attempt by any person to intervene in the action. If action which could be taken by the attorney general pursuant to the provisions of this subsection may be materially adverse to the interests of an agency of government or an officer or employee thereof whom the attorney general has previously represented in the same or a substantially related matter, the attorney general shall not proceed to act without the written consent of the agency of government or the affected officer or employee. In the absence of such consent, the attorney general shall provide for an independent special assistant attorney general to be retained to consider the comments, views and allegations received concerning the proposed judgment, and to pursue such action as may be deemed appropriate, in accordance with the provisions of this subsection.

(e) The attorney general may establish procedures for implementing the policy established by this section. Where it is clear that the public interest in the policy hereby established is not compromised, the attorney general may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than sixty days or a procedure other than stated herein.

(f) Any agency of government which agrees to a consent judgment after the thirtieth day of June, one thousand nine hundred ninety-five, shall thereafter file an annual report, on or before the first day of November, setting forth the status of the action, the fiscal impact of the consent judgment upon the resources of the state, and the manner in which any cost to the state is met or will be met by appropriations authorized in the state budget. Such report shall be filed with the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates.
CHAPTER 47
(H.B. 2096—By Delegates Farris and Beane)

[Passed February 23, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state banking institution reports; eliminating the requirement of publication; who bears the cost of report.

Be it enacted by the Legislature of West Virginia:

That section nineteen, 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-4-19. Reports.

Every state banking institution shall make at least four reports each year to the commissioner of banking upon his or her call therefor. The reports shall be called for as nearly as conveniently may be on the dates on which the comptroller of the currency shall call for reports by national banking associations, and be in the form and contain the details as shall be prescribed by the commissioner of banking. The reports shall be verified by the oath of the president or active vice president or cashier and attested by the signatures of at least three directors of the banking institution. Each report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the date specified by the banking commissioner, and shall be transmitted to the commissioner within ten days from the receipt of the request for the report.

In lieu of the report, the commissioner of banking
shall have discretion to accept from a banking institution which is a member of the federal reserve system a report, and the publication thereof required of the banking institution by the federal reserve board, or by its agency, provided that the report shall show in detail, under appropriate heads, the resources and liabilities of the banking institution at the close of business on the day specified by the federal reserve board, or by its agency, and shall contain such further details as may be deemed necessary or desirable by the commissioner of banking.

Any report shall be at the expense of the banking institution.

CHAPTER 48

(Com. Sub. for S. B. 443—By Senators Manchin, By Request, and Helmick)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the limits to which banks can loan or extend credit to any one person or common enterprise.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER­ALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.
(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, shall not exceed fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to ten percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

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

(B) The term "person" shall include an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndi-
cate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(C) The term "unimpaired capital and unimpaired surplus" means the amount of total equity capital outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the commissioner of banking pursuant to section nineteen of this article, plus the amount of the allowance for loan losses, minus the amount of goodwill or other nonmarketable intangible assets included in such quarterly report pursuant to generally accepted accounting principles. Unrealized gains and losses on the bank's securities and loan portfolios shall be included in the calculation of total equity capital to the extent required by generally accepted accounting principles and applicable federal or state law, rule or regulation; and

(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

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

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus;

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

(C) Loans and extensions of credit having a term of ten months or less and secured by bills of lading, warehouse receipts, or similar documents transferring or secur-
ing title to readily marketable staples shall be subject to a limitation of twenty percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds one hundred fifteen percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

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

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

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

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

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

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

(I) (i) Loans and extensions of credit secured by ship-
ning documents or instruments transferring or securing
title covering livestock or giving a lien on livestock when
the market value of the livestock securing the obligation is
not at any time less than one hundred fifteen percent of
the face amount of the note covered, shall be subject un-
der this section, to a maximum limitation equal to
twenty-five percent of such unimpaired capital and unim-
paired surplus, notwithstanding the collateral requirements
set forth in subdivision (2) of this subsection.

(ii) Loans and extensions of credit which arise from
the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, shall be subject under this section, to a limitation of twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection.

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general fifteen percent limitation, the loan must be brought into conformance within thirty business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

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

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

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

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

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

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

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

(3) For purposes of this subsection:

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

(B) The term "person" shall include any individual,
partnership, sole proprietorship, society, association, firm,
institution, company, public or private corporation,
not-for-profit corporation, state, governmental agency,
bureau, department, division or instrumentality, political
subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed,
created or existing under the laws of this state or any other
jurisdiction; and
(C) The term "unimpaired capital and unimpaired surplus" shall have the same meaning as set forth in subsection (a) of this section.

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

(A) Obligations of the United States or its agencies;

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

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

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

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

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

(G) Obligations of the federal financing bank;

(H) Obligations or other instruments or securities of the student loan marketing association;
(I) Obligations of the environmental financing authority;

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

(K) Obligations of a public housing agency as that term is defined in the United States Housing Act of 1937, as amended, (42 USC § 1437a) as are secured:

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

(ii) By a pledge of annual contributions under an annual contributions contract between such public housing agency and the secretary if such contract shall contain the covenant by the secretary which is authorized by Section 11 (42 USC § 1437i(a)(1)(B)) of the United States Housing Act of 1937, as amended, and if the maximum
sum and the maximum period specified in such contract pursuant to said section, shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations; or

(iii) By a pledge of both annual contributions under an annual contributions contract containing the covenant by the secretary which is authorized by Section 11 of the United States Housing Act of 1937 (42 USC § 1437i(a)(B)) and a loan under an agreement between the local public housing agency and the secretary in which the public housing agency agrees to borrow from the secretary, and the secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which, together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity; and

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

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

(6) Notwithstanding any other provision in this subsection, a state-chartered banking institution may purchase, for its own account, shares of stock of small business investment companies chartered under the laws of this state, which are licensed under the act of Congress known as the "Small Business Investment Act of 1958", as amended, and of business development corporations created and organized under the act of the Legislature known as the "West Virginia Business Development Corporation Act", as amended: *Provided, That in no event shall any such state-chartered banking institution hold shares of stock in small business investment companies and/or business development corporations in any amount aggregating more than fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution.*

(7) Notwithstanding any other provision of this subsection, a state-chartered banking institution may purchase for its own account shares of stock of a bankers' bank or a bank holding company which owns or controls such bankers' bank, but in no event shall the total amount of such stock held by such state-chartered banking institution exceed at any time fifteen percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution and in no event shall the purchase of such stock result in that state-chartered banking institution acquiring more than twenty percent of any class of voting securities of such bankers' bank or of the bank holding company which owns or controls such bankers' bank.

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

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

(c) In the event of a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than twenty percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than thirty percent in any twelve-month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the commissioner of banking those loans, extensions and investments that exceed the limitations of this section using the bank's current re-evaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit, and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current re-evaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the commissioner of banking retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the re-evaluated limitations. In such cases, the
commissioner will provide the bank a written notice ex-
plaining briefly the specific reasons why the determination
was made to require the more frequent calculations.

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

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

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

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

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

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

(f) The commissioner of banking and any employee of the department of banking may not borrow, directly or indirectly, any sum of money from a state-chartered banking institution which is subject to examination by the commissioner or the department.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities shall not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: Provided, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by such generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.
CHAPTER 49

(Com. Sub. for H. B. 2574—By Delegates Thompson, Amores, Pulliam, Sprouse, Given and Kiss)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing state banks parity with national bank agency powers to conduct certain business.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at colleges and universities; limitations and restrictions; examinations and hearings; standards of review; penalties for violation of section.

(a) Except as otherwise provided herein, no banking institution shall engage in business at any place other than at its principal office in this state, at a branch bank in this state permitted by this section as a customer bank communication terminal permitted by section twelve-b of this article or at any loan organization office permitted by section twelve-c of this article.

(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary, as defined in section two, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does
not constitute branch banking. In addition, the conduct of
activity at bank offices as an agent for any bank subsid-
iary of the same bank holding company shall be permitted
to the same extent allowed by federal law for national
banks pursuant to 12 USC 1828, and does not constitute
branch banking; nor shall such activity constitute a viola-
tion of section forty-two, article four of this chapter: Pro-
vided, That no banking institution may utilize that agency
relationship to evade state consumer protection laws, in-
cluding usury laws, or any other applicable laws of this
state, or to conduct any activity that is not financially-
related, as that term is defined by §31A-8C-2.

(2) A banking institution located in a county where
there is also a higher educational institution as defined in
section two, article one, chapter eighteen-b of this code,
may establish a temporary business office on the campus
of any such educational institution located in such county
for the limited purposes of opening accounts and accept-
ing deposits for a period not in excess of four business
days per semester, trimester or quarter: Provided, That
prior to opening any temporary office, a banking institu-
tion must first obtain written permission from the institu-
tion of higher education. The term "business days," for
the purpose of this subsection, means days exclusive of
Saturdays, Sundays and legal holidays as defined in sec-
tion one, article two, chapter two of this code.

(3) Any banking institution which on January one,
one thousand nine hundred eighty-four, was authorized to
operate an off-premises walk-in or drive-in facility, pursu-
ant to the law then in effect, may, as of the seventh day of
June, one thousand nine hundred eighty-four, operate
such facility as a branch bank and it shall not be neces-
sary, for the continued operation of such branch bank, to
obtain additional approvals, notwithstanding the provisions
of subsection (d) of this section and subdivision (6), sub-
section (b), section two, article three of this chapter.

(b) Except for a bank holding company, it shall be
unlawful for any individual, partnership, society, associa-
tion, firm, institution, trust, syndicate, public or private
corporation, or any other legal entity, or combination of
entities acting in concert, to directly or indirectly own, 
control or hold with power to vote, twenty-five percent or 
more of the voting shares of each of two or more banks, 
or to control in any manner the election of a majority of 
the directors of two or more banks.

(c) A banking institution may establish branch banks 
either by:

(1) The construction, lease or acquisition of branch 
bank facilities as follows:

(A) After the seventh of June, one thousand nine hun-
dred eighty-four, within the county in which that banking 
institution’s principal office is located or within the county 
in which that banking institution had prior to January first, 
one thousand nine hundred eighty-four, established a 
branch bank, pursuant to subdivision (2) of this subsec-
tion; and

(B) After the thirty-first of December, one thousand 
nine hundred eighty-six, within any county in this state; or

(2) The purchase of the business and assets and ass-
sumption of the liabilities of, or merger or consolidation 
with, another banking institution.

d) Notwithstanding any other provision of this chap-
ter to the contrary, subject to and in furtherance of the 
board’s authority under the provisions of subdivision (6), 
subsection (b), section two, article three of this chapter, 
and subsection (g) of this section, the board may approve 
or disapprove the application of any state banking institu-
tion to establish a branch bank.

e) The principal office of a banking institution as of 
the seventh day of June, one thousand nine hundred 
eighty-four, shall continue to be the principal office of 
such banking institution for purposes of establishing 
branch banks under this section, notwithstanding any 
subsequent change in the location of such banking institu-
tion’s principal office.

(f) Any banking institution which is authorized to 
establish branch banks pursuant to this section may pro-
vide the same banking services and exercise the same
powers at each such branch bank as may be provided and
exercised at its principal banking house.

(g) The board shall, upon receipt of any application to
establish a branch bank, provide notice of such application
to all banking institutions. A banking institution may,
within ten days after receipt of such notice, file a petition
to intervene and shall, if it so files such petition, thereupon
become a party to any hearing relating thereto before the
board.

(h) The commissioner shall prescribe the form of the
application for a branch bank and shall collect an exami-
nation and investigation fee of one thousand dollars for
each filed application for a branch bank that is to be es-
tablished by the construction, lease or acquisition of a
branch bank facility, and two thousand five hundred dol-
ars for a branch bank that is to be established by the pur-
chase of the business and assets and assumption of the
liabilities of, or merger or consolidation with another
banking institution. Notwithstanding the above, if the
merger or consolidation is between an existing banking
institution and a bank newly incorporated solely for the
purpose of facilitating the acquisition of the existing
banking institution, the commissioner shall collect an
examination and investigation fee of five hundred dollars.
The board shall complete the examination and investiga-
tion within ninety days from the date on which such appli-
cation and fee are received, unless the board request in
writing additional information and disclosures concerning
the proposed branch bank from the applicant banking
institution, in which event such ninety-day period shall be
extended for an additional period of thirty days plus the
number of days between the date of such request and the
date such additional information and disclosures are re-
ceived.

(i) Upon completion of the examination and investiga-
tion with respect to such application, the board shall, if a
hearing be required pursuant to subsection (j) of this sec-
tion, forthwith give notice and hold a hearing pursuant to
the following provisions:
(1) Notice of such hearing shall be given to the banking institution with respect to which the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board but shall not be less than ten nor more than thirty days after such notice is given.

(2) At any such hearing a party may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(3) After such hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(j) No state banking institution may establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That no such hearing shall be required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) Public convenience and advantage will be promoted by the establishment of the proposed branch bank;

(2) Local conditions assure reasonable promise of successful operation of the proposed branch bank and of those banks and branches thereof already established in the community;

(3) Suitable physical facilities will be provided for the
branch bank;

(4) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish by regulation;

(5) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state; and

(6) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially lessening competition, nor tend to create a monopoly or in any other manner be in restraint of trade, unless the anticompetitive effects of the establishment of that proposed branch bank are clearly outweighed in the public interest by the probable effect of the establishment of the proposed branch bank in meeting the convenience and needs of the community to be served by that proposed branch bank.

(k) Any party who is adversely affected by the order of the board shall be entitled to judicial review thereof in the manner provided in section four, article five, chapter twenty-nine-a of this code. Any such party adversely affected by a final judgment of a circuit court following judicial review as provided in the foregoing sentence may seek review thereof by appeal to the supreme court of appeals in the manner provided in article six, chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and with the prior written approval of the commissioner, a state banking institution may discontinue the operation of a branch bank upon at least thirty days' prior public notice given in such form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section shall constitute a misdemeanor offense punishable by applicable penalties as provided in section fifteen of this article.
AN ACT to amend and reenact sections twelve-c and thirteen, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for out-of-state loan production office operations in West Virginia; and allowing for limited indemnification of officers, directors and employees by banking institutions.

Be it enacted by the Legislature of West Virginia:

That sections twelve-c and thirteen, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12c. Loan origination offices permitted.

§31A-8-13. Banking institution not to be surety; hypothecation and other dealings with securities and assets limited.

§31A-8-12c. Loan origination offices permitted.

1 (a) Origination of loans by employees or agents of a banking institution at offices other than that banking institution's principal office or branch bank is permitted: Provided, That any such loans originating at said office are approved and made at the banking institution's principal place of business or branch bank.

7 (b) Origination of loans by employees or agents of a federally-insured depository institution of banking chartered outside the state of West Virginia at nonbranch offices within this state is permitted: Provided, That a license is
11 obtained pursuant to section five, article two of this chap-
12 ter and that any such loans originating at the office are
13 approved and made at the banking institution's principal
14 place of business or branch bank: Provided, however,
15 That any consumer loans made in this manner conform
16 with state consumer protection laws. The commissioner of
17 banking may examine the operations of such offices and
18 collect fees for their examination in the amount of fifty
19 dollars per hour of examiner time. A loan production
20 office authorized under this section or by federal law may
21 indicate its bank affiliation notwithstanding section two,
22 article four of this chapter.

§31A-8-13. Banking institution not to be surety; hypothecation
and other dealings with securities and assets
limited.

1 No banking institution shall become or be accepted as
2 surety on any bond or undertaking required by the laws
3 or by the courts of this state or any other state or shall
4 become surety or guarantor of any person for the dis-
5 charge of any duty in any position or the performance of
6 any contract or undertaking. No banking institution shall
7 pledge, hypothecate or deliver any of its assets of any
8 description whatsoever to any person to indemnify him as
9 surety for such banking institution or as surety for any
10 other person. But a bank may pledge, hypothecate, deliv-
11 er or deposit securities to guarantee deposits of the United
12 States, or any agency or instrumentality thereof, the state
13 of West Virginia, or any agency or instrumentality thereof,
14 or any county, district, municipal corporation or other
15 governmental agency or instrumentality, and the deposits
16 of a bankrupt's estate made pursuant to an order of a court
17 of bankruptcy, and, with the consent in writing of the
18 commissioner of banking, may pledge, hypothecate, deliv-
19 er or deposit securities or assets to guarantee deposits
20 made by receivers of closed or insolvent banking institu-
21 tions; and the receiver of a closed or insolvent banking
22 institution, if the proceeding be not in court, with the con-
23 sent in writing of the commissioner of banking, and if the
24 proceeding be in court, with the consent in writing of the
commissioner of banking and the approval of the court, may accept securities or assets of a banking institution to secure deposits made by such receiver. In every such case, the hypothecation of such securities or assets shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as a depository for any such deposits as aforesaid, and such collateral security shall be released only by order of record of the public officer or public body, or by the receiver of a closed or insolvent banking institution, if the proceeding be not in court, with the consent in writing of the commissioner of banking, and if the proceeding be in court, with the consent in writing of the commissioner of banking and the approval of the court, when satisfied that full and faithful accounting and payment of all the monies has been made under the provisions hereof. The public officer or public body, or the receiver of a closed or insolvent banking institution, shall make ample provision for the safekeeping of such hypothecated securities or assets, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid.

The foregoing shall not prevent the hypothecation of the securities or assets of any banking institution to secure the repayment of money borrowed from another banking institution; nor shall the foregoing prevent a bank's indemnification of its officers, directors or employees by purchase of insurance or otherwise, to the extent that such indemnification is permitted to that institution under federal law. Indemnification articles or bylaws must conform to, or be more restrictive than, that set forth in section nine, article one, chapter thirty-one of this code. The commissioner reserves the right to prohibit or limit, by regulation or order, any indemnification payment for reasons of safety and soundness or nonconformity to the bank's articles of incorporation or bylaws or to the restrictions placed on indemnification contained in this section or other applicable state law.
AN ACT to repeal section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fourteen, article twenty-one of said chapter; to amend and reenact sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter; to amend and reenact sections four, eleven, fifteen and twenty-two, article twenty-one of said chapter; and to amend and reenact section two, article twenty-three of said chapter, all relating to license and reporting requirements relating to charitable bingo, raffles, raffle boards or games; repealing provisions relating to limitations on permissible amounts of rent which may be received for premises upon which bingo and raffle occasions are held; providing that certain junior firemen may assist in the conduction of bingo games; prohibiting hiring persons to advertise; allowing acceptance of personal checks by licensees; removing certain limitations on prizes awarded during duration of bingo license period; allowing twenty-five percent of gross proceeds to be used to pay expenses; increasing the number of paid employees for charitable bingo games, operating bingo games and related concessions; requiring operators to be residents of this state; limiting rent payments to the fair market value of the premises; permitting nonprofit entities holding raffle and bingo occasions receiving state or federal funds to elect annual reporting periods which coincide with the licensee's fiscal year; permitting licensed public accountants to compile and review or audit records of licensed entities holding raffle or bingo occasions; deleting requirement for audited financial reports in accordance with certain standards; permitting nonprofit social clubs to hold raffle license; removing certain limitations on awards of raffle prizes; allowing thirty percent of raffle gross proceeds from raffle license be used for payment of expenses; and providing that persons donating raffle or game items
or services without compensation are not required to be licensed as a wholesaler or distributor.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fourteen, article twenty-one of said chapter be repealed; that sections four, ten, eleven, twelve-a, fifteen, seventeen and twenty-four, article twenty of said chapter be amended and reenacted; that sections four, eleven, fifteen and twenty-two, article twenty-one of said chapter be amended and reenacted; and that section two, article twenty-three of said chapter be amended and reenacted, all to read as follows:

Article

ARTICLE 20. CHARITABLE BINGO.

§47-20-4. Annual license; conditions on holding of games.
§47-20-10. Limits on prizes awarded—General provisions.
§47-20-12a. Compensation of bingo operator; number of employees.
§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
§47-20-17. Advertising.
§47-20-24. Filing of reports.

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

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

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

All bingo occasions shall be open to the general public: Provided, That no licensee shall permit or allow any individual under the age of eighteen to participate in the playing of any bingo game with knowledge or reason to believe that the individual is under the age of eighteen: Provided, however, That an individual under the age of eighteen may attend the playing of a bingo game when accompanied by and under the supervision of an adult relative or a legal guardian of said individual: Provided further, That nothing contained herein may be construed to prohibit junior volunteer firefighters sixteen years of age or older from assisting the volunteer fire company of which such junior firefighter is a member in the conduct of an event under this article where such junior firefighter is supervised by a senior member of the same volunteer fire company who is over the age of twenty-one years.

Any licensee may receive and cash personal checks in an amount not to exceed one hundred dollars during the normal operation of a bingo game.

§47-20-10. Limits on prizes awarded — General provisions.

Except as otherwise provided in section twenty-two of this article, during the period of a license the average total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license, may not exceed seven thousand five hundred dollars in value.
Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.


Except as provided in sections thirteen and twenty-two of this article, only persons, as defined in section two of this article, who are residents of this state and who are active members of the licensee organization or its authorized auxiliary organization may participate in any manner in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion: Provided, That notwithstanding anything contained in this article to the contrary, no individual under the age of eighteen years may directly or indirectly participate in the conduct of a bingo game.

§47-20-12a. Compensation of bingo operator; number of employees.

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

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

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

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

§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
(a) The reasonable, necessary and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed twenty-five percent of the gross proceeds collected during a license period, may be paid out of the gross proceeds of the conduct of bingo, including, but not limited to:

1. Rent paid for the use of the premises: Provided, a copy of the rental agreement was filed with the bingo license application and any changes thereto were filed within ten days of being made: Provided, however, that in no event may the rent paid for the use of any premises exceed the fair market value of rent for such premises;

2. The cost of custodial services;

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

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

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

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

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

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

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

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

§47-20-17. Advertising.

A licensee may advertise its bingo occasions in a manner reasonably necessary to promote the occasion: Provided, That a licensee may not hire any person, as defined in section two of this article, to develop or conduct an advertising campaign to promote any bingo occasion.

§47-20-24. Filing of reports.

Each licensee holding an annual license shall file with the tax commissioner a quarterly and an annual financial report summarizing its bingo operations for the time period covered by the report. Each quarterly report shall be filed within twenty days after the end of the quarter which it covers. The annual report shall be filed within thirty days after the expiration of the license under which the operations covered by the report were held. The time period covered by the annual report is the full license year.
or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

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

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-4. Who may hold raffles; application for license; licenses not transferable.

§47-21-11. Limits on prizes awarded—General provisions.

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

§47-21-22. Filing of reports.

§47-21-4. Who may hold raffles; application for license; licenses not transferable.

(a) Except as provided in section three of this article, only persons, as defined in section two of this article, who are residents of this state and who are active members of any charitable or public service organization which has been in existence in this state for at least one year prior to filing an application for a raffle license issued pursuant to section five or six of this article may hold raffle occasions in accordance with the provisions of this article during such time as it holds a valid license.
(b) Application for a raffle license shall be made to
the tax commissioner and shall be on a form which shall
be supplied by him. The application shall contain the
information required by section eight of this article and
any other information which the commissioner considers
necessary. An application shall be filed not less than sixty
days before the date when the applicant intends to hold its
first raffle occasion. An application which is not denied
within thirty days after filing is considered approved and
the commissioner shall, within five days after the expira-
tion of such thirty days, send to the applicant its license.

(c) For purposes of this article, any application for an
annual license or a limited occasion license received prior
to the effective date of this article is considered filed on
such effective date.

(d) No raffle license issued pursuant to this article may
be transferred.

§47-21-11. Limits on prizes awarded — General provisions.

During the period of a license, the total prizes awarded
by a licensee, or in the aggregate by two or more limited
occasion licensees holding a joint raffle occasion, for any
raffle occasion held pursuant to a limited occasion license,
may not exceed in value seven thousand five hundred
dollars.

Prizes may be money, real or personal property or
merchandise other than beer, wine, spirits or alcoholic
liquor as defined in section five, article one, chapter sixty
of this code. If the prizes are real or personal property or
merchandise, the value assigned to them is their fair mar-
ket value at the time of acquisition for the raffle or at the
time of purchase.

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

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

(1) Rent paid for the use of the premises: Provided,
That a copy of the rental agreement was filed with the
raffle license application with any modifications thereto to be filed within ten days of being made: Provided, however, That in no event may the rent paid for the use of any premises exceed the fair market value of rent for such premises;

(2) The cost of custodial services;

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

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

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

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

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

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

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

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

§47-21-22. Filing of reports.

Each licensee holding an annual, limited or state fair license shall file with the commissioner a financial report summarizing its raffle operations within thirty days after the expiration date of such license. The time period covered by an annual report is the full license year or, at the election of a licensee receiving state or federal funding, the most recently ended state or federal fiscal year.

The reports required by this section shall contain the name, address and social security number of any individual who received during the course of a raffle occasion prizes the aggregate value of which exceeded one hundred dollars, and other information required by the commissioner: Provided, That any licensee failing to file such report when due shall be liable for a penalty of twenty-five dollars for each month or fraction thereof during which the failure continues, such penalty not to exceed one hundred dollars: Provided, however, That annual financial reports for license years ending after the first day of July, one thousand nine hundred ninety-three, must contain a compilation and review of such financial report by a certified or licensed public accountant, or may be audited by a certified or licensed public accountant, if a licensee's gross receipts exceed fifty thousand dollars.

ARTICLE 23. CHARITABLE RAFFLE BOARDS AND GAMES.

For purposes of this article, unless specified otherwise:

(a) "Commissioner" means tax commissioner of the state of West Virginia, or his delegate.

(b) "Retail value" means the actual consideration paid to the wholesaler by the retailer for any raffle boards or games.

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

(d) "Retailer" means every person engaged in the business of making retail sales of raffle chances except a charitable or public service organization authorized to conduct raffles pursuant to section three, article twenty-one of this chapter.

(e) "Charitable raffle board" or "charitable raffle game" means: (1) A board or other device that has many folded printed slips to be pulled from the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize; (2) a series of paper cards with perforated break-open tabs, a face value of which is covered or otherwise hidden from view to conceal one or more numbers, letters or symbols, which, on payment of a nominal sum, entitles the player to obtain a chance to a designated prize; or (3) such other similar game which may be defined by the state tax commissioner by legislative rule.

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

(g) "Verification" means a unique manufacture identifiable serial number which is required to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form of identification as may be prescribed by the tax commissioner upon a showing of undue hardship by the taxpayer: Provided, That such other form of identification shall be prescribed by rule in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(h) "Wholesaler" or "distributor" means any person or
entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the commissioner, and licensed under the provisions of this article, to distribute said devices to charitable raffle boards or games retailers as defined in this article. It also includes anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this state: Provided, That no license taxes or other fees provided for in this section may be charged to any newspaper or other printing or duplicating operation not regularly engaged in the business of manufacturing, packaging, preparing or repackaging charitable raffle boards or games where the gross sales of such printing or duplicating operation from such activity does not exceed seven thousand five hundred dollars per calendar year and who is donating such items or services to a nonprofit entity without compensation may not be considered a "wholesaler" or "distributor" under this article.

CHAPTER 52

(S. B. 371—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to industrial development and commercial development bonds; ceiling on issuance of private activity bonds, including private activity bonds for projects located in empowerment zones and enterprise communities; procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations; and carryovers.

Be it enacted by the Legislature of West Virginia;

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.

(a) Private activity bonds (as defined in Section 141(a) of the United States Internal Revenue Code of 1986, other than those described in Section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (11), section five, article one, chapter five-d of this code, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by Section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding: (i) That, in an attempt to promote economic revitalization of distressed urban and rural areas, certain special tax incentives will be provided for empowerment zones and enterprise communities to be designated from qualifying areas nominated by state and local governments, all as set forth by Section 1391 et seq. of the United States Internal Revenue Code; (ii) that qualified businesses operating in enterprise communities and empowerment zones will be eligible to finance property and provide other forms of financial assistance as provided for in Section 1394 of the United States Internal Revenue Code; (iii) that it is in the best interest of this state and the citizens thereof to facilitate the acquisition, construction and equipping of projects within designated empowerment zones and enterprise communities by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects. It is hereby further determined and declared as a matter of legislative finding: (iv) that the production of bituminous coal in this state has resulted in coal waste, which coal waste is stored in areas generally referred to as gob piles; (v) that such gob piles are unsightly and have the potential to pollute the environment in this state;
(vi) that the utilization of the materials in such gob piles to produce alternative forms of energy needs to be encouraged; (vii) that Section 142(a)(6) of the United States Internal Revenue Code of 1986, permits the financing of solid waste disposal facilities through the issuance of such private activity bonds; and (viii) that it is in the best interest of this state and the citizens thereof to facilitate the construction of facilities for the generation of power through the utilization of coal waste by providing an orderly mechanism for the commitment of the annual ceiling for private activity bonds for such projects.

(b) On or before the first day of each calendar year, the executive director of the development office shall determine the state ceiling for such year based on the criteria of the United States Internal Revenue Code, which annual ceiling shall be allocated among the several issuers of bonds under this article or under article eighteen, chapter thirty-one of this code, as follows:

(1) Fifty million dollars shall be allocated to the West Virginia housing development fund for the purpose of issuing qualified mortgage bonds, qualified mortgage certificates or bonds for qualified residential rental projects.

(2) The amount remaining after the allocation to the West Virginia housing development fund described in subdivision (1) of this subsection shall be retained by the West Virginia development office and shall be referred to in this section as the "state allocation".

(3) For calendar year one thousand nine hundred ninety-five, twenty-five and one-half percent of the state allocation and for all subsequent calendar years, thirty-five percent of the state allocation shall be set aside by the development office to be made available for lessees, purchasers or owners of proposed projects, hereafter in this section referred to as "nonexempt projects", which do not qualify as exempt facilities as defined by United States Internal Revenue Code. All reservations of private activity bonds for nonexempt projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that
the council for community and economic development may promulgate pursuant to section three, article two, chapter five-b of this code: *Provided,* That all requests for reservations of funds from projects described in this subsection shall be submitted to the development office on or before the first day of November of each calendar year: *Provided, however,* That on the fifteenth day of November of each calendar year, the uncommitted portion of this part of the state allocation, shall revert to and become part of the state allocation portion described in subsection (g) of this section.

(4) For calendar year one thousand nine hundred ninety-five, four and one-half percent of the state allocation and for all subsequent calendar years, ten percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities under Section 1394 of the United States Internal Revenue Code. All reservations of private activity bonds for the projects shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that the council for community and economic development may promulgate pursuant to section three, article two, chapter five-b of this code.

(c) For calendar year one thousand nine hundred ninety-five, the remaining seventy percent and for all subsequent calendar years, the remaining fifty-five percent of the state allocation shall be made available for lessees, purchasers or owners of proposed commercial or industrial projects which qualify as exempt facilities as defined by Section 142(a) of the United States Internal Revenue Code. All reservations of private activity bonds for exempt facilities shall be approved and awarded by the committee based upon an evaluation of general economic benefit and any rule or regulation that the council for community and economic development may promulgate pursuant to section three, article two, chapter five-b of this code: *Provided,* That no reservation shall be in an amount in excess of fifty percent of this portion of the state allocation.

(d) No reservation shall be made for any project until
the governmental body seeking the same shall submit a notice of reservation of funds as provided in subsection (e) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the maximum amount of bonds to be issued. Each governmental body seeking a reservation of funds following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the development office. Such notice shall include information as may be required by the development office pursuant to any rule or regulation of the council for community and economic development. Notwithstanding the foregoing, when a governmental body proposes to issue bonds for the purpose of: (i) Constructing, acquiring or equipping a project described in subdivision (3) or (4), subsection (b) of this section; or (ii) constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent such project qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, the project may be awarded a reservation of funds from the state allocation available for three years subsequent to the year in which the notice of reservation of funds is submitted, at the discretion of the executive director of the development office: Provided, That no discretionary reservation may be made for any single project described in this subdivision in an amount in excess of thirty-five percent of the state allocation available for the year subsequent to the year in which the request is made. A discretionary reservation of the state allocation for a project described in this subdivision shall not be granted by the executive director of the development office unless the project for which the request is made has received a certification from the federal energy regulatory commission as a qualifying facility or a cogeneration project.

(e) Currently with or following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;
(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(f) The development office shall accept the notice of reservation of funds no earlier than the first calendar workday of the year for which a reservation of funds is sought: Provided, That a notice of reservation of funds with respect to a project described in subdivision (4), subsection (b) of this section or an energy producing project that is eligible for a reservation of funds for a year subsequent to the year in which the notice of reservation of funds is submitted may contain an application for funds from a subsequent year's state allocation. Upon receipt of the notice of reservation of funds, the development office shall immediately note upon the face of the notice the date and time of reception.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the reservation to be made by the committee, or the thirty-first day of December following such date of reservation if sooner and a statement of bond closure which has been executed by the clerk, secretary, recorder or other appropriate official of the governmental body reserving the same has not been received by the development office within that time, then the reservation shall expire and be deemed to have been forfeited and the funds so reserved shall be released and revert to the portion of the state allocation from which the funds were originally reserved and shall then be made available
for other qualified issues in accordance with this section and the Internal Revenue Code: *Provided, That* as to any reservation for a nonexempt project that is forfeited on or after the first day November in any calendar year, fifty percent of such reservation shall revert to the portion of the state allocation described in subsection (c) of this section and fifty percent of such reservation shall revert to the portion of the state allocation described in subdivision (4), subsection (b) of this section: *Provided, however, That,* as to any notice of reservation of funds received by the development office during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to Section 146(f)(5) of the Internal Revenue Code, the notice of reservation of funds and the reservation to which the same relates shall not expire or be subject to forfeiture: *Provided further, That,* any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to Section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund, which shall be deemed to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds upon loss of a reservation pursuant to this section shall be treated in the same manner as a new notice of reservation of funds in accordance with subsections (d) and (e) of this section.

(h) Once a reservation of funds has been made for a project described in subdivision (4), subsection (b) of this section or for an energy producing project which relies, in whole or in part, upon coal waste as fuel and otherwise qualifies as a solid waste facility under Section 142(a)(6) of the United States Internal Revenue Code of 1986, notwithstanding the language of subsection (g) of this section, the reservation shall remain fully available with respect to such project until the first day of October in the year from which the reservation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be deemed forfeited and the funds so reserved shall be released as provided in subsection (g) of this section.
CHAPTER 53
(H. B. 2023—By Delegates Jenkins, Amores and Klime)

[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the registration of charitable organizations with the office of the secretary of state; authorizing the secretary of state to extend the due date for the annual filing of a registration statement or report; imposing a late filing fee; setting forth limitations on such fee; and payment of late filing fee into charitable organization fund.

Be it enacted by the Legislature of West Virginia:

That section five, article nineteen, 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 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions within this state or to have funds solicited on its behalf shall, prior to any solicitation, file a registration statement with the secretary of state upon forms prescribed by him or her, which shall be good for one full year and which shall be refilled in the next and each following year in which such charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it must file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It shall be the duty of the president,
chairman or principal officer of such charitable
organization to file the statements required under this
article. Such statements shall be sworn to and shall
contain the following information:

(1) The name of the organization and the purpose for
which it was organized;

(2) The principal address of the organization and the
address of any offices in this state. If the organization
does not maintain an office, the name and address of the
person having custody of its financial records;

(3) The names and addresses of any chapters,
branches or affiliates in this state;

(4) The place where and the date when the
organization was legally established, the form of its
organization;

(5) The names and addresses of the officers, directors,
trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or
report of income and expenses for the organization's
immediately preceding fiscal year, or a financial statement
reporting information showing the kind and amount of
funds raised during the preceding fiscal year, the costs and
expenses incidental thereto and showing how the funds
were disbursed or allocated for the same fiscal year:
Provided, That for organizations raising more than fifty
thousand dollars per year in contributions, the balance
sheet and income and expense statement, or financial
statement provided, shall be audited by an independent
public accountant. Organizations are required to report
the amount of money raised in the state and the amount
spent in the state for charitable purposes;

(7) A copy of any determination of the organization's
tax exempt status under the provisions of 26 U.S.C.
§501(c)(3) and a copy of the last filed Internal Revenue
Service form 990 and Schedule A for every charitable
organization and any parent organization;

(8) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided for in subsection (d), section seven of this article.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section, or report the information to its parent organization which shall then furnish such information as to its West Virginia affiliates, chapters and branches in a consolidated form to the secretary of state. An independent member agency of a federated fund-raising organization, as hereinbefore defined, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.
(c) The registration forms and any other documents prescribed by the secretary of state shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization collecting less than one million dollars during any year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifteen dollars; every charitable organization collecting more than one million dollars during one year which submits an independent registration to the secretary of state shall pay an annual registration fee of fifty dollars; a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of fifty dollars for itself and such chapters, branches or affiliates included in the registration statement.

(e) For good cause shown, the secretary of state may extend the due date for the annual filing of a registration statement or report for a period not to exceed ninety days. During such period, the previously filed registration statement or report of the charitable organization which has been granted the extension shall remain in effect.

(f) In addition to the registration fee required by this section, a charitable organization which fails to file a registration statement or report by the original or extended due date therefor as required by this section shall, for each month or part of the month thereafter in which the same is not filed, pay an additional fee of twenty-five dollars: Provided, That the total amount of such additional fees for a registration statement or report required to be filed in any one year shall not exceed five hundred dollars. Any such additional fees received shall be paid into the charitable organization fund established pursuant to the provisions of section fifteen-b of this article.
AN ACT to amend and reenact section fourteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the waiver of the notification requirement to foster parents and adoptive parents in cases involving afterborn siblings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 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
(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 arrange-
ment 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 ar-
angement 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 previ-
ously 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 placement 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 ar-
angement with the department and if such arrangement is
in the best interests of the child: Provided, That the de-
partment may petition the court to waive notification to
the foster parents or adoptive parents of the child's sib-
lings. This waiver may be granted, ex parte, upon a show-
ing of compelling circumstances.

(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 application 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 55

(Com. Sub. for S. B. 27—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 4, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, ten, thirteen, fourteen, sixteen, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the jurisdiction of courts over persons under eighteen years of age generally; the continuing jurisdiction of juvenile courts; the transfer of juvenile proceedings from juvenile jurisdiction to criminal jurisdiction of the courts; the commitment of juveniles upon disposition; the modification of dispositional orders; the transfer of juveniles from a secure facility to a penitentiary once the age of eighteen years is attained; the expungement of juvenile records; and the formulation of after-care plans for juveniles.

Be it enacted by the Legislature of West Virginia:

That sections two, ten, thirteen, fourteen, sixteen, seventeen and eighteen, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Continuing jurisdiction of court.
§49-5-10. Waiver and transfer of jurisdiction.
§49-5-16. Committing children to jail and detention facilities; standards.
§49-5-17. Expungement of records; exceptions; no discrimination.
§49-5-18. After-care plans; submission to the court; comments to be submitted; hearing on the plan and adoption thereof.

§49-5-2. Continuing jurisdiction of court.

1 As used in this article, a "child" shall include a person
2 under the age of eighteen years or a person subject to the
juvenile jurisdiction of the court pursuant to this section.

If a child commits an act which if committed by an adult
would be a crime and for such act is adjudged delinquent,
the jurisdiction of the court shall continue until the child
becomes twenty-one years of age with the same power
over the child that the court had prior to the child’s be-
coming an adult and the further power to sentence such
person to not more than six months in jail if the offender
is over the age of eighteen years. This shall not preclude
the exercise of criminal jurisdiction where the proceedings
have been transferred to the criminal jurisdiction of the
court pursuant to section ten of this article, or in case the
offender, after becoming an adult, commits a violation of
law. A child may be brought before the circuit court for
proceedings under this article by the following means and
no others:

(a) By juvenile petition praying that the child be ad-
judged neglected or delinquent;

(b) By certification or transfer to the juvenile jurisdic-
tion of the circuit court, from the criminal jurisdiction of
such court, from any foreign court or any court of this
state before which such child is brought charged with the
commission of a crime, as provided in section one, one-a
or one-b of this article;

(c) By warrant, capias or attachment issued by a judge,
referee or magistrate returnable to the circuit court, charg-
ing a child with an act of delinquency.

§49-5-10. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney
filed at least eight days prior to the adjudicatory hearing
and with reasonable notice to the child, the parents, guard-
ians or custodians of the child and the child’s counsel, the
court shall conduct a hearing to determine if juvenile
jurisdiction should or must be waived and the proceeding
transferred to the criminal jurisdiction of the court. Any
motion filed in accordance with this section shall state,
with particularity, the grounds for the requested transfer,
including the grounds relied upon set forth in subsections
(d), (e), (f) and (g) of this section and the burden shall be
upon the state to establish such grounds by clear and con-
vincing proof. Any hearing held under the provisions of this section shall be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial shall be made by or before the court until a decision shall have been made relative to whether the proceeding is to be transferred to criminal jurisdiction.

(c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a child who has attained the age of fourteen years shall make a demand on the record to be transferred to the criminal jurisdiction of the court. Such cases may then be referred to a magistrate for trial, if otherwise cognizable by a magistrate.

(d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The child is at least fourteen years of age and has committed the crime of treason under section one, article one, chapter sixty-one of this code; the crime of murder under sections one, two and three, article two of said chapter; the crime of robbery involving the use or presenting of firearms or other deadly weapons under section twelve of said article; and the crime of kidnapping under section fourteen-a of said article; the crime of first degree arson under section one, article three of said chapter; or the crime of sexual assault in the first degree under section three, article eight-b of said chapter; or

(2) The child is at least fourteen years of age and has committed an offense of violence to the person which would be a felony if the child were an adult: Provided, That the child has been previously adjudged delinquent for the commission of an offense of violence to the person which would be a felony if the child were an adult; or

(3) The child is at least fourteen years of age and has committed an offense which would be a felony if the child were an adult: Provided, That the child has been twice
previously adjudged delinquent for the commission of an
offense which would be a felony if the child were an adult.

(e) The court may transfer a juvenile proceeding to
criminal jurisdiction if there is probable cause to believe
that the child would otherwise satisfy the provisions of
subdivision (1), subsection (d) of this section, but who is
younger than fourteen years of age.

(f) The court may, upon consideration of the child's
mental and physical condition, maturity, emotional atti-
tude, home or family environment, school experience and
similar personal factors, transfer a juvenile proceeding to
criminal jurisdiction if there is probable cause to believe
that the child would otherwise satisfy the provisions of
subdivision (2) or (3), subsection (d) of this section, but
who is younger than fourteen years of age.

(g) The court may, upon consideration of the child's
mental and physical condition, maturity, emotional atti-
tude, home or family environment, school experience and
similar personal factors, transfer a juvenile proceeding to
criminal jurisdiction if there is probable cause to believe
that:

(1) The child, who is at least fourteen years of age, has
committed an offense of violence to the person which
would be a felony if the child were an adult; or

(2) The child, who is at least fourteen years of age, has
committed an offense which would be a felony if the child
were an adult: Provided, That the child has been previ-
ously adjudged delinquent for the commission of a crime
which would be a felony if the child were an adult; or

(3) The child, who is at least fourteen years of age,
used or presented a firearm or other deadly weapon dur-
ing the commission of a felony; or

(4) The child has committed a violation of the provi-
sions of section four hundred one, article four, chapter
sixty-a of this code which would be a felony if the child
were an adult involving the manufacture, delivery or pos-
session with the intent to deliver a narcotic drug. For
purposes of this subdivision, the term "narcotic drug" shall
have the same definition as that set forth in section one hundred one, article one of said chapter.

(h) For purposes of this section, the term "offense of violence" means an offense which involves the use or threatened use of physical force against a person.

(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate such findings of fact and conclusions of law in its order directing transfer.

(j) The child shall have the right to directly appeal an order of transfer to the supreme court of appeals of the state of West Virginia: Provided, That notice of intent to appeal and a request for transcript be filed within ten days from the date of the entry of any such order and the petition for appeal shall be presented to the supreme court of appeals within forty-five days from the entry of such order, and that, in default thereof, the right of appeal and the right to object to such order of transfer shall be waived and may not thereafter be asserted. The provisions of article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions shall apply to appeals under this chapter except as herein modified. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and re-extend the period in which to file the petition for appeal for such additional time, not to exceed a total extension of sixty days, as in the court's opinion may be necessary for preparation of the transcript: Provided, however, That the request for such transcript was made by the party seeking appeal within ten days of entry of such order of transfer.


(a) In aid of disposition, the juvenile probation officer
assigned to the court shall, upon request of the court, make an investigation of the environment of the child and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the child. The report of such examination and other investigative and social reports shall not be made available to the court until after the adjudicatory hearing. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the child no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving all parties an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the child and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the child and the child's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the child is in need of extra-parental supervision: (A) Place the child under the supervision of a probation officer of the court or of the court of the county where the child has his or her usual place of abode or other person while leaving the child in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the child's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to section twenty-five, article seven, chapter twenty of this code, or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the child, that a child is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the child, the court may
place the child in temporary foster care or temporarily commit the child to the state department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department of human services, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter and guidelines promulgated by the supreme court of appeals;

(5) Upon a finding that the best interests of the child or the welfare of the public require it, and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, the court may commit the child to an industrial home, correctional institution for children, or other appropriate facility for the treatment, instruction and rehabilitation of juveniles: Provided, That the court maintains discretion to consider alternative sentencing arrangements. Commitments shall not exceed the maximum term for which an adult could have been sentenced for the same offense. The order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible;

(6) Upon an adjudication of delinquency pursuant to subdivision (3) or (4), section four, article one of this chapter, and upon a finding that the child is so totally unmanageable, ungovernable and antisocial that the child is amenable to no treatment or restraint short of incarcera-

76 tion, commit the child to a rehabilitative facility devoted exclusively to the custody and rehabilitation of children adjudicated delinquent pursuant to said subdivision. Commitments shall not exceed the maximum period of one year with discretion as to discharge to rest with the director of the institution, who may release the child and return him or her to the court for further disposition. The
order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; or

(7) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of this code, commit the child to a mental health facility in accordance with the child's treatment plan; the director may release a child and return him to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the child and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible.

(c) The disposition of the child shall not be affected by the fact that the child demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the supreme court of appeals.

(d) Following disposition, it shall be inquired of the respondent whether or not appeal is desired and the response transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the child or his or her counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(e) Notwithstanding any other provision of this code to the contrary, if a child charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing such person as an adult.


(a) A dispositional order of the court may be modified:

(1) Upon the motion of the probation officer, a state
(2) Upon the request of the child or a child's parent or custodian who alleges a change of circumstances relating to disposition of the child.

Upon such a motion or request, the court shall conduct a review proceeding, except that if the last dispositional order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child's parent or custodian, the child's social worker and other persons providing assistance to the child or child's family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. In the absence of such proof, the court may decline to modify the dispositional order or may modify the order to one of the less restrictive alternatives set forth in section thirteen of this article. No child shall be required to seek a modification order as provided in this section in order to exercise his right to seek release by habeas corpus.

(b) In a hearing for modification of a dispositional order, or in any other dispositional hearing, the court shall consider the best interests of the child and the welfare of the public.

§49-5-16. Committing children to jail and detention facilities; standards.

(a) A child under eighteen years of age shall not be committed to a jail or police station, except that any child over fourteen years of age who has been committed to an industrial home or correctional institution may be held in the juvenile department of a jail while awaiting transportation to the institution for a period not to exceed ninety-six hours, and a child over fourteen years of age who is charged with a crime which would be an offense of vio-
lence which would be a felony if committed by an adult, may, upon an order of the circuit court, be housed in a juvenile detention portion of a county facility, but not within sight of adult prisoners. A child charged with or found to be delinquent solely under subdivision (3), (4) or (5), section four, article one of this chapter, shall not be housed in a detention or other facility wherein persons are detained for criminal offenses or for delinquency involving offenses which would be crimes if committed by an adult: Provided, That a child who is adjudicated delinquent under subdivision (5) of said section and who has violated an order of probation or a contempt order arising out of a proceeding wherein the child was adjudicated delinquent for an offense which would be a crime if committed by an adult may not be housed in a detention or other facility wherein persons are detained who have not been adjudicated delinquent for such offenses.

(b) No child who has been convicted of an offense under the adult jurisdiction of the circuit court shall be held in custody in a penitentiary of this state: Provided, That such child may be transferred from a secure juvenile facility to a penitentiary after he shall attain the age of eighteen years if, in the judgment of the court which committed such child, such transfer is appropriate: Provided, however, That any other provision of this code to the contrary notwithstanding, prior to such transfer the child shall be returned to the sentencing court for the purpose of reconsideration and modification of the imposed sentence, which shall be based upon a review of all records and relevant information relating to the child's rehabilitation since his conviction under the adult jurisdiction of the court.

§49-5-17. Expungement of records; exceptions; no discrimination.

(a) One year after the child's eighteenth birthday, or one year after personal or juvenile jurisdiction shall have terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including law-enforcement files and records, fingerprints, physical evidence and all other records pertaining to said proceed-
Expungement shall be accomplished by physically marking the records to show that such records have been expunged and by the secure sealing and filing of said records in such a manner that no one can determine the identity of said juvenile except as provided in subsection (d) of this section. Expungement shall have the legal effect as if the offense never occurred.

(c) The child's counsel, parent, guardian or custodian, the court, law-enforcement agencies and other public and private agencies, in response to a request for record information, shall reply that juvenile records are not public records and are available only by order of the circuit court in which the case was pending.

(d) Notwithstanding this or any other provision of this code to the contrary, after the effective date of the reenactment of this section juvenile records and law-enforcement records shall not be disclosed or made available for inspection except as follows:

(1) If a juvenile case is transferred to the criminal jurisdiction of the court, and upon the happening of any of the following:

(A) The failure of the juvenile transferred to timely file an appeal of the order of transfer; or

(B) The refusal of the supreme court of appeals to hear the petition of the juvenile appealing the order of transfer; or

(C) The affirming of the order of transfer by the supreme court of appeals, then all records of the case generated thereafter shall be open to public inspection, under all of the same structures and guidelines and requirements of law as exist regarding records for the prosecution of adults.

(2) The court may also, by written order pursuant to a
written petition, permit disclosure when:

(A) A court having juvenile jurisdiction has the child before it in a juvenile proceeding;

(B) A court exercising criminal jurisdiction over the child requests such records for the purpose of a presentence report or other dispositional proceeding;

(C) The child or counsel for the child requests disclosure or inspection of such records;

(D) The officials of public institutions to which a child is committed require such records for transfer, parole or discharge considerations; or

(E) A person doing research requests disclosure, on the condition that information which would identify the child or family involved in the proceeding shall not be divulged.

(e) No individual, firm, corporation or other entity shall, on account of a person's prior involvement in a proceeding under this article, discriminate against any person in access to, terms of, or conditions of employment, housing, education, credit, contractual rights or otherwise.

(f) No records of a child convicted under the criminal jurisdiction of the court pursuant to subdivision (1), subsection (d), section ten of this article shall be expunged.

(g) Any person who willfully violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail not more than six months, or both such fine and imprisonment, and shall be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

§49-5-18. After-care plans; submission to the court; comments to be submitted; hearing on the plan and adoption thereof.

(a) Forty-five days prior to the discharge of a child from any institution or facility pursuant to subdivision (5), (6) or (7), subsection (b), section thirteen of this article,
the director of such institution or facility shall have prepared and shall forward to the committing court a copy of the child's proposed after-care plan. Copies of the plan shall also be sent to: (1) The child's parents, if any, or legal guardian if the child is not living with his parents; (2) the child's lawyer; (3) the child's probation officer or community mental health center professional; (4) the prosecuting attorney of the county in which the original commitment proceedings were held; and (5) the principal of the school where the child will attend school.

(b) The after-care plan shall contain a detailed description of the training, schooling, counseling and treatment received while at the institution or facility and the same proposed for the child upon his discharge. The plan shall describe any problems the child may have, the source of those problems and describe how those problems will be addressed by the after-care plan. Attached to the plan shall be a list of the persons who are to receive copies of this plan.

(c) Within twenty-one days of the receipt of the plan, the child's probation officer or community mental health center professional shall, and any other person who received a copy of the plan pursuant to subsection (a) of this section may, submit written comments concerning the plan to the court: Provided, That if any person does submit comments upon the plan, he shall also send copies of those comments to every other person who received a copy of the plan pursuant to said subsection (a) from the director.

(d) Within the twenty-one days provided in subsection (c) of this section it shall be the responsibility and duty of the child's probation officer or the community mental health center professional who receives a copy of the after-care plan to contact all other persons, organizations and agencies to be involved in executing the plan and to determine whether such persons, organizations and agencies are capable of and will be adequately prepared to execute the provisions of the plan: Provided, That if a hearing is held to discuss the plan as provided in subsection (e) of this section, representatives of such persons,
organizations or agencies may be required to appear unless excused by the court.

(e) The judge to whom the plan was sent shall within forty-five days of receipt of the plan schedule and hold a hearing to consider the plan, including any comments or objections submitted in response thereto: Provided, That if no adverse comments or objections are submitted, a hearing need not be held. The court shall consider the after-care plan as submitted and shall within five days of the hearing or within forty-five days of the receipt of the plan if no hearing is held issue an order which adopts the plan as submitted or as modified in response to comments and objections: Provided, however, That the plan as adopted by order of the court shall be in the best interests of the child and be in conformity with the state's interest in youth as embodied in subsection (b), section thirteen of this article: Provided further, That the court shall appoint the child's probation officer or a community mental health center professional to act as supervisor of the plan, which supervisor shall make a report commenting on the progress of the child to the court every sixty days, or until the court shall determine that no such report is necessary, or when the court determines that after-care is no longer needed.

CHAPTER 56

(Com. Sub. for H. B. 2402—By Delegates Amores, Hunt, Farris and Seacrist)

[Passed March 10, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section thirteen-b, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article seven-a, chapter fifty-five of said code, all relating to the liability of parents for the acts of their children; providing for parental liability for restitution not made by a juvenile; providing for parental
liability for willful, malicious or criminal acts of children; and increasing the monetary liability of parents for such acts.

Be it enacted by the Legislature of West Virginia:

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

Chapter
55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.

(a) In addition to the methods of disposition provided in section thirteen of this article, the court may enter an order imposing one or more of the following penalties, conditions and limitations:

(1) Impose a fine not to exceed one hundred dollars upon such child;

(2) Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent, or if the child does not make full restitution, require the custodial parent or parents, as defined in section two, article seven-a, chapter fifty-five, of the child to make partial or full restitution to the victim to the extent the child fails to make full restitution;

(3) Require the child to participate in a public service project under such conditions as the court prescribes, including participation in the litter control program established pursuant to the authority of section twenty-five, article seven, chapter twenty of this code;

(4) When the child is fifteen years of age or younger
and has been adjudged delinquent, the court may order that the child is not eligible to be issued a junior probationary operator’s license or when the child is between the ages of sixteen and eighteen years and has been adjudged delinquent, the court may order that the child is not eligible to operate a motor vehicle in this state, and any junior or probationary operator’s license shall be surrendered to the court. Such child’s driving privileges shall be suspended for a period not to exceed two years, and the clerk of the court shall notify the commissioner of the department of motor vehicles of such order.

(b) Nothing herein stated shall limit the discretion of the court in disposing of a juvenile case: Provided, That the juvenile shall not be denied probation or any other disposition pursuant to this article because the juvenile is financially unable to pay a fine or make restitution or reparation: Provided, however, That all penalties, conditions and limitations imposed under this section shall be based upon a consideration by the court of the seriousness of the offense, the child’s ability to pay, and a program of rehabilitation consistent with the best interests of the child.

(c) Notwithstanding any other provisions of this code to the contrary, in the event a child charged with delinquency under this chapter is transferred to adult jurisdiction and there convicted, the court may nevertheless, in lieu of sentencing such person as an adult, make its disposition in accordance with this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7A. LIABILITY OF PARENTS.

§55-7A-2. Parental liability for willful, malicious or criminal acts of children.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed five thousand dollars for damages which are the proximate result of any one or a combination of the following acts of the minor child:

(a) The malicious and willful injury to the person of
(b) The malicious and willful injury or damage to the property of another, whether the property be real, personal or mixed; or

(c) The malicious and willful setting fire to a forest or wooded area belonging to another; or

(d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" shall mean the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this article shall include, but not be limited to, the state of West Virginia, any municipal corporation, county commission and board of education, or other political subdivision of this state, or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this article.

The provisions of this article shall be applicable to causes of action arising on and after the effective date of reenactment of this article. Causes of actions arising before the effective date of reenactment of this article and proceedings thereon shall be governed by the previously enacted provisions of this article in force at the time the cause arose.
CHAPTER 57

(Com. Sub. for H. B. 2743—By Delegates Facemyer and Linch)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

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 preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

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.

For positions in any agency as defined in section four, article one, chapter five-f of this code or any other political subdivision of this state 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 58

(S. B. 14—By Senators Dittmar, Anderson, Whitlow and Bailey)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to civil service system; classified-exempt service; additions to classified service; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

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

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

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

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

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

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

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

(4) All secretaries of departments and employees within the office of a secretary;

(5) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order;

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

(7) All policy-making positions;

(8) Patients or inmates employed in state institutions;

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

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

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

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

(13) Members and employees of the board of trustees and board of directors or their successor agencies;

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

(15) Seasonal employees in the state forests, parks, and recreational areas working less than 1,733 hours per calendar year. *Provided,* That notwithstanding any provision of law to the contrary, seasonal employees shall not be considered full-time employees.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the governor including all employees assigned to the executive mansion, as well as any persons appointed by the governor to fill policy-making positions, in that such offices or positions are confidential in character and/or require their holders to act as advisors to the governor or the governor's appointees, to formulate and implement the policies and goals of the governor or the governor's appointees, or to help the governor or the governor's appointees communicate with and explain their policies and views to the public, the Legislature and the press.
AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consideration of public employees' levels of seniority as a factor when awarding benefits or withdrawing benefits under the classified service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-10. Rules of division.

The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a of this code, to implement the provisions of this article:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Except for persons employed by the governing boards of higher education, all persons receiving compensation as a wage or salary, funded either in part or in whole by the state, are included in either the position classification plan for classified service or classified-exempt service. After each such classifi-
cation plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the board. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the board. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions in the classified service. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his or her discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.
An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant's qualifications, record of performance, seniority and his or her score on a written examination, when such examination is practicable. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is required between two or more employees in the classified service as to who will receive the benefit or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal or similar qualifications, consideration shall be given to the level of seniority of each of the respective employees as a factor in determining which of the employees will receive the benefit or have the benefit withdrawn, as the case may be.

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any other job duties held by less senior employees within that agency in the job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.
(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his or her place on the recall list for the same period of time as his or her seniority on the date of his or her layoff or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his or her last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the vacancy. It shall be the responsibility of the employee to notify the agency of any change in his or her address.

Notwithstanding any other provision of the code to the contrary, except for the provisions of section seven, article two, chapter five-b of this code, when filling vacancies at state agencies the directors of state agencies shall, for a period of twelve months after the layoff of a permanent classified employee in another agency, give preference to qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities: Provided, That employment of these persons who are qualified and who were permanently employed immediately prior to their layoff shall not supersede the recall rights of employees who have been laid off in such agency or facility.

(7) For the establishment of eligible lists for appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top ten names on the appropriate lists of eligibles, or may choose any person scoring at or above the ninetieth per-
For the establishment of eligible lists for preference as provided in subdivision (6) of this section, a list shall be provided according to seniority. An appointed authority shall make the selection of the most senior qualified person: Provided, That eligibility for appointment from any such list shall continue not longer than one year and shall cease immediately upon appointment to a classified position.

(8) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience who are addicted to alcohol or narcotics or who have attempted any deception or fraud in connection with an examination.

(9) For a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service.

(10) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment may continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(11) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(12) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after
the person to be discharged or reduced has been presented
with the reasons for such discharge or reduction stated in
writing, and has been allowed a reasonable time to reply
thereto in writing, or upon request to appear personally
and reply to the appointing authority or his or her deputy.
The statement of reasons and the reply shall be filed as a
public record with the director. Notwithstanding the fore-
going provisions of this subdivision, no permanent em-
ployee shall be discharged from the classified service for
absenteeism upon using all entitlement to annual leave and
sick leave when such use has been due to illness or injury
as verified by a physician's certification or for other exten-
uating circumstances beyond the employee's control un-
less his or her disability is of such a nature as to perma-
nently incapacitate him or her from the performance of
the duties of his or her position. Upon exhaustion of
annual leave and sick leave credits for the reasons speci-
fied herein and with certification by a physician that the
employee is unable to perform his or her duties, a perma-
nent employee shall be granted a leave of absence without
pay for a period not to exceed six months if such employ-
ee is not permanently unable to satisfactorily perform the
duties of his or her position.

(13) For such other rules and administrative regula-
tions, not inconsistent with this article, as may be proper
and necessary for its enforcement.

(14) The board shall review and approve by rules the
establishment of all classified-exempt positions to assure
consistent interpretation of the provisions of this article.

The provisions of this section are subject to any modi-
fications contained in chapter five-f of this code. The
board may include in the rules provided for in this article
such provisions as are necessary to conform to regulations
and standards of any federal agency governing the receipt
and use of federal grants-in-aid by any state agency, any-
thing in this article to the contrary notwithstanding. The
board and the director shall see that rules and practices
meeting such standards are in effect continuously after the
effective date of this article.
CHAPTER 60

(S. B. 366—By Senators Whitlow, Blatnik, Helmick, Manchin, Sharpe and Ross)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§ 1. Finding and declaring certain claims against the board of probation and parole; department of education; division of corrections; division of culture and history; division of human services; division of labor; geological and economical survey; regional jail and correctional facility authority; and women's commission to be moral obligations of the state and directing payments thereof.

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

(a) **Claim against the Board of Probation and Parole:**

(TO BE PAID FROM GENERAL REVENUE FUND)

1. Bell Atlantic-West Virginia, Inc. $ 898.78

(b) **Claim against the Department of Education:**

(TO BE PAID FROM GENERAL REVENUE FUND)

1. Bell Atlantic-West Virginia, Inc. $ 14,292.08

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

(TO BE PAID FROM GENERAL REVENUE FUND)

1. ARA Health Services, Inc., dba Correctional Medical Systems $ 18,197.32
2. American Office Systems $ 197.00
3. Associated Anesthesiologists, Inc $ 645.00
4. BMA of West Virginia, Inc. $ 64,354.19
5. Ashraf Badour, M.D. $ 100.00
6. Raymond A. Bannan, M.D. $ 55.00
7. E.Y. Baysal, M.D. $ 430.00
8. Beckley Appalachian Regional Healthcare $ 1,899.00
9. Bell Atlantic-West Virginia, Inc. $ 21,503.54
10. Michael W. Blatt, M.D. $ 820.00
11. Bluefield Pathology Associates, Inc. $ 250.00
12. Bluefield Regional Medical Center $ 99.08
13. John W. Byers, D.D.S. $ 214.00
14. Hubert H. Byron, Jr., D.D.S. $ 1,711.00
15. Cabell Huntington Hospital $ 10,001.39
16. Camden Clark Memorial Hospital $ 215.73
17. Cardiocare $ 216.00
18. Anthony Catania, Jr., DPM $ 245.00
19. Charleston Area Medical Center $ 1,434.79
20. City of Grafton $ 9,636.00
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<td>120</td>
<td>(78) Michael A. Stewart, M.D.</td>
<td>$ 7,260.00</td>
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<td>121</td>
<td>(79) Surgical Specialists of Greenbrier Valley</td>
<td>$ 2,235.00</td>
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<td>122</td>
<td>&amp; Robert M. Jones, M.D., P.C.</td>
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<td>123</td>
<td>(80) T. Keith Edwards, M.D., Inc.</td>
<td>$ 600.00</td>
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<td>124</td>
<td>(81) Romeo B. Tan, M.D.</td>
<td>$ 6,810.00</td>
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<td>125</td>
<td>(82) Taylor County Emergency Squad, Inc.</td>
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<td>126</td>
<td>(83) The Heart Institute of Southern WV</td>
<td>$ 1,240.00</td>
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<td>127</td>
<td>(84) Thoracic &amp; Cardiovascular Surgery, Inc.</td>
<td>$ 6,335.00</td>
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<td>128</td>
<td>(85) Tri-State Ambulance, Inc.</td>
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<td>(86) Tri-State Derm. Lab., John P.</td>
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<td>Donahue, M.D.</td>
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<td>133</td>
<td>(87) Unisource (Copco Papers)</td>
<td>$ 377.20</td>
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<td>134</td>
<td>(88) United Hospital Center</td>
<td>$ 10,255.45</td>
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(89) University Health Associates  
   Dental Practice ........................ $ 2,144.00
(90) University Health Associates, Inc. .... $ 103,951.00
(91) Valley Comp. Comm. Mental Health Center, Inc. ........ $ 1,091.00
(92) Welch Emergency Hospital ........ $ 11,207.42
(93) West Virginia University Hospitals, Inc. ........ $ 321,095.98
(94) Wheeling Clinic, Inc. ................. $ 1,476.00
(95) Wheeling Hospital ..................... $ 9,675.35
(96) Nazih R. Youssef, M.D. .............. $ 6,947.29

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

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Bell Atlantic-West Virginia, Inc. ...... $ 2,527.44

(e) Claims against the Division of Human Services:

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Bartlett Burdette Cox Funeral Home .. $ 400.00
(2) Roane County Commission .......... $ 300.00

(f) Claim against the Division of Labor:

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Dodson Bros. Exterminating Company, Inc. .......... $ 240.00

(g) Claim against the Geological and Economical Survey:

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Bell Atlantic-West Virginia, Inc. ...... $ 2,596.01

(h) Claim against the Regional Jail and Correctional Facility Authority:

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Correctional Medical Services, Inc. ... $ 25,753.63

(i) Claim against the Women's Commission:

   (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Bell Atlantic-West Virginia, Inc. ...... $ 376.34
CHAPTER 61
(S. B. 354—By Senators Whitlow, Blatnik, Helmick, Manchin and Sharpe)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)

(1) Coffman, Ralph S., Sr. .................. $ 7,500.00
(2) Cole, William F. .................. $ 10,000.00
(3) Ganaway, Louis A. .................. $ 7,500.00
(4) Glover, Eddie D. .................. $ 15,000.00
(5) Harvey, Thomas C. .................. $ 15,000.00
(6) Lander, Dana M. .................. $ 15,000.00
(7) Mathews, Franklin W. .................. $ 15,000.00
(8) Miller, John P. .................. $ 15,000.00
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants herein.

CHAPTER 62

(H. B. 2518—By Delegates Seacrist, Compton, Burke, Evans and Clements)

[Passed March 10, 1995; in effect from passage. Became law without Governor's signature.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control administration; attorney general; board of directors of the state college system; board of embalmers and funeral directors; board of examiners for licensed practical nurses; board of trustees of the university system of West Virginia; bureau of employment programs; center for professional development; commission on aging; consolidated medical services fund; council on vocational education; crime victims compensation fund; department of administration; department of agriculture; department of education; department of tax and revenue; development office; division of banking; division of corrections; divi-
sion of environmental protection; division of health; division of highways; division of human services; division of labor; division of public safety; division of rehabilitation services; division of tourism and parks; division of veterans affairs; education and state employees grievance board; educational broadcasting authority; governor's cabinet on children and families; hospital finance authority; human rights commission; insurance commission; library commission; municipal bond commission; office of emergency services; office of the chief medical examiner; public service commission; racing commission; real estate commission; regional jail and correctional facility authority; school building authority; secretary of state; state fire commission; state treasurer; supreme court of appeals, and West Virginia ethics commission; to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Adjutant General:

(1) Bell Atlantic-West Virginia, Inc. . . . $ 2,745.32

(b) Claim against the Alcohol Beverage Control Administration:

(1) Bell Atlantic-West Virginia, Inc. . . . $ 7,755.20

(c) Claims against the Attorney General:

(1) Bell Atlantic-West Virginia, Inc. . . . $ 7,755.20
Ch. 62] CLAIMS 347

22 (1) Bell Atlantic-West Virginia, Inc. . . . $ 4,107.23
23 (2) West Publishing Corporation . . . . $ 296.25
24 (d) Claims against the Board of Directors of the State College System:
25 (TO BE PAID FROM SPECIAL REVENUE FUND)
26 (1) Lola Hicks . . . . . . . . . . . . . . . . $ 151.57
27 (2) Xerox Corporation . . . . . . . . . . . $ 4,690.03
28 (e) Claim against the Board of Embalmers and Funeral Directors:
29 (TO BE PAID FROM SPECIAL REVENUE FUND)
30 (1) Bell Atlantic-West Virginia, Inc. . . . $ 176.64
31 (f) Claim against the Board of Examiners for Licensed Practical Nurses:
32 (TO BE PAID FROM SPECIAL REVENUE FUND)
33 (1) Bell Atlantic-West Virginia, Inc. . . . $ 179.54
34 (g) Claims against the Board of Trustees of the University System of West Virginia:
35 (TO BE PAID FROM SPECIAL REVENUE FUND)
36 (1) Amber D. Dimmick . . . . . . . . . . . $ 75.00
37 (2) Michele K. Rivera, M.D. . . . . . . . . . $ 41,544.00
38 (3) Xerox Corporation . . . . . . . . . . . $ 1,010.65
39 (h) Claims against the Bureau of Employment Programs:
40 (TO BE PAID FROM SPECIAL REVENUE FUND)
41 (1) Bell Atlantic-West Virginia, Inc. . . . $ 23,846.23
42 (2) Frank J. Haas . . . . . . . . . . . . . . . $ 145.41
43 (3) HCX, Inc. . . . . . . . . . . . . . . . . $ 23,121.55
44 (4) The Michie Company . . . . . . . . . . . $ 211.64
45 (5) F. Winston Polly, III . . . . . . . . . . . $ 213.00
52 (TO BE PAID FROM WORKERS' COMPENSATION FUND)
53 (6) Bell Atlantic-West Virginia, Inc. . . . . $ 20,503.18
54 (i) Claim against the Center for Professional Development:
55 (TO BE PAID FROM GENERAL REVENUE FUND)
56 (1) Bell Atlantic-West Virginia, Inc. . . . . $ 246.72
57 (j) Claims against the Commission on Aging:
58 (TO BE PAID FROM GENERAL REVENUE FUND)
59 (1) Bell Atlantic-West Virginia, Inc. . . . . $ 321.70
60 (TO BE PAID FROM SPECIAL REVENUE FUND)
61 Account No. 5403
62 (2) Bell Atlantic-West Virginia, Inc. . . . . $ 618.34
63 (k) Claims against Consolidated Medical Services Fund:
64 (TO BE PAID FROM GENERAL REVENUE)
65 (1) General Electric Company . . . . . . . . . $ 1,460.09
66 (2) Puritan-Bennett Corporation . . . . . . . . . $ 1,663.52
67 (3) Western District Guidance Center, Inc. . . . . . . . . . . . . . . . . . $ 6,437.00
68 (l) Claim against the Council on Vocational Education:
69 (TO BE PAID FROM FEDERAL REVENUE)
70 From Account No. 8650
71 (1) Bell Atlantic-West Virginia, Inc. . . . . $ 356.28
72 (m) Claim against the Crime Victims Compensation Fund:
73 (TO BE PAID FROM SPECIAL REVENUE FUND)
74 (1) Bell Atlantic-West Virginia, Inc. . . . . $ 199.54
75 (n) Claims against the Department of Administration:
### CLAIMS

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

<table>
<thead>
<tr>
<th>No.</th>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>81</td>
<td>Bell Atlantic-West Virginia, Inc.</td>
<td>$47,663.59</td>
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#### (TO BE PAID FROM SPECIAL REVENUE FUND)

<table>
<thead>
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<th>No.</th>
<th>Claimant</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>82</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
<td>$47,663.59</td>
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<tr>
<td>83</td>
<td>(2) Harper Collins Publishers</td>
<td>$1,025.00</td>
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<td>84</td>
<td>(3) Mountain State Temporary Serv., dba Manpower Temporary Service</td>
<td>$1,127.12</td>
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#### (o) Claim against the Department of Agriculture:

<table>
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<th>No.</th>
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<td>From Account No. 1401</td>
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<tr>
<td>86</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
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#### (p) Claims against the Department of Education:

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<tbody>
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<td>88</td>
<td>(1) Steven H. Brunty</td>
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<td>89</td>
<td>(2) Aleta Jo Crotty</td>
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<td>90</td>
<td>(3) Myra Leigh Huffman-Runion</td>
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<td>(4) Barbara E. Maxwell</td>
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<td>92</td>
<td>(5) William Tomblin</td>
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#### (q) Claims against the Department of Tax and Revenue:

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<th>No.</th>
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<td>93</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
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#### (TO BE PAID FROM SPECIAL REVENUE FUND)

<table>
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<th>No.</th>
<th>Claimant</th>
<th>Amount</th>
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<td>94</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
<td>$6,941.46</td>
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<td>95</td>
<td>(2) Gannet River Cities Publishing, dba</td>
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<td>Claim Amount</td>
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<td>110</td>
<td>PRINCIPAL</td>
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<td>111</td>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
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<td>Cabell County Commission</td>
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<td>Division of Personnel</td>
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<td>115</td>
<td>Doddridge County Commission</td>
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<td>Fayette County Commission</td>
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<td>Fuller &amp; D'Albert, Inc</td>
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<td>Glen L. Spitznogle dba Comm. and Custom Butchering</td>
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<td>Greenbrier County Commission</td>
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<td>Virgil J. Adkins</td>
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<td>William B. and Nancy J. Ball</td>
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<td>166</td>
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<td>Billie Marlene Croaff</td>
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<td>192</td>
<td>Charlotte A. Shamblin</td>
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194 (33) Shirley K. Strickland ................. $ 17,812.50
195 (34) Janet L. Terry ....................... $ 776.06
196 (35) Leah K. Torbett ..................... $ 250.00
197 (36) Adolfo M. Torres .................... $ 205.96
198 (37) Vicki L. Watters .................... $ 187.55
199 (38) Linda Williams ....................... $ 250.00
200 (x) *Claim against Division of Human Services:*
201 (TO BE PAID FROM GENERAL REVENUE)
202 (1) Bell Atlantic-West Virginia, Inc. .... $ 59,174.25
203 (y) *Claims against the Division of Labor:*
204 (TO BE PAID FROM GENERAL REVENUE FUND)
205 (1) Bell Atlantic-West Virginia, Inc. .... $ 1,281.91
206 (2) Pen Holdings, Inc., on behalf of
207 Frank Br. Mining ......................... $ 1,795.72
208 (z) *Claims against the Division of Public Safety:*
209 (TO BE PAID FROM GENERAL REVENUE FUND)
210 (1) Bell Atlantic-West Virginia, Inc. .... $ 26,670.50
211 (2) Eastman Kodak Company ............... $ 657.60
212 (3) Safety-Kleen Corporation ............. $ 268.50
213 (4) West Virginia University
214 Hospitals, Inc. ......................... $ 156.09
215 (aa) *Claim against the Division of Rehabilitation Services:*
216 (TO BE PAID FROM FEDERAL REVENUE)
217 From Account No. 8662
218 (1) Bell Atlantic-West Virginia, Inc. .... $ 10,184.66
219 (bb) *Claim against the Division of Tourism and Parks:*
220 (TO BE PAID FROM SPECIAL REVENUE FUND)
221 (1) Bell Atlantic-West Virginia, Inc. .... $ 52,540.01
(cc) Claim against the Division of Veterans Affairs:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 1,441.80

(dd) Claim against the Education and State Employees Grievance Board:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 1,523.31

(ee) Claim against the Educational Broadcasting Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 9,109.00

(2) Archie Wayne McHenry . . . . . . . . . $ 9,000.00

(ff) Claims against the Governor's Cabinet on Children and Families:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 830.94

(2) Community Council of Kanawha Valley, Inc. . . . . . . . . . . . . . . . $ 4,024.00

(gg) Claim against the Hospital Finance Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 185.64

(hh) Claim against the Human Rights Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 974.52

(ii) Claim against the Insurance Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. . . . $ 2,454.42

(jj) Claim against the Library Commission:

(TO BE PAID FROM FEDERAL FUNDS)

Account No. 8720
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253 (1) Bell Atlantic-West Virginia, Inc. . . . $ 9,720.36

254 (kk) Claim against the Municipal Bond Commission:

255 (TO BE PAID FROM SPECIAL REVENUE FUND)

256 (1) Bell Atlantic-West Virginia, Inc. . . . $ 199.54

257 (II) Claim against the Office of Emergency Services:

258 (TO BE PAID FROM GENERAL REVENUE FUND)

259 (1) Bell Atlantic-West Virginia, Inc. . . . $ 1,045.20

260 (mm) Claim against the Office of the Chief Medical Examiner:

261 (TO BE PAID FROM GENERAL REVENUE FUND)

262 (1) Bell Atlantic-West Virginia, Inc. . . . $ 789.56

263 (nn) Claim against the Public Service Commission:

264 (TO BE PAID FROM SPECIAL REVENUE FUND)

265 (1) Bell Atlantic-West Virginia, Inc. . . . $ 4,557.16

266 (oo) Claim against the Racing Commission:

267 (TO BE PAID FROM SPECIAL REVENUE FUND)

268 (1) Bell Atlantic-West Virginia, Inc. . . . $ 98.32

269 (pp) Claims against the Real Estate Commission:

270 (TO BE PAID FROM SPECIAL REVENUE FUND)

271 (1) Bell Atlantic-West Virginia, Inc. . . . $ 179.54

272 (2) Patricia A. Mooney ........................ $ 720.00

273 (qq) Claims against the Regional Jail and Correctional Facility Authority:

274 (TO BE PAID FROM GENERAL REVENUE FUND)

275 (1) Bell Atlantic-West Virginia, Inc. . . . $ 592.92

276 (2) Timothy B. Humphrey ................. $ 79.00

277 (3) David M. Reed ............................ $ 240.00

278 (rr) Claim against the School Building Authority of WV:

279 (TO BE PAID FROM SPECIAL REVENUE FUND)
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
CHAPTER 63

(Com. Sub. for S. B. 22—By Senator Tomblin, Mr. President)
[By Request of the Executive]

[Passed February 20, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating generally to the closure of the Colin Anderson Center; setting forth a closure date; requiring the secretary to prepare care, placement and transfer plans for each resident; setting forth criteria to be followed in developing plans; allowing the transfer of funds; setting limitations on transfer of funds; setting forth reporting requirements regarding transfer of funds; creating "Colin Anderson Transfer Fund"; providing for expenditure from fund; providing for the deposit of savings in medical services trust fund; requiring monthly reports to the joint committee on government and finance on the placement of residents; providing qualified employees with a hiring preference for other state government positions; requiring a feasibility study regarding the establishment of one or more permanent intermediate care facilities for the mentally retarded that could house up to thirty residents; expediting certificate of need review under specified circumstances; and creating a subcommittee of the joint committee on government and finance to monitor residents transferred from Colin Anderson Center.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1b. Deinstitutionalization of residents at Colin Anderson.
(a) Notwithstanding any other provisions in this code to the contrary, the secretary of the department of health and human resources shall close the Colin Anderson Center on or before the thirty-first day of December, one thousand nine hundred ninety-six: Provided, That prior to any transfer of any resident from Colin Anderson Center as a result of action taken pursuant to this section, the secretary must design and be able to implement a detailed plan providing for the ongoing appropriate care, placement and transfer of said resident in accordance with subsection (b) of this section.

(b) The plan for providing for the ongoing appropriate care, placement and transfer of each resident at Colin Anderson Center shall be designed in accordance with the criteria set forth in this subsection. Each resident must have a plan of service developed to meet his or her individual medical, physical and emotional needs. The plan of service shall be developed by a team which shall include, but not be limited to, the following persons: The resident; the immediate family of the resident, if the immediate family of the resident is willing to participate; the guardian of the resident, if the guardian is willing to participate; representatives of the Colin Anderson Center; community behavioral health service providers; and such other persons as may be appointed to the team by the secretary of the department. The plan shall not compromise the health, safety and well-being of the resident. The plan will be implemented in a timely manner. However, no plan shall be implemented until the needed services are in place, adequate staff training has been completed and an appropriate transition has been provided. Each resident, or his or her guardian, shall have access to and be informed of the written appeal process which shall be established by the department.

(c) In designing and implementing the placement plan, the secretary of the department of health and human resources shall transfer funds from the hospital services revenue account created pursuant to section fifteen-a, article one, chapter sixteen of this code and the consolidated medical service fund to a special revenue account created in the state treasury, designated the "Colin
Anderson Transfer Fund" for the specific purposes of
42 caring for residents in alternative placement settings:
43 Provided, That transfers in excess of a total of ten million
dollars in any one fiscal year shall require the prior
46 approval of the governor and shall be reported forthwith
to the joint committee on government and finance.
48 Moneys deposited in the "Colin Anderson Transfer Fund"
49 shall be expended directly from the fund for payments
related to care of persons affected by the provisions of this
48 section and may be expended by the transfer of moneys
from this fund to match the state's share of medicaid
payments necessary to effectuate the purposes of this
section. The secretary shall prepare a quarterly report of
all transfers made from the hospital services revenue
account and the consolidated medical service fund
explaining the specific reason for the transfer. The
48 reports shall be submitted to the joint committee on
government and finance upon their completion. In
submitting a budget to the Legislature for the fiscal year
following the closure of Colin Anderson, the secretary
shall include funding necessary for the continued care of
each resident in the appropriate account and the authority
of the secretary to transfer funds pursuant to this section
shall be void and of no further effect.

(d) All savings accruing to the state as a result of
46 actions taken pursuant to this section shall be deposited in
the medical services trust fund established by section
two-a, article four-a, chapter nine of this code.

(e) The secretary of the department of health and
human resources shall make monthly reports to the joint
committee on government and finance regarding the
placement and monitoring of all residents placed from
Colin Anderson Center pursuant to the provisions of this
section. The report shall include, but not be limited to, the
following information: (1) The types of financing and
start-up funds expended for relocation; (2) the costs
incurred during the month for the placement, relocation
and maintenance of each resident; (3) a description of the
transition process planned for each resident and the results
of any trial visits by the resident; (4) a description of the
facility into which any resident is to be placed; (5)
information regarding the dislocation of any individual presently occupying a bed at an intermediate care facility for the mentally retarded and the ultimate placement of the dislocated individual; (6) information regarding the use of day programming and employment; (7) identification of medical providers by type, prior to and following the relocation of each resident from Colin Anderson Center; (8) serious injury and mortality, other than from natural cause, reports for relocated residents, provided in a manner to protect the confidentiality of the residents; (9) a comparison of the needs assessment and medical and social resources identified for each resident prior to relocation and after relocation; and (10) such other information the secretary deems appropriate or is specifically requested by the joint committee on government and finance.

(f) The department of health and human resources, the bureau of employment programs, the public employees retirement system, the public employees insurance agency, any state agency or local community action agency receiving job training partnership act funds and any other agency of the state involved with benefits or services to the unemployed shall work individually with all employees whose jobs have been terminated by this section in order to recommend benefits, services, training, interagency employment transfer or other employment. The secretary of the department of health and human resources and secretaries of all other state agencies shall use best efforts to employ qualified employees who were employed at the facility immediately prior to its closure: Provided, That notwithstanding any other provision of this code to the contrary, in filling vacancies at other facilities or other state agencies, the secretary and the directors of other agencies shall, for a period of twelve months after the closure, give preference over all but existing employees to qualified employees who were permanently employed at the facility immediately prior to its closure: Provided, however, That qualified persons who were permanently employed at Colin Anderson immediately prior to its closure shall not supersede those employees with recall rights in other state agencies. The secretary of the
department of health and human resources is directed to encourage vendors providing mental health related services for the department to hire employees who were separated from service as a result of the closure of Colin Anderson.

(g) No later than the thirtieth day of November, one thousand nine hundred ninety-five, the department shall report to the joint committee on government and finance regarding the feasibility of establishing one or more permanent intermediate care facilities for the mentally retarded which would house up to thirty residents which is constructed and/or operated by a private contractor. Prior to preparing the report, the department shall solicit requests for proposals from private contractors who are willing to construct and/or operate such a facility within this state. In formulating the feasibility report, the department shall consider the availability of all necessary equipment at the private facility, the cost to the state of maintaining patients in the private facility and the quality of care available at the privately run facility vis-a-vis the care available at a group home in this state. The department shall also consider, when making its report, the preference of a guardian of any resident at Colin Anderson Center who prefers the more restrictive placement of that resident in an intermediate care facility for the mentally retarded. The department may also consider and report on such other factors which are relevant to the feasibility of permanently maintaining, in this state, one or more intermediate care facilities for the mentally retarded which would house up to an aggregate of thirty residents statewide.

(h) In order to assist the department in completing the transfer of residents at Colin Anderson Center to some other appropriate placement by the thirty-first day of December, one thousand nine hundred ninety-six, the health care cost review authority is authorized and required to expedite any certificate of need review of group homes or other facilities that are necessitated as a direct result of the required closure of Colin Anderson Center. For the purposes of this subsection only, the health care cost review authority may decrease any time limitations or
other requirements set forth in section seven, article two-d, chapter sixteen of this code: Provided, That in no event may the health care cost review authority fail to follow any other provision of said article. The secretary of the department of health and human resources shall provide the health care cost review authority with a list of the applications that are to be expedited under this subsection.

(i) The Legislature shall establish a subcommittee of the joint committee on government and finance to monitor the placement and care of residents transferred from Colin Anderson Center as a result of the provisions of this section. The subcommittee shall monitor both state and federal moneys expended as a result of the implementation of this section. The subcommittee, upon approval by the joint committee and when the terms of the visitation are in compliance with any applicable law or regulation regarding confidentiality and privacy of the residents, may visit any facility or placement location.

CHAPTER 64


[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article six-b, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the standards for use of replacement parts in crashed car repairs generally; legislative declaration; definitions; prohibiting the use or requirement of aftermarket crash parts on new cars without written consent; notice to the vehicle owner of the intended use of aftermarket parts; not precluding other remedies; violating article is an unfair method of competition or deceptive act or practice; and penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. CONSUMER PROTECTION — AUTOMOTIVE CRASH PARTS.

§46A-6B-1. Legislative declaration.

The Legislature hereby finds and declares as a matter of public policy that the purposes of this article are to require disclosure to motor vehicle owners of information on certain replacement crash parts for repairs to their motor vehicles and to prevent both motor vehicle body shops and insurance companies from requiring the use of aftermarket crash parts for repair unless the motor vehicle owner consents in writing at the time of the repair.

§46A-6B-2. Definitions.

As used in this article, the following terms shall have the meaning defined:

(a) "Aftermarket crash parts" means crash parts:

(1) Manufactured by a person other than the original manufacturer of the motor vehicle to be repaired; and

(2) For which the original manufacturer of the motor vehicle has not authorized the use of its name or trade-mark by the manufacturer of the crash parts;

(b) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(c) "Crash parts" means exterior or interior sheet metal or fiberglass panels and parts that form the superstructure or body of a motor vehicle, including, but not limited to, fenders, bumpers, quarter panels, door panels, hoods, grills, fire walls, permanent roofs, wheel wells and front and rear lamp display panels;

(d) "Genuine crash parts" means crash parts:

(1) Manufactured by or for the original manufacturer of the motor vehicle to be repaired; and

For all motor vehicles requiring repair by motor vehicle body shops in the year of their manufacture or in the two succeeding years thereafter, motor vehicle body shops must use genuine crash parts sufficient to maintain the manufacturer’s warranty for fit, finish, structural integrity, corrosion resistance, dent resistance and crash performance unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts. No insurance company may require the use of aftermarket crash parts when negotiating repairs of the motor vehicle with any repairer for a period of three years, the year the motor vehicle was manufactured and the two succeeding years thereafter, unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts.

§46A-6B-4. Notices and written statements to be provided to vehicle owner.

(a) Effective the first day of July, one thousand nine hundred ninety-five, before beginning repair work on crash parts, a motor vehicle body shop shall:

(1) Provide a list to the vehicle owner of the replacement crash parts that the body shop intends to use in making repairs;

(2) Specify whether the replacement parts are genuine crash parts; and

(3) Identify the manufacturer of the parts if the re-
(b) If the replacement crash parts to be used by the body shop in the repair work are aftermarket crash parts, the body shop shall include with its estimate the following written statement: "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS THAT ARE NOT MANUFACTURED BY THE ORIGINAL MANUFACTURER OF THE VEHICLE OR BY A MANUFACTURER AUTHORIZED BY THE ORIGINAL MANUFACTURER TO USE ITS NAME OR TRADEMARK. THE USE OF AN AFTERMARKET CRASH PART MAY INVALIDATE ANY REMAINING WARRANTIES OF THE ORIGINAL MANUFACTURER ON THAT CRASH PART."

(c) The notices and statements required under this section shall be made in writing in a clear and conspicuous manner on a separate piece of paper in ten-point capital type.

(d) This section may not be construed to replace or alter any provision under article six or any other provision of this chapter.

§46A-6B-5. Other remedies available.

This article does not:

(a) Prohibit a person from filing an action for damages against a body shop; or

(b) Require a person first to exhaust any administrative remedy he may have.

§46A-6B-6. Violation of article an unfair method of competition or deceptive act or practice; penalty.

A violation of any provision of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement and penalty provisions contained in this chapter.
CHAPTER 65
(Com. Sub. for H. B. 2492—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to controlled substances monitoring and centralized information repository; establishing the controlled substances monitoring act; reporting system requirements; implementing the act; establishing a central repository for information collected; requiring certain information be reported; providing for confidentiality of records; limiting access to records; reimbursing for certain costs associated with upgrading software; retaining records; limiting civil liability; requiring promulgation of rules; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-1. Short title.
§60A-9-2. Establishment of program; purpose.
§60A-9-3. Reporting system requirements; implementation; central repository requirement.
§60A-9-4. Required information.
§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.
§60A-9-6. Promulgation of rules.
§60A-9-7. Criminal penalties.

§60A-9-1. Short title.

1 This article shall be referred to as the controlled sub-
§60A-9-2. Establishment of program; purpose.

There is hereby established a controlled substances monitoring act the purpose of which is to require the recordation and retention in a single repository of information regarding the prescribing, dispensing and consumption of certain controlled substances.

§60A-9-3. Reporting system requirements; implementation; central repository requirement.

(a) On or before the first day of May, one thousand nine hundred ninety-six, the board of pharmacy shall implement a program wherein a central repository is established and maintained which shall contain such information as is required by the provisions of this article regarding Schedule II controlled substances prescriptions written or filled in this state. In implementing this program, the board of pharmacy shall consult with the division of public safety, the licensing boards of practitioners affected by this article and affected practitioners.

(b) The program authorized by subsection (a) of this section shall be designed to minimize inconvenience to patients, prescribing practitioners and pharmacists while effectuating the collection and storage of the required information. The board of pharmacy shall allow reporting of the required information by electronic data transfer where feasible, and where such is infeasible, on reporting forms promulgated by the board of pharmacy. The information required to be submitted by the provisions of this article shall be required to be filed no more frequently than once in a two-month period.

(c) The program authorized by subsection (a) of this section shall also provide for the reimbursement in whole or in part of the costs reasonably and necessarily incurred by pharmacists or pharmacies in modifying software in conformance with the reporting requirements of this arti-
Provided, That the total expenditures for reimbursements shall not exceed twenty-five thousand dollars. The board of pharmacy is hereby authorized to promulgate an emergency legislative rule to effectuate the reimbursement provisions of this section in accordance with the provisions of chapter twenty-nine-a of this code. The board of pharmacy shall provide for the electronic transmission of the information required to be provided by this article by and through the use of a toll-free telephone line.

§60A-9-4. Required information.

Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter, or whenever a prescription for such controlled substances is filled by (i) a pharmacist or pharmacy in this state; (ii) a hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist, licensed by the board of pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the board of pharmacy under this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and DEA controlled substance registration number of the dispensing pharmacy;

(2) The name and address of the person for whom the prescription is written;

(3) The name, address and drug enforcement administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II controlled substance dispensed;

(5) The quantity and dosage of the Schedule II controlled substance dispensed;
26 (6) The date the prescription was filled; and
27 (7) The number of refills, if any, authorized by the
28 prescription.
29
30 The board of pharmacy may prescribe by rule pro-
31 mulgated under this article the form to be used in pre-
32 scribing a Schedule II substance if, in the determination of
33 the board, the administration of the requirements of this
34 section would be facilitated.

§60A-9-5. Confidentiality; limited access to records; period of
retention; no civil liability for required reporting.

1 The information required by this article to be kept by
2 the board of pharmacy shall be confidential and shall be
3 open to inspection only by inspectors and agents of the
4 board of pharmacy, members of the division of public
5 safety expressly authorized by the superintendent to have
6 access to the information, duly authorized agents of li-
7 censing boards of practitioners authorized to prescribe
8 Schedule II controlled substances and persons with an
9 enforceable court order or regulatory agency administra-
10 tive subpoena. The board shall maintain the information
11 required by this article for a period of no less than five
12 years. Notwithstanding any provisions of this code, data
13 obtained under the provisions of this article may be used
14 for compilation of educational, scholarly or statistical
15 purposes as long as the identities of persons or entities
16 remain confidential. No individual or entity required to
17 report under section four of this article shall be subject to
18 a claim for civil damages or other civil relief for the re-
19 porting of information to the board of pharmacy as re-
20 quired under and in accordance with the provisions of this
21 article.

§60A-9-6. Promulgation of rules.

1 The board of pharmacy shall promulgate legislative
2 rules to effectuate the purposes of this article in accor-
dance with the provisions of chapter twenty-nine-a of this code.

§60A-9-7. Criminal penalties.

(a) Any person who is required to submit information to the board of pharmacy pursuant to the provisions of this article who fails to do so as directed by the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars.

(b) Any person who is required to submit information to the board of pharmacy pursuant to the provisions of this article who knowingly and willfully refuses to submit the information required by this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail not more than six months or fined not more than one thousand dollars, or both.

(c) Any person who is required by the provisions of this article to submit information to the board of pharmacy and who knowingly submits thereto information known to that person to be false or fraudulent shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail not more than one year or fined not more than five thousand dollars, or both.

(d) Any person granted access to the information required by the provisions of this article to be maintained by the board of pharmacy, and who shall willfully disclose the information required to be maintained by this article in a manner inconsistent with a legitimate law-enforcement purpose, a legitimate professional regulatory purpose, the terms of a court order or as otherwise expressly authorized by the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months or fined not more than one thousand dollars, or both.
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to copyrighted works; legislative findings; definitions; applicability; contracts between proprietors and copyright owners; publication requirement; defense in civil action; and applicability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COPYRIGHT PROTECTION.

§47-2A-1. Legislative findings.
§47-2A-3. Publication of royalty rates; notice requirement; sanctions for failure to publish.

§47-2A-1. Legislative findings.

The Legislature finds and declares that:

(a) Under the copyright laws of the United States, a copyright owner may enforce the rights thereof against the owners of restaurants, bars, retail establishments, entertainment and sports facilities and similar places of business where members of the public may assemble for the public performance of music and other similar copyrighted works, whether it be in person by a performing artist hired by the proprietor or on radio stations or other electronic media transmitted, received and rebroadcast by the propri-
etor at those places of business;

(b) The rights and responsibilities regarding copyrighted works are set forth in clause eight, section VIII, article I of the constitution of the United States and governed statutorily by Title 17 of the United States code. The Legislature believes it is important that the state of West Virginia assist its business owners who utilize copyrighted materials and the creative artists of this state and elsewhere by ensuring that the holders of copyrights and those who use such materials are equitably treated.


As used in this article:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work, other than a motion picture or other audiovisual work, recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, Public Law 94-553.

(2) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American society of composers, authors and publishers, broadcast music, inc., and SESAC, inc.

(3) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other similar place of business located in this state in which the public may assemble to hear nondramatic musical works or similar copyrighted works be performed, broadcast or otherwise transmitted for the enjoyment of the members of the public there assembled.

(4) "Royalty" or "royalties" means the fees payable to the copyright owner or performing rights society for the public performance of nondramatic musical or other similar work.
§47-2A-3. Publication of royalty rates; notice requirement; sanctions for failure to publish.

(a) Any copyright owner or performing rights society seeking to charge a proprietor or proprietors a royalty or fee for the performance for the public of nondramatic musical or similar works, shall, at least annually, provide notice of the royalty or fee rate and the means of its computation to said proprietor or proprietors.

(b) The notice referred to in subsection (a) of this section shall be satisfied if the copyright owner or performing rights society publishes the required information in a Class II-0 legal advertisement in a qualified newspaper published in this state with a bona fide circulation of forty thousand or more, or if the copyright owner or performing rights society files copies of its license agreements containing the information required under subsection (a) of this section with the secretary of state's office.

(c) Failure of a copyright owner or performing rights society to meet the publication requirements of this section shall constitute a complete defense to any civil action brought by a copyright owner or performing rights society seeking to recover royalties in circumstances where no contract exists between such parties regarding royalties.


This article does not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the federal communications commission, except that if a copyright owner or performing rights society is licensed by the federal communications commission, this article shall apply to contracts between that copyright owner or performing rights society and a proprietor as otherwise provided herein. This article does not apply to any conduct engaged in for the enforcement of section fifty, article three, chapter sixty-one of this code.
AN ACT to amend article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to arrest authority for correctional officers employed by the regional jail authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AUTHORITY.

§31-20-27a. Arrest authority of correctional officers.

(a) Persons employed by the regional jail authority as correctional officers are hereby authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to such correctional officer and to arrest persons already in the custody of the regional jail authority for violations of law occurring in the officer's presence.

(b) Nothing in this section shall be construed as to make a correctional officer employed by the regional jail authority a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code.
AN ACT to amend and reenact sections three and three-cc, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to emergency communications systems; authorizing counties to establish a uniform system for the naming or renaming of roadways; increasing local telephone service fees to implement the uniform system; adopting minimum standards for emergency communications systems; and establishing standards for alarm systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3. Jurisdiction, powers and duties.

§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers, and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for such systems and for roadway conversion systems; authority to contract with the telephone companies for billing of such fee.

§7-1-3. Jurisdiction, powers and duties.

1. The county commissions, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties and the same shall be preserved therein, or otherwise disposed of as now is, or may be prescribed by law. They shall have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curators and the settlement of their accounts and in all matters
relating to apprentices. They shall also, under such regu-
lations as now are or may be prescribed by law, have the
superintendence and administration of the internal police
and fiscal affairs of their counties, including the establish-
ment and regulation of roads, ways, streets, avenues, drives
and the like, and the naming or renaming thereof, in co-
operation with local postal authorities, the division of
highways and the directors of county emergency commu-
ications centers, to assure uniform, nonduplicative con-
version of all rural routes to city-type addressing on a
permanent basis, bridges, public landings, ferries and mills,
with authority to lay and disburse the county levies. They
shall, in all cases of contest, judge of the election, qualifi-
cation and returns of their own members, and of all coun-
ty and district officers, subject to appeal as prescribed by
law. Such tribunals as have been heretofore established by
the Legislature under and by virtue of section thirty-four,
article VIII of the constitution of one thousand eight hun-
dred seventy-two, for police and fiscal purposes, shall,
until otherwise provided by law, remain and continue as at
present constituted in the counties in which they have been
respectively established, and shall be and act as to police
and fiscal matters in lieu of the county commission herein
mentioned, until otherwise provided by law. And until
otherwise provided by law, such clerk as is mentioned in
section twenty-six, article VIII of the constitution, as
amended, shall exercise any powers and discharge any
duties heretofore conferred on, or required of, any court
or tribunal established for judicial purposes under said
section of the constitution of one thousand eight hundred
seventy-two, or the clerk of such court or tribunal, respec-
tively, respecting the recording and preservation of deeds
and other papers presented for record, matters of probate,
the appointment and qualification of personal representa-
tives, guardians, committees, curators and the settlement of
their accounts and in all matters relating to apprentices.

§7-1-3cc. Authority of county commissions to establish en-
hanced emergency telephone systems, technical
and operational standards for emergency communications centers, and standards for education
and training of emergency communications sys-
tems personnel; standards for alarm systems; fee upon consumers of telephone service for such systems and for roadway conversion systems; authority to contract with the telephone companies for billing of such fee.

(a) In addition to possessing the authority to establish an emergency telephone system pursuant to section four, article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia enhanced 911 council concerning the operation of all county emergency communications centers or emergency telephone systems centers in the state, including, but not limited to, recommendations for:

(1) Minimum standards for emergency telephone systems and emergency communications centers;

(2) Minimum standards for equipment used in any center receiving telephone calls of an emergency nature and dispatching emergency service providers in response to that call and which receives 911 moneys or has basic 911 service funded through its county commission; and

(3) Minimum standards for education and training of all personnel in emergency communications centers.

(b) A county commission may impose a fee upon consumers of local exchange service within that county for an enhanced emergency telephone system and associated electronic equipment and for the conversion of all rural routes to city-type addressing, as provided in section three of this article. Such fee shall be utilized for the capital, installation and maintenance costs of the enhanced emergency telephone system and of the conversion to city-type addressing. The county shall reduce such fee when the capital and installation costs have been fully recovered to the level necessary to offset recurring maintenance and dispatcher costs only. No such fee may be
36 used for the costs associated with establishing, equipping, furnishing, operating or maintaining a county answering point.

39 (c) A county commission may contract with the telephone company or companies providing local exchange service within the county for such telephone company or companies to act as the billing agent or agents of the county commission for the billing of the fee imposed pursuant to subsection (b) of this section. The cost for such billing agent services may be included as a recurring maintenance cost of the enhanced emergency telephone system.

48 (d) A county commission of any county with an emergency communications center or emergency telephone system may establish standards for alarm systems, including security, fire and medical alarms.

CHAPTER 69

(Com. Sub. for H. B. 2241—By Delegates Manuel, Ryan, Linch and Collins)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section sixteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-three, article thirteen, chapter eight of said code, all relating to the preparation, publication and disposition of financial statements; and allowing counties and municipalities to report salaries, receipts and expenditures made to deputy sheriffs and members of municipal fire companies and departments and municipal police departments only in the aggregate in those financial statements.
Be it enacted by the Legislature of West Virginia:

That section sixteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-three, article thirteen, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter 7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-16. Preparation, publication and disposition of financial statements.

(a) The county commission of every county, within sixty days after the first session held after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner, and cause to be published a statement revealing: (1) The receipts and expenditures of the county during the previous fiscal year arranged under descriptive headings; (2) the name of each firm, corporation, and person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid; and (3) all debts of the county, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. The statement shall be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county: Provided, That all salaries, receipts and expenditures to all county employees by office or department may be published in the aggregate.

(b) The county commission shall transmit to any resident of the county requesting the same a copy of the
published statement for the fiscal year designated, supplemented by a list of the names of each firm, corporation and person who received less than fifty dollars from any fund during such fiscal year showing the amount paid to each, the purpose for which paid and an itemization of the salaries, receipts and expenditures to all county employees by office or department otherwise published in the aggregate.

(c) If a county commission willfully fails or refuses to perform the duties hereinbefore named, every member of the commission, concurred in such failure or refusal, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than one hundred dollars; and the prosecuting attorney of any county shall, when the failure or refusal shall come to his knowledge, immediately present the evidence thereof to the grand jury if in session, and if not in session, he shall institute proper criminal proceedings before a magistrate against any offender, and cause the failure or refusal to be investigated by the next succeeding grand jury.

(d) Where in subsectons (a) and (b), salaries, receipts and expenditures are published in the aggregate, the county commission shall, upon written request, provide to any resident of the county an itemized accounting of such salaries, receipts and expenditures.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§8-13-23. Preparation, publication and disposition of financial statements.

(a) Every city, within ninety days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and cause to be published a sworn statement revealing: (1) The receipts and expenditures of the city during the previous fiscal
year arranged under descriptive headings; (2) the name of
each person who received more than fifty dollars from
any fund during the previous fiscal year, together with the
amount received and the purpose for which paid; and (3)
all debts of the city, the purpose for which each debt was
contracted, its due date, and to what date the interest there-
on has been paid. Such statement shall be published as a
Class I legal advertisement in compliance with the provi-
sions of article three, chapter fifty-nine of this code, and
the publication area for such publication shall be the city:
Provided, That all salaries, receipts and expenditures to
employees of municipal offices, companies and depart-
ments may be published in the aggregate.

(b) Every city shall transmit to any resident of such
city requesting the same a copy of any published state-
ment for the fiscal year designated, supplemented by a
document listing the names of each person who received
less than fifty dollars from any fund during the fiscal
year and showing the amount paid to each and the pur-
pose for which paid, and an itemization of the salaries,
receipts and expenditures to employees of municipal of-
fices, companies and departments otherwise published in
the aggregate.

(c) Every town or village, within one hundred twenty
days after the beginning of each fiscal year, shall prepare
on a form to be prescribed by the state tax commissioner a
sworn statement revealing: (1) The receipts and expendi-
tures of the town or village during the previous fiscal year
arranged under descriptive headings; (2) the name of
each person who received money from any fund during
the previous fiscal year, together with the amount received
and the purpose for which paid; and (3) all debts of the
town or village, the purpose for which each debt was con-
tracted, its due date, and to what date the interest thereon
has been paid: Provided, That all salaries, receipts and
expenditures to employees of municipal offices, compa-
nies and departments may be published in the aggregate.
(d) Every town or village shall transmit to any resident of the town or village requesting the same a copy of any statement for the fiscal year designated. Any town or village may, if the governing body thereof so elects, also publish the statement as a Class I legal advertisement in compliance with the provisions of said article three, chapter fifty-nine, and in such event, the publication area for such publication shall be the town or village.

(e) The statement required by subsection (a) of this section and the statement required by subsection (c) of this section shall be sworn to by the recorder of the municipality and the mayor thereof and two members of the governing body of the municipality. As soon as practicable following the close of the fiscal year, a copy of any statement herein required shall be filed by the municipality with the state tax commissioner, and the clerk of the county commission of the county, and the clerk of the circuit court of the circuit, in which the municipality or the major portion of the territory thereof is located. If the governing body fail or refuse to perform any of the duties set forth in this section, every member of such governing body and the recorder thereof concurring in such failure or refusal shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars. If any of the provisions of this section are violated, it shall be the duty of the prosecuting attorney of the county in which the municipality or the major portion of the territory thereof is located to immediately present the evidence thereof to the grand jury if in session, and if not in session, he shall cause such violations to be investigated by the next succeeding grand jury.

(f) Where in subsections (a), (b) and (c), salaries, receipts and expenditures are published in the aggregate, the city, town or village shall, upon written request, provide to any resident of such city, town or village, an itemized accounting of such salaries, receipts and expenditures.
AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-b; and to amend and reenact section eleven, article nine-a, chapter eighteen of said code, all relating to the tax increment project financing act; legislative findings and purpose; definitions; tax increment financing procedures; copies of tax increment project financing order provided to assessor, sheriff and director of finance; issuance of obligations for development project costs; terminating tax increment financing; severability; and clarifying the term "assessed value".

Be it enacted by the Legislature of West Virginia:

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

Chapter
  7. County Commissions and Officers.
  18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-1. Short title.
§7-11B-2. Findings and legislative purpose.
§7-11B-3. Definitions.
§7-11B-4. Tax increment financing procedures.
§7-11B-5. Copies of tax increment financing order to assessor, sheriff and director of the division of finance.
§7-11B-6. Issuance of obligations for development project costs.
§7-11B-7. Terminating tax increment financing.
§7-11B-8. Severability.
§7-11B-1. Short title.

This article may be known and cited as "The Tax Increment Financing Act".

§7-11B-2. Findings and legislative purpose.

It is hereby found and declared that capital improvements or facilities in any area which result in the increase in the value of property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area and that each development project developed pursuant to this article, and any leasehold interest therein, are declared to be public property, and shall be exempt from taxation by the state or any county, municipality or to other levying body as long as such development project is owned by the county commission.

§7-11B-3. Definitions.

As used in this article, the term or phrase:

(a) "Agency" means a county or municipal development agency established by section one, article twelve, chapter seven of this code.

(b) "Base assessed value" means the taxable assessed value of real and tangible personal property of a project developer within a development project area as shown upon the landbook and personal property records of the assessor on the first day of July of the year preceding the effective date of the order authorizing the tax increment financing plan.

(c) "Current assessed value" means the annual taxable assessed value of real and tangible personal property of a project developer within a development project area as shown upon the landbook and personal property records of the assessor.

(d) "Development project" means a project undertaken by a county commission in a development project area in accordance with a tax increment financing plan.
(e) "Development project area" means an area to be designated by one or more agencies as a development project area, which may include one or more counties, municipalities or combination thereof.

(f) "Private project" means any project which is subject to ad valorem property taxes in the state undertaken by a project developer in accordance with a tax increment financing plan in a development project area.

(g) "Project" means any facility requiring an investment of capital, including extensions, additions or improvements to existing facilities and including water or waste water facilities, but does not include performance of any governmental service by a county or municipal government or any housing facility to be rented or used as a permanent residence.

(h) "Project developer" means any person or corporation which engages in the development of projects in the state.

(i) "Tax increment" means the amount of tax attributable to the amount by which the current assessed value of a private project in a development project area exceeds the base assessed value, if any, of such private project, less the portion of tax allocated to the state.

(j) "Tax increment obligation" means any bond or note issued by a county commission in accordance with section six of this article.

(k) "Tax increment financing plan" means a plan proposed by either an agency or a project developer requesting that a specific development project be developed in conjunction with a private project of such project developer, which plan is approved by the county commission for the county in which the development project area is located in accordance with the procedures set forth in section four of this article.

(l) "Taxing unit" means a municipal corporation, a county commission or a county board of education.

§7-11B-4. Tax increment financing procedures.
(a) An agency or a project developer may request that a county commission adopt a tax increment financing plan with respect to a development project to be developed in conjunction with a private project of a project developer. Upon receipt of an agency's or project developer's proposed tax increment financing plan, the county commission of any county may adopt a tax increment financing plan by entering an order designating a development project area, approving a tax increment financing plan and providing that ad valorem property taxes on real property owned by the project developer in the development project area shall be assessed, collected and allocated by the taxing units in such area in the following manner for so long as any tax increment financing obligations payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

1. The assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property of the project developer in the development project area.

2. Ad valorem taxes upon real and tangible personal property of the project developer which are attributable to the lower of the base assessed value or current assessed value of real and tangible personal property located in the development project area shall be allocated to the taxing units in the same manner as applicable in the year preceding adoption of the tax increment financing order.

3. The tax increment with respect to the private project of the project developer in the development project area shall be allocated and paid into a separate special fund created for each development project entitled the "Tax Increment Financing Fund" and used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of such development project. Any taxing unit having a private project or any portion thereof within its borders shall allocate its tax increment to such fund, provided, however, that the portion of property taxes allocable to the state
shall be paid over to the state in accordance with law.

(4) In no event shall tax increment financing apply to any levies other than the levies provided for in article eight, chapter eleven of this code.

(b) Before entering an order approving a tax increment financing plan, the county commission in every county in which the development project area is located shall hold a public hearing on the need for tax increment financing in the county. Notice of the public hearing shall be published once each week for three successive weeks immediately preceding the public hearing as a Class III legal advertisement in accordance with section two, article three, chapter fifty-nine of this code. The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, indicate the proposed boundaries of the development project area and the proposed tax increment financing obligations to be issued to finance the development project costs. All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to undertake and finance the project.

(c) Proceeds from tax increment financing obligations issued under this article may be used only to pay for costs of development projects to foster economic development, including infrastructure and other public improvements prerequisite to private improvements, when such development projects would not reasonably be expected to occur without tax increment financing. There shall be a finding by any county commission which issues tax increment financing obligations that a development project is not reasonably expected to occur without the use of tax increment financing.

§7-11B-5. Copies of tax increment financing order to assessor, sheriff and director of the division of finance.

The county commission shall transmit to the assessor, sheriff and the director of the division of finance, department of administration, a copy of the tax increment financing order; a description of all real and tangible
§7-11B-6. Issuance of obligations for development project costs.

(a) A county commission may issue bonds or notes for the purpose of financing the cost of acquisition and construction of one or more development projects in a development project area within the county which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to a project developer. Such bonds or notes shall be issued and the payment of such bonds or notes secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen, except to the extent that the provisions of said section thirteen are modified hereby with respect to the tax increment financing fund, fourteen, fifteen, seventeen, nineteen and twenty, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds or notes shall be payable out of the tax increment financing fund attributable to the related private project: Provided, however, That in the event the moneys on deposit in such tax increment financing fund are not sufficient to fully pay the debt service on such bonds or notes, then such bonds or notes shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition in connection with the development project for which the bonds or notes are issued, or any other revenue derived from such project.

(b) No bonds or notes shall be issued under this article until all questions connected with the same shall have been first submitted to a vote of the qualified voters of the county for which the bonds or notes are to be issued, and shall have received three fifths of all the votes cast for and against the same: Provided, That if a development project area includes more than one county, the qualified voters in both counties must adopt the measure prior to any notes
or bonds being issued. The county commission referred to in this section may, by order entered of record, direct that an election be held for the purpose of submitting to the voters of the county all questions connected with the issuing of bonds or notes. Such order shall state:

(1) The reasons for issuing the bonds or notes;

(2) The purpose or purposes for which the proceeds of bonds or notes are to be expended;

(3) The amount of the proposed bond or note issue;

(4) The date of the election;

(5) If a special election, the names of commissioners for holding same; and

(6) That the tax increment attributable to the related private project shall be used to pay the principal and interest on such bonds or notes and will not be available for other purposes until such bonds or notes are paid in full.

Any other provision which does not violate any provision of law, or transgress any principle of public policy, may be incorporated in the order. The cost of such election, if any, shall be reimbursed by the project developer of the related private project: Provided, That no election is required in a municipality in which a project development area is located if the municipality is within a county holding an election. The order authorizing the issuance of tax increment obligations shall pledge all or such part of the funds deposited in the tax increment financing fund as are necessary for the payment of the debt service on such tax increment obligations.

(c) Any revenues in the tax increment financing fund which are not used for the payment of the principal of or interest on tax increment financing obligations issued shall be deemed "surplus funds" and at the end of each tax year shall be paid into the general funds of the taxing units in proportion to their respective contributions to the fund.

§7-11B-7. Terminating tax increment financing.
1 (a) Upon the retirement of all tax increment financing
2 obligations payable from the tax increment financing
3 fund, the county commission shall enter an order to
4 dissolve the tax increment financing fund and to terminate
5 the existence of a development project area. When the
6 fund is dissolved, any and all revenue remaining in the
7 fund after payment of all tax increment obligations
8 payable therefrom shall be paid into the general fund of
9 the taxing units in proportion to their respective
10 contributions to the fund.

11 (b) Upon dissolving the tax increment financing fund,
12 real and tangible personal property shall be assessed and
13 taxes collected and allocated in the same manner as
14 applicable in the year preceding the adoption of the tax
15 increment financing order.

§7-11B-8. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held
3 unconstitutional or otherwise invalid, such
4 unconstitutionality or invalidity shall not affect, impair or
5 invalidate other provisions or applications of this article
6 and, to this end, the provisions of this article are declared
7 to be severable.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-11. Computation of local share; appraisal and
1 assessment of property.

2 (a) For the fiscal year beginning on the first day of
3 July, one thousand nine hundred ninety-three, and
4 thereafter, on the basis of each county's certificates of
5 valuation as to all classes of property as determined and
6 published by the assessors pursuant to section six, article
7 three, chapter eleven of this code for the next ensuing
8 fiscal year in reliance upon the assessed values annually
9 developed by each county assessor pursuant to the
10 provisions of articles one-c and three, chapter eleven of
11 this code, the state board shall for each county compute
12 by application of the levies for general current expense
purposes, as defined in section two of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows:

(1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five percent of public utility taxes computed as provided above, and this total shall be further reduced by the amount due each county assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code, and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share that may be required prior to the report to the Legislature by the tax commissioner, the state board of education shall use the most recent projections or estimations that may be available from the tax department for such purpose.

(b) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of chapter eleven of this code and this section, and the tax
commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make such corrections shall constitute ground for removal from office.

(c) For the purposes of any computation made in accordance with the provisions of this section, in any taxing unit in which tax increment financing is in effect pursuant to the provisions of article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base assessed value as defined in section two of said article.

CHAPTER 71

(S. B. 432—By Senators Wooton, Scott, Anderson, Dittmar, Ross, Buckalew and Yoder)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirty-eight and thirty-nine, all relating to accounting procedures for county officers; requiring all county officers, including officials of any agency or entity created by the county commission, to deposit funds into bank accounts; authorizing such officers to determine whether to utilize interest bearing accounts; requiring the deposit of funds on the first available business day where the amount of funds is not less than five hundred dollars; excepting county assessors from deposits on the first available business day; interest to be deposited on at least a quarterly basis; county officers to issue duplicate receipts on forms approved by the chief inspector; chief inspector to prescribe minimum requirements of such forms; and providing for the removal of county officers who fail to comply with the prescribed accounting procedures."

Be it enacted by the Legislature of West Virginia:
That section thirty-seven, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections thirty-eight and thirty-nine, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-37. Deposits by county officers in noninterest bearing or interest bearing accounts; payment to county general fund; annual report.

§59-1-38. County officers to issue receipts of collections.


§59-1-37. Deposits by county officers in noninterest bearing or interest bearing accounts; payment to county general fund; annual report.

Except as to any tax receipts, which shall be deposited in accordance with section four, article six, chapter seven of this code, when any fee, cost, percentage, penalty, commission, allowance, bond, deposit, surety or other cash payment or sum is to be held by the sheriff, the prosecuting attorney, the county commission, an official of an agency or entity created by the county commission, the clerk of the county commission, the clerk of the circuit court or the assessor of any county under any provision of law or proper order of the circuit court, said officer shall deposit the same in an account or accounts which may, at his or her sole discretion, be an interest bearing account or accounts in secure and properly insured banks. All money collected, including cash and checks, shall be deposited intact on the first available business day: Provided, That the requirement for deposits on the first available business day shall not apply to the county assessor, nor shall it apply to any county officer if the amount to be deposited is less than five hundred dollars. Any interest earned on such accounts, and not otherwise included in any refund, return or reimbursement of said fees, costs, penalties, commissions, allowances, bonds, deposits, sureties or other cash payments or sums, as directed by law or proper order of the circuit court, shall be paid into the county's general fund on a regular basis, but in no event less often than quarterly.
All county officers shall report to the county commission by the first day of July each year concerning his or her election to use interest bearing accounts, amounts currently on deposit and interest actually earned on such accounts.

§59-1-38. County officers to issue receipts of collections.

Any county officer, as described in section thirty-seven of this article, who receives a fee, cost, percentage, penalty, commission, allowance, bond, deposit, surety or other cash payment or sum shall issue a receipt to the payor thereof, in duplicate, on a form approved by the chief inspector, in accordance with the provisions of article nine, chapter six of this code. The county officer shall issue the original of such receipt to the payor and shall retain the copy. The chief inspector shall prescribe the minimum information to be included on such receipt forms.


If any county officer shall fail to comply with the provisions of this article, the chief inspector may, in addition to any other remedies provided by law, seek the removal from office of such county officer, in accordance with provisions of section seven, article six, chapter six of this code.

CHAPTER 72

(Com. Sub. for H. B. 2586—By Delegates Beane, Gallagher, Manuel and Johnson)

[Passed March 10, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section ten, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact
sections four and five, article five-a of said chapter, all relating to revising the procedures for collection against judgment debtors; providing that service of a summons against a suggestee and the return thereof is governed by the rules of civil procedure for trial courts of record; prescribing the method of service of notice of execution on a judgment debtor and of a suggestee execution on a suggestee; increasing the fee which may be charged for serving a notice on a judgment debtor; allowing service of a suggestee execution on a suggestee by certified mail or by the sheriff; permitting a clerk to issue a suggestion in the county where the judgment is entered and to mail it to the sheriff of another county for service; and making technical and grammatical corrections.

Be it enacted by the Legislature of West Virginia:

That section ten, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four and five, article five-a of said chapter be amended and reenacted, all to read as follows:

Article

5. Proceedings in Aid of Execution; Interrogatories; Suggestion.
5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

§38-5-10. Suggestion on judgment; summons against person suggested.

(a) Upon a suggestion by the judgment creditor that a person is indebted or liable to the judgment debtor or has in the person's possession or control personal property belonging to the judgment debtor, which debt or liability could be enforced, when due, or which property could be recovered, when it became returnable, by the judgment debtor in a court of law, and which debt or liability or
property is subject to the judgment creditor's writ of fieri facias, a summons against such person may be issued out of the office of the clerk of the circuit court or of the magistrate court of the county in which the judgment creditor obtained the writ of fieri facias, requiring such person to answer the suggestion in writing and under oath. Service of a summons issued under this section may be made as provided by subdivision (1), subsection (d) of rule four of the rules of civil procedure for trial courts of record. The return day for a summons issued under this section is governed by the provisions of rule sixty-nine of the rules of civil procedure for trial courts of record.

(b) The suggestion by the judgment creditor provided for herein shall include, to the extent possible, the present address and social security number of the judgment debtor, which information shall be made available to the person suggested for purposes of identifying the judgment debtor and facilitating a proper answer to the suggestion.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

§38-5A-4. Notice to judgment debtor; time for service on suggestee; fee.

A certified copy of an execution issued under this article against salary or wages shall be served upon the judgment debtor. Such service shall be made by the court or the clerk of the court who issued the execution by mailing the copy to the judgment debtor or his agent authorized to accept service of process by certified mail, return receipt requested. The day and hour of such mailing shall be clearly noted on the face of the original execution and for collection shall not make service upon the suggestee
§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for failure or refusal to pay; payments to be made every ninety days.

(a) Service of a suggestee execution against salary or wages may be made by the clerk of the circuit court or the magistrate court clerk, as the case may be, by sending a copy of the suggestee execution to the suggestee by certified mail, return receipt requested, with delivery restricted to the addressee. If the registered mail is unclaimed, or otherwise is not accepted or is refused by the suggestee, then service of the suggestee execution shall be made in the same manner as a summons commencing an action is served, in accordance with the rules of civil procedure for trial courts of record: Provided, That if the suggestee is located in a county other than the county where the suggestee execution issues, the clerk may mail the suggestee execution by first class mail to the sheriff of the other county for such service.

(b) If the suggestee served with the execution is indebted or will in the future become indebted to the judgment debtor for salary or wages, then during the time the execution remains a lien on any indebtedness for salary and wages, the suggestee is required to pay over to the officer serving the same or to the judgment creditor the percentage of the indebtedness required by section three of this article, until the execution is wholly satisfied. The suggestee shall deduct the amounts paid from the amounts payable to the judgment debtor as salary or wages, and the deduction of these amounts is a bar to any further action by the judgment creditor against the wages or salary of the judgment debtor.

(c) Once every ninety days during the life of such
execution and any renewal execution, the suggestee upon whom the execution or any renewal execution is served shall pay over to the officer who served the same or to the judgment creditor the full amount of money held or retained pursuant to such execution or renewal execution during the preceding ninety days.

If the suggestee upon whom the execution is served fails or refuses to pay over to the officer serving the execution or to the judgment creditor the required percentage of the indebtedness, as aforesaid, he or she shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied in satisfaction of the execution.

CHAPTER 73

(S. B. 260—By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Miller, Oliverio, Ross, Schoonover, Scott, Wagner, White, Wiedebusch and Yoder)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections six, twelve, thirteen, fourteen and twenty-eight, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirteen, article one, chapter fifty-nine of said code; and to amend and reenact section fourteen, article two of said chapter, all relating to the activities of the clerk of the supreme court of appeals; the time required for the clerk of the supreme court to return the record to the circuit clerk; the service of an order granting an appeal rather than a summons in actions when an appeal is granted by the supreme court; the endorsement by the clerk of the supreme court on an order or supersedeas pending the posting of a bond; the requirement of an appeal bond in cases before the supreme court; the certification of a mandate by the clerk of the supreme court; fees charged by the supreme court; and the taxation of statutory fees.

Be it enacted by the Legislature of West Virginia:
That sections six, twelve, thirteen, fourteen and twenty-eight, article five, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirteen, article one, chapter fifty-nine of said code be amended and reenacted; and that section fourteen, article two of said chapter be amended and reenacted, all to read as follows:

Chapter

58. Appeal and Error.

59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-6. Filing of petition; transmission of petition and record; deposit or bond; return of record; transcript; charges.

§58-5-12. Order granting appeal or supersedeas; service.

§58-5-13. Indorsement of writs as to bond.


§58-5-28. Certification of mandate to lower court; stay of mandate pending rehearing.

§58-5-6. Filing of petition; transmission of petition and record; deposit or bond; return of record; transcript; charges.

Such petition, together with a copy thereof, shall be first filed in the office of the clerk of the circuit court wherein the judgment, decree or order complained of was entered, and such clerk, retaining in his office the copy of such petition, shall, as soon as may be, transmit to the clerk of the supreme court of appeals, or such judge of said court as the petitioner shall designate, if said court be not in session, by United States registered mail or valued express, the original, together with the record of so much of the case wherein the judgment, decree or order is, as will enable the court or judge to whom the petition is to be presented properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it. The clerk of the circuit court, before transmitting the record as aforesaid, shall
arrange the papers, as nearly as may be, in the order of the filing and entry thereof, numbering the pages, make and certify copies of all orders entered in the case, copies of which are not in the files, and prepare and annex to the record a table of contents or index. Before such petition and record are transmitted as aforesaid, the petitioner shall deposit with the clerk of the circuit court a sufficient sum of money to defray the expenses of the preparation and indexing of the record, fees for filing the petition and making and certifying necessary copies of orders, costs of transmission and return of the record, and the making of a transcript of the record, or file with the clerk a bond conditioned to pay the same, in a penalty and with sureties to be fixed and approved by such clerk, who shall indorse on the petition that such deposit has been made or such bond filed. If the appeal or writ of error prayed for be granted, the clerk of the supreme court of appeals shall return the record to the clerk of the circuit court, by mail or express, as aforesaid; and such circuit court clerk shall forthwith make a transcript of so much of the record as is required for the purposes of the appeal or writ of error and transmit the same to the clerk of the supreme court of appeals. Insofar as provision therefor is not made by existing law, the compensation of the clerk of the circuit court for services rendered hereunder shall be fixed by the judge of such court. If the prayer of the petition be not granted, the petition and record shall be returned as aforesaid, and the clerk of the circuit court shall repay to the petitioner, or his attorney, the money deposited with him, if any, less his fees and expenses.

§58-5-12. Order granting appeal or supersedeas; service.

The clerk of the appellate court shall thereupon send a copy of the order granting the appeal to the parties interested, other than the petitioners, that they may be heard, and also send a copy of any supersedeas which may be awarded, which order or supersedeas may be served upon the party in person or his attorneys in the court from which the appeal or writ of error is taken.

§58-5-13. Indorsements on writs as to bond.

The clerk of the supreme court of appeals shall in-
dorse on the order or supersedeas that it is not to be effec-
tual until the bond required by section fourteen of this
article, with good personal security, be given before the
clerk of the court below, who shall take such bond and
indorse on the order that it has been given, and the names
of the sureties therein, and forward to the clerk of the
supreme court of appeals a certified copy of such bond.


When required by the court, an appeal, writ of error or
writ of supersedeas shall not take effect until bond is given
by the appellants or petitioners, or one of them, or some
other person, in a penalty to be fixed by the court or
judge by or in which the appeal, writ of error or superse­
deas is allowed or entered with condition: If a supersedeas
be awarded, to abide by and perform the judgment, decree
or order of affirmance, and to pay to the opposite party,
and to any person injured all such costs and damages as
they, or either of them, may incur or sustain by reason of
said appeal, in case such judgment, decree or order, or
such part, be affirmed, or the appeal, writ of error or su­
persedeas be dismissed, and also, to pay all damages, costs
and fees, which may be awarded against or incurred by the
appellant or petitioners; and if it be an appeal from an
order or decree dissolving an injunction, or dismissing a
bill of injunction, with a further condition, to indemnify
and save harmless the surety in the injunction bond
against loss or damage in consequence of his suretyship;
and with condition when no supersedeas is awarded to pay
such specific damages, and such costs and fees as may be
awarded or incurred: Provided, That whenever a writ of
error, appeal or supersedeas shall be awarded in any action
or suit wherein a judgment or decree for the payment of
money has been entered against an insured in an action
which is defended by an insurance corporation, or other
insurer, on behalf of the insured under a policy of insur-
ance, the limit of liability of which is less than the amount
of said judgment, execution on the judgment to the extent
of the policy coverage shall be stayed until final determi-
nation of such appeal, writ of error or supersedeas, and no
execution shall be issued, or action brought, maintained or
continued against such insured, insurance corporation, or
other insurer, for the amount of such judgment or decree so stayed, by either the injured party, the insured, or the legal representative, heir or assigns of any of them, during the pendency of such proceeding, provided such insurance corporation, or other insurer, shall:

(1) File with the clerk of the court in which the judgment was entered, a sworn statement of one of its officers, describing the nature of the policy and the amount of coverage thereof;

(2) Give or cause to be given by the judgment debtor or some other person for him a bond in a penalty to be fixed by the court or judge by or in which the appeal, writ of error or supersedeas is allowed or entered, not to exceed the amount of such insurance coverage set out in the sworn statement above required, with condition to pay the amount of such coverage upon said judgment if the judgment or decree or such part be affirmed or the appeal, writ of error or supersedeas be dismissed, plus interest on said sum and cost;

(3) Serve a copy of such sworn statement and bond upon the judgment creditor or his attorney;

(4) Deliver or mail to the insured at the latest address of the insured appealing upon the records of such insurance corporation, or other insurer, written notice that execution on such judgment to the extent that it is not covered by such insurance is not stayed in respect to the insured: Provided, That the filing of a bond by the insured or someone for him, conditioned upon the payment of the balance of the judgment or decree and interest not stayed by the insured as aforesaid if the judgment or decree be affirmed or the appeal, writ of error or supersedeas be dismissed, shall stay execution on the balance of said judgment not covered by such insurance: Provided, however, That the filing of such statement and bond hereunder by an insurance corporation or other insurer shall not thereby make such insurance corporation or other insurer a party to such action, either in the trial court or in the appellate court.
§58-5-28. Certification of mandate to lower court; stay of mandate pending rehearing.

1 The clerk of the supreme court of appeals shall certify and mail or otherwise transmit its mandate to the clerk of the court below thirty days after entry of judgment. Unless otherwise ordered by the supreme court of appeals, judgment is not effective until issuance of the mandate. A certified copy of the judgment and a copy of the opinion of the supreme court of appeals, if any, and any direction as to costs, constitute the mandate. The timely filing of a petition for rehearing shall stay the mandate until disposition of the petition unless otherwise ordered by the supreme court of appeals. When the petition for rehearing is denied, the mandate shall issue seven days after entry of the order denying the petition: Provided, That the time for performance of any act under this section may be shortened or enlarged by order of the supreme court of appeals.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

Article
1. Fees and Allowances.
2. Costs Generally.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-13. Fees to be charged by clerk of supreme court of appeals.

1 The clerk of the supreme court of appeals shall charge the following fees to be paid by the parties for whom the services are rendered:

2 For all copies of petitions, records, orders, opinions or other papers, per page .......................... 25

3 For each certificate under seal of the court ........... 5.00

4 For license to practice law, suitable for framing .... 25.00

5 For any other work or services not herein enumerated, the clerk shall charge the fees prescribed for similar services by clerks of circuit courts.
ARTICLE 2. COSTS GENERALLY.


He shall include in the costs to the prevailing party:

(a) In any civil action, ten dollars;

(b) In civil actions in any court of limited jurisdiction, the same fees as are allowed in a circuit court for like actions.

CHAPTER 74

(H. B. 2580—By Delegates Rowe and Trump)

[Passed March 8, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating to the distribution of moneys received as a result of the commission of a crime; and providing treble civil damages for the violation thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. DISTRIBUTION OF CRIME PROFITS.


§14-2B-2. Legislative findings; purpose and intent.


§14-2B-4. Notice of contract with defendant; payment over of crime profits to prosecutor; placing of crime profits into escrow account.

§14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.
§14-2B-6. Authority of prosecutor to make payments from escrow account for the necessary expenses of protection of moneys paid into the escrow account; payment of moneys to defendant when charges dismissed prior to filing of interpleader action.

§14-2B-7. Prosecutor to distribute funds as ordered by court; court to order distribution of funds.

§14-2B-8. Priorities of claims to moneys in escrow account.


§14-2B-11. Failure of defendant or person, firm, corporation, partnership, association or other legal entity contracting with defendant to provide notice to prosecutor or pay over moneys to prosecutor as required by this article; civil penalty of treble damages.


This article shall be known and may be cited as the "West Virginia Crime Profits Act".

§14-2B-2. Legislative findings; purpose and intent.

The Legislature finds and declares that it is a violation of the public policy of this state to permit a person who commits a crime to thereafter gain a monetary profit from the commission of that crime. Consequently, the Legislature finds that when a person convicted of a crime later profits as a result of the commission of that crime, such profits should be used to compensate those crime victims who were damaged as a result of the commission of the crime, as well as the taxpayers who paid for the prosecution or incarceration of the defendant, or both.


As used in this article:

(a) "Crime" means any offense designated by the provisions of this code as a felony or misdemeanor.

(b) "Crime profits" means:

(1) Any property obtained through or income generated from the commission of a crime of which the defendant was convicted;

(2) Any property obtained by or income generated from the sale, conversion or exchange of proceeds of a
(3) Any property which the defendant obtained or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

(c) "Crime victim" means the victim of the offense or the personal representative of a crime victim.

(d) "Defendant" means a person charged with a crime or convicted of a crime after trial, by entry of a plea of guilty or by entry of a plea of nolo contendere in any court in this state. The term "defendant" shall also include any person found by a court of record to be not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction.

(e) "Court" means the circuit court of the county wherein the defendant is charged with or was prosecuted for the commission of the crime.

(f) "Personal representative" means an attorney-in-fact or legal guardian of a living person or the executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status of the estate of a deceased person.

(g) "Prosecutor" means the prosecuting attorney of the county in which the defendant is charged with or was prosecuted for the commission of the crime.

(h) "Contract" means any agreement, whether reduced to writing or not, in which any person, firm, corporation, partnership, association or other legal entity contracts for, pays or agrees to pay, any crime profits to a defendant or to a defendant's personal representative.
§14-2B-4. Notice of contract with defendant; payment over of crime profits to prosecutor; placing of crime profits into escrow account.

(a) Every person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays or agrees to pay, any crime profits, as defined in section three of this article, to a defendant shall submit a copy of such contract to the prosecutor and pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant. The prosecutor shall deposit such moneys in an interest bearing escrow account and shall thereafter disburse such moneys only in accordance with the provisions of this article.

(b) Every defendant who contracts for, receives or agrees to receive, any crime profits, as defined in section three of this article, from any person, firm, corporation, partnership, association or other legal entity, shall submit a copy of such contract to the prosecutor and pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant. The prosecutor shall deposit such moneys in an interest bearing escrow account and shall thereafter disburse such moneys only in accordance with the provisions of this article.

§14-2B-5. Prosecutor to commence action to distribute profits from crime; joinder of parties; statute of limitations; issues to be determined in action.

(a) The prosecutor shall, within six months of the receipt of any contract or moneys, bring an action in interpleader in accordance with the West Virginia rules of civil procedure for trial courts of record to determine the distribution of any crime profits which have been received or may be received in the future by the defendant. The prosecutor shall join the defendant, any instrumentality of the state or political subdivision thereof which has expended or likely will expend taxpayer funds as a result of the commission of the crime, including, without limitation, funds to prosecute or incarcerate the defendant, all known crime victims, the crime victim's compensation
13 fund and any person, firm, corporation, partnership, association or other legal entity which has paid, or agreed to pay, any crime profits to the defendant, as parties to the action.

17 (b) Notwithstanding any other provision of this code with respect to the timely bringing of an action, the prosecutor shall have the right to bring a civil action authorized by this section within three years after the prosecutor first receives notice pursuant to section four of this article. If, but for the provisions of this section, any party would be barred from bringing an action due to the expiration of the applicable statute of limitations, said party may not recover damages against the defendant in excess of the value of the crime profits allotted to said party by the court in accordance with the provisions of this article.

29 (c) A crime victim, the defendant or any instrumentality of the state or political subdivision thereof which has expended or will likely expend taxpayer funds as the result of the commission of the crime may bring a writ of mandamus to compel the prosecutor to bring an interpleader action as authorized by this section. Any applicable statute of limitations shall be tolled during the pendency of such writ.

37 (d) Any party to the interpleader action may demand a trial by jury on the issues of entitlement to and the amount of damages arising from any claim of any instrumentality of the state or political subdivision thereof or of any crime victim, except that such claims that have already been reduced to judgment in any other civil action by a court of competent jurisdiction shall be conclusively presumed to have been established: Provided, That no jury trial shall be permitted on subrogation claims of the crime victim's compensation fund.

47 (e) The court may, upon motion of any party or upon its own motion, consolidate with the interpleader action any other pending civil actions by crime victims against the defendant when the basis for such other action is the same crime which has or may result in the generating of crime profits.
§14-2B-6. Authority of prosecutor to make payments from escrow account for the necessary expenses of protection of moneys paid into the escrow account; payment of moneys to defendant when charges dismissed prior to filing of interpleader action.

(a) The prosecutor may in his or her discretion, and without court approval, make such payments from the escrow account to such parties as may be necessary to preserve or maintain the moneys paid into the escrow account, provided the prosecutor finds that such payments would be in the best interests of any affected instrumentality of the state or political subdivision thereof or of the crime victims and would not be contrary to public policy.

(b) If, at any time prior to the filing of an interpleader action as authorized by this article, the charges against the defendant are dismissed or the defendant is acquitted of such charges in circumstances other than a finding by a court of record that the defendant is not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction, the prosecutor shall immediately pay over to such defendant all moneys, including accrued interest, in the escrow account established on behalf of such defendant.

§14-2B-7. Prosecutor to distribute funds as ordered by court; court to order distribution of funds.

(a) Except as otherwise provided in this article, the prosecutor shall distribute funds which are or may later be deposited in the escrow account only in accordance with this section.

(b) The court or jury before which the interpleader action authorized by this article is pending shall decide all claims, except such claims that have already been reduced to judgment by a court of competent jurisdiction which shall be conclusively presumed to have been established, to such crime profits as have already been or may later be due and owing to the defendant as a result of the contract and shall thereafter order the prosecutor to distribute such moneys as are in the escrow account, or as may be later
paid to the defendant pursuant to the contract, in accordance with the provisions of this section. If no escrow account has been established at the time of the court's entry of judgment, the court shall provide in its final order for the distribution of any future crime profits and shall provide that any such funds be paid directly to such persons and in such proportions as the court may direct. If an escrow account is established, the court shall distribute the moneys in the escrow account and shall provide that any future funds, if any, be paid directly to such persons and in such proportions as the court may direct. If an escrow account is established and the court also finds that it is likely that future crime profits will accrue to the defendant, the court in its discretion may provide for the continuance of the escrow account and for such further hearings as may be necessary or may provide that any future funds be paid directly to such persons and in such proportions as the court may direct.

(c) Upon the dismissal of charges against the defendant or upon the acquittal of the defendant in circumstances other than a finding by a court of record that the defendant is not criminally responsible for the commission of a crime by reason of mental illness, mental retardation or addiction, the court shall order the prosecutor to immediately pay over to such defendant the moneys, including accrued interest, in the escrow account established on behalf of such defendant.

(d) Upon a showing by any defendant that three years have elapsed since the prosecutor first received notice pursuant to section four of this article and that no actions are pending against such defendant pursuant to this article, the court shall order the prosecutor to immediately pay over to such defendant or his legal representative the moneys, including accrued interest, in the escrow account.

(e) Upon a showing by the defendant that moneys in the escrow account shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such defendant, including the appeals process, the court shall order the prosecutor to pay over such moneys as are reasonable and necessary to
pay for such legal representation: Provided, That if the defendant at any time during such criminal proceedings has been represented by court-appointed counsel, the court shall first order that public defender services be reimbursed for any funds expended on behalf of the defendant.

§14-2B-8. Priorities of claims to moneys in escrow account.

(a) The court, in ordering relief pursuant to this article, shall distribute the moneys in the escrow account and moneys which may later be payable under the contract, in the following priority:

(1) Payments authorized by the court for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against such defendant;

(2) Reasonable attorneys fees and expenses incurred by the prosecutor in bringing the interpleader action;

(3) Civil judgments of the victims of the crime, judgments awarded to any crime victim pursuant to the interpleader action authorized by this article and subrogation claims of the crime victim's compensation fund;

(4) Unpaid criminal fines owed to the state by the defendant as a result of the defendant's conviction for any crime;

(5) Expenses incurred by any other instrumentality of the state or political subdivision thereof as a result of the commission of the crime, including, without limitation, any county or regional jail or penitentiary in which the defendant was incarcerated: Provided, That for the purposes of this subdivision, the term "instrumentality of the state or political subdivision thereof" shall not include the crime victim's compensation fund; and

(6) The defendant.

(b) No payment shall be made out of the escrow account where such payment would be in derogation of claims, either presented or pending, entitled to a higher priority under this subdivision. If insufficient moneys
exist to pay all claims entitled to equal priority, the court shall equitably allot such moneys as are available among the several claimants. Notwithstanding any provision in this article to the contrary, when the court considers other civil judgments rendered against the defendant for any crime victim for the purposes of equitably allotting moneys, the court shall review such judgment and shall consider for allotment only that portion of the civil judgment which relates to the crime which produced the crime profits.

(c) Moneys in the escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this subdivision.


Any action taken by any defendant, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this article shall be null and void as against the public policy of this state.


A person who commits a crime in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article. A person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays or agrees to pay any profit to a defendant who commits a crime in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article. For purposes of this section, service of process may be perfected in accordance with the West Virginia rules of civil procedure for trial courts of record.

§14-2B-11. Failure of defendant or person, firm, corporation, partnership, association or other legal entity contracting with defendant to provide notice to prosecutor or pay over moneys to prosecutor as required by this article; civil penalty of treble damages.
Notwithstanding any provision of this article to the contrary, if any defendant or any person, firm, corporation, partnership, association or other legal entity which knowingly contracts for, pays, or agrees to pay to a defendant, any crime profits, as defined in section one of this article, fails to submit a copy of such contract to the prosecutor of the county in which the defendant is charged with or is being prosecuted or was prosecuted for the commission of the crime, or fails to pay over to the prosecutor any moneys which would otherwise, by the terms of such contract, be owing to the defendant, such defendant or such person, firm, corporation, partnership, association or other legal entity shall be civilly liable in the interpleader action authorized by this article for treble damages to each party in whose favor judgment is entered.

CHAPTER 75

(Com. Sub. for S. B. 442—By Senators Walker, Helmick, Anderson, Bailey, Plymale and Roess)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-seven-a, relating to required reporting of burns.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

(a) Any health care provider who examines or renders medical treatment to a person suffering from an injury caused by a burn resulting from fire or a chemical, where the circumstances under which the examination is made or treatment is rendered, or where the condition of the injury gives the health care provider reasonable cause to suspect that the injury occurred during the commission, or attempted commission, of an arson as defined in article three of this chapter, shall report the same to the office of the state fire marshal. A written report shall be made by the provider, or by an employee or agent of the provider at the direction of the provider, to the office of the state fire marshal within forty-eight hours after the initial report: Provided, That where two or more health care providers participate in the examination or treatment of such injury, the obligation to report imposed by this section applies only to the attending physician or, if none, to the person primarily responsible for providing medical treatment for the injury.

(b) Any health care provider who in good faith makes or causes to be made a report pursuant to subsection (a) of this section is immune from any civil liability which may otherwise arise as the result of making such report.

(c) Within available funding and as may be determined necessary by the state fire marshal, the state fire marshal shall conduct educational programs for persons required to report injuries under this section.

CHAPTER 76

(S. B. 574—By Senators Wooton, Bowman, Dittmar, Buckalew, White, Wagner, Anderson, Deem, Scott, Ross, Miller and Oliverio)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-d, relating to fraudulent schemes; cumulation of amounts where common scheme exists; and penalties.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-24d. Fraudulent schemes; cumulation of amounts where common scheme exists; penalties.

1 (a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof.

5 (b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

11 (c) A violation of law may be prosecuted under this section notwithstanding any other provision of this code.

CHAPTER 77

(S. B. 261—By Senators Wooton, Oliverio, Bowman, Buckalew, Scott, White, Anderson and Dittmar)

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; and definition.

Be it enacted by the Legislature of West Virginia:

That section fifty, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-50. Unauthorized transferral of recorded sounds; sale and possession; penalties; civil action; definition.

(a) No person shall knowingly and willfully for commercial advantage or private financial gain transfer by electronic or mechanical means or cause to be transferred by electronic or mechanical means with intent to sell for profit the recorded sounds contained on any phonograph record, disc, tape, film or other device without the permission of the owner of such recorded sounds or his authorized representative, or to knowingly, or with reasonable grounds to know, sell or possess with intent to sell any phonograph record, disc, tape, film or other device containing such unauthorized transferred recorded sounds.

This paragraph applies to sound recordings initially fixed prior to the fifteenth day of February, one thousand nine hundred seventy-two.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, cause the sale, resale, rental or transportation of or possess for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain record or fix or cause to be recorded or fixed on any type of recording device a live performance with the knowledge that the live performance is being recorded or fixed without the consent of the owner.

No person shall knowingly and willfully for commercial advantage or private financial gain offer for sale, sell, rent, transport, or cause the sale, resale, rental or transportation of or possess for one or more of these purposes, any phonograph record, disc, tape, film, video tape, video cassette or other device which fails to clearly and conspicuously disclose the actual name and address of the manufacturer thereof.
(b) Any owner of such recorded sounds, images or any audio-visual combination and any person lawfully transferring such sounds by agreement with such owner shall have a cause of action for the unauthorized transfer of such sounds and shall be entitled to treble damages resulting therefrom.

(c) (1) For the purpose of this section, the term "owner" means the person vested with the rights to and ownership of the original fixation of sounds, images or any audio-visual combination embodied in the master phonograph record, master disc, master tape, master film or other device used for transferring sounds or images on phonograph records, discs, tapes, films, video tapes or video cassettes or other similar articles upon which sounds, images or any audio-visual combination are recorded and from which the transferred recorded sounds and/or images are directly derived.

In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix the sounds, images or any audio-visual combination of a live performance. A person who is authorized to maintain custody and control over business records that reflect whether or not the owner or owners of a live performance consented to having a live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent.

(2) For the purposes of this section, the term "manufacturer" means the person who transfers, authorizes or causes the transfer of a recording of sounds, images or any audio-visual combination to a phonograph record, disc, tape, film, video tape, video cassette or other device.

(d) (1) Any person convicted of an offense under this section involving less than one hundred unlawful sound recordings or less than twenty unlawful audio-visual recordings shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned for not more than one year in jail or both fined and imprisoned.
(2) Any person convicted of an offense under this section involving at least one hundred but less than one thousand unlawful sound recordings or at least twenty but less than sixty-five audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned for not more than two years in the penitentiary or both fined and imprisoned.

(3) Any person convicted of an offense under this section involving at least one thousand unlawful sound recordings or at least sixty-five unlawful audio-visual recordings shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars, or imprisoned for not more than five years in the penitentiary or both fined and imprisoned.

(4) Any person convicted of a second or subsequent offense under this section shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned for not more than five years or both fined and imprisoned.

(5) Any unauthorized recorded sounds or images produced in violation of this section and any equipment used for such purpose shall be confiscated by the appropriate law-enforcement agency.

If a person is convicted of any violation under this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or release to a law-enforcement agency for use in official agency business of all infringing recordings and of any equipment or components used or intended to be used in the production of the recordings. All infringing phonograph records, discs, tapes, films, video tapes, video cassettes or other devices shall be destroyed once they are no longer needed for court proceedings. Nothing contained herein shall apply to televisions and radio stations licensed by the federal communications commission or to educational institutions, when the purpose of such reproduction is limited and used for criticism, comments, news reporting, archival or educational purposes.
AN ACT to amend and reenact section four, article three-c, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to computer fraud; prohibiting the knowing and willful access to any data stored in a computer owned by the Legislature; limitation of defenses; criminal penalties; and regulations.

Be it enacted by the Legislature of West Virginia:

That section four, article three-c, 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 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties.

(a) Any person who, knowingly and willfully, directly or indirectly, accesses or causes to be accessed any computer, computer services or computer network for the purpose of (1) executing any scheme or artifice to defraud or (2) obtaining money, property or services by means of fraudulent pretenses, representations or promises is guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned in the penitentiary for not more than ten years, or both fined and imprisoned.

(b)(1) Any person who, knowingly and willfully, directly or indirectly, accesses, attempts to access, or causes to be accessed any data stored in a computer owned by the Legislature without authorization is guilty of a felony, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the penitentiary for not more than five years, or both fined and imprisoned.
(2) Notwithstanding the provisions of section seventeen of this article to the contrary, in any criminal prosecution under this subsection against an employee or member of the Legislature, it shall not be a defense (A) that the defendant had reasonable grounds to believe that he or she had authorization to access the data merely because of his or her employment or membership, or (B) that the defendant could not have reasonably known he or she did not have authorization to access the data: Provided, That the joint committee on government and finance shall promulgate rules for the respective houses of the Legislature regarding appropriate access of members and staff and others to the legislative computer system.

CHAPTER 79

(Com. Sub. for H. B. 2034—By Delegates Linch, Pino, Trump and Staton)

[Passed February 17, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating penalties for escape from a county sheriff, the director of the regional jail authority, representatives of said persons, from a law-enforcement officer, court bailiff, or from any institution, facility, or any alternative sentence of confinement.

Be it enacted by the Legislature of West Virginia:

That section ten, 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. Persons in custody of institutions or officers.

Whoever escapes or attempts to escape by any means from the custody of a county sheriff, the director of the
regional jail authority, an authorized representative of said persons, a law-enforcement officer, court bailiff, or from any institution, facility, or any alternative sentence confinement, by which he or she is lawfully confined, shall, if the custody or confinement is by virtue of a charge or conviction for a felony, be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not more than five years; and if the custody or confinement is by virtue of a charge or conviction for a misdemeanor, shall be guilty of a misdemeanor, and, upon conviction thereof, he or she shall be confined in the jail for not more than one year.

CHAPTER 80
(Com. Sub. for H. B. 2702—By Delegate Beane)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section seventeen, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that fleeing from an officer attempting to make a lawful arrest is a misdemeanor; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That section seventeen, 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.
§61-5-17. Obstructing officer; fleeing from officer; penalty.

(a) Any person who by threats, menaces, acts or otherwise, shall forcibly or illegally hinder, obstruct or oppose, or attempt to obstruct or oppose, or shall counsel, advise or invite others to hinder, obstruct or oppose any officer in this state (whether civil or military) in the lawful
6 exercise or discharge of his official duty, shall, for every
7 such offense, be guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not less than fifty nor
9 more than five hundred dollars, and may, in the discretion
10 of the court, be imprisoned not exceeding one year.

11 (b) If any person intentionally flees from or attempts
12 to flee from any officer in this state (whether civil or
13 military) who is attempting to make a lawful arrest of such
14 person, and the person knows or reasonably believes that
15 the officer is attempting to arrest him or her, he or she is
16 guilty of a misdemeanor, and, upon conviction thereof,
17 shall be fined not less than fifty nor more than five
18 hundred dollars, and may, in the discretion of the court, be
19 imprisoned for a term not exceeding twelve months.

CHAPTER 81

(Com. Sub. for H. B. 2331—By Delegates Fantasia and Rowe)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section twenty-seven, article five,
chapter sixty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to crimes
against public justice; providing for the criminal offense of
impeding or obstructing the administration of justice by an
officer or member of any court or of impairing the testimo-
ny of any person or the production of any document by use
of intimidation, physical force or threats or attempts thereof;
providing for the criminal offense of retaliating against an
officer or member of any court or against a witness or other
party testifying or producing documentary evidence; estab-
lishing criminal penalties; defining the term "official pro-
ceeding" for purposes of section; and clarifying the applica-
ability of the provisions.
Be it enacted by the Legislature of West Virginia:

That section twenty-seven, 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.

§61-5-27. Obstructing administration of justice; intimidation of judicial officer, jurors and witnesses; retaliation against judicial officers, jurors and witnesses; penalty.

(a) It shall be unlawful for any person to use intimidation, physical force or threats of such, or to attempt to do so, against any person, with the intent to:

(1) Impede or obstruct the administration of justice by any judge, family law master, magistrate, juror, arbitrator, or officer or member of any court in the discharge of that person's duties as such in an official proceeding;

(2) Influence, delay, or prevent the testimony of any person in an official proceeding; or

(3) Cause or induce any person to (A) withhold testimony, or withhold a record, document, or other object, from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; (C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object in an official proceeding; or (D) be absent from an official proceeding to which such person has been summoned by legal process.

(b) It shall be unlawful for any person to engage in any conduct and thereby cause bodily injury to another person or to damage the tangible property of another person, or to threaten or to attempt to do so, with intent to retaliate against any person:

(1) For that person's discharge of duties as a judge,
(2) For the attendance of a witness or party at an official proceeding, or for any testimony given or for the production of any record, document, or other object produced by a witness in an official proceeding.

(c) Any person who violates the provisions of this section:

(1) In the case of an official proceeding involving any felony charge, is guilty of a felony, and upon conviction thereof, shall be imprisoned for a definite term of not less than one year nor more than five years or fined not more than one thousand dollars, or both;

(2) In the case of an official proceeding involving any misdemeanor charge and no felony charge, or of an official proceeding which is a civil proceeding, is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for not more than one year or fined not more than five hundred dollars, or both; or

(3) In the case of any official proceeding, where the violation of the provisions of this section is directed at a judge, family law master or magistrate, is guilty of a felony, and upon conviction thereof, shall be imprisoned for a definite term of not less than one year nor more than five years or fined not more than one thousand dollars, or both.

(d) For the purposes of this section, the term "official proceeding" means a proceeding pending before the supreme court of appeals or before any judge, magistrate, family law master, court, or grand jury of the state of West Virginia, and the testimony given or to be given, or the record, document or other object produced or to be produced need not be admissible in evidence or free of a claim of privilege at the time of the commission of any unlawful act as provided in this section.
AN ACT to amend and reenact section nineteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhanced and additional criminal penalties for convictions of animal cruelty; required evaluation; conditions of probation.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article eight, 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 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

(a) If any person cruelly mistreats, abandons or withholds proper sustenance, including food, water, shelter or medical treatment necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in the county jail not more than six months, or both so fined and confined.

(b) Any person, other than a licensed veterinarian or a person acting under the direction or with the approval of a licensed veterinarian, who knowingly and willfully administers or causes to be administered to any animal
participating in any contest any controlled substance or any other drug for the purpose of altering or otherwise affecting said animal's performance is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars.

(c) Any person convicted of a violation of this section shall forfeit his or her interest in any such animal and all interest in such animal shall vest in the humane society or county pound of the county in which said conviction was rendered, and such person shall, in addition to any fine imposed, be liable for any costs incurred or to be incurred by the humane society or county pound as a result.

(d) For the purpose of this section, the term "controlled substance" shall have the same meaning ascribed to it by subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(e) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U.S.C. § 2131 et seq. and the regulations promulgated thereunder, as both such statutes and regulations are in effect on the effective date of this section.

(f) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second violation of said subsection is guilty of a misdemeanor and shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than one thousand dollars, or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (g) are complied with.
Notwithstanding any provision of this code to the contrary, no person who has been convicted of a second or subsequent violation of the provisions of subsection (a) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed such evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

In addition to any other penalty which can be imposed for a violation of this section, a court may, as a condition of probation, prohibit any person so convicted from possessing or owning any animal or type of animal during the period of probation.

CHAPTER 83

(Com. Sub. for H. B. 2339—By Delegates Prezioso, Gallagher, Staton, Douglas, Jenkins, Leach and Mezzatesta)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twelve, thirteen and fourteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the requirement that the clerk of the circuit court annually prepare a list of fines imposed in criminal matters for the state auditor; penalty for failure to prepare and transmit such report to the auditor; and the use of the list by the auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§1. Repeal of sections relating to preparing of list of fines by circuit clerk for auditor; penalty for failure to prepare and transmit such report; use of list by auditor.

Sections twelve, thirteen and fourteen, article four, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.
CHAPTER 84
(H. B. 2599—By Delegates Hutchins and Varner)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eight, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to circuit court jurisdiction over crimes committed by convicts.

Be it enacted by the Legislature of West Virginia:

That section three, article eight, 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 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.


1 All criminal proceedings against convicts in the
2 custody of the commissioner of corrections shall be in the
3 circuit court in the county where the crime is committed.

CHAPTER 85
(Com. Sub. for S. B. 252—By Senators Plymale, Wagner, Wooton, Buckalew, Scott, Schoonover and Chafin)

[Passed March 9, 1995; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated article two-b, relating generally to blood sampling
and analyses for DNA database and databank act of 1995; policy of DNA database; definitions; division of public safety to implement database; division to inspect facilities; cooperative agreements; promulgation of legislative rules; compatibility of state program with federal guidelines; requirement of blood sample upon conviction of certain crimes and for certain prisoners; tests; maintenance of records and samples; procedures for drawing blood; the database exchange; disclosure of record; expungement of DNA records; confidentiality, unauthorized use of databank, neglect of duties, destruction of samples; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twenty-four-a, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article two-b, to read as follows:

ARTICLE 2B. DNA DATA.

§15-2B-4. Division of public safety to establish and administer DNA identification system; inspection of laboratories.
§15-2B-5. Authority of division to enter into cooperative agreements.
§15-2B-7. Tests to be performed on blood sample.
§15-2B-10. DNA database exchange.
§15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.


1 This article may be cited as the "DNA Database and Databank Act of 1995".

It is the policy of this state to assist federal, state and local criminal justice and law-enforcement agencies in the identification, detection and exclusion of individuals who are subjects of the investigation or prosecution of violent crimes, sex-related crimes and other crimes against the person. In furtherance of such assistance, the Legislature finds:

That the analysis of DNA contained in biological evidence that may be recovered from a crime scene facilitates such identification, detection and exclusion;

That the comparison of DNA data recovered from a crime scene with existing DNA records maintained in a central DNA database further facilitates such identification, detection and exclusion; and

That requiring individuals convicted of certain crimes to provide a blood sample for DNA analysis with the resulting DNA records maintained in a central DNA database will likewise further facilitate the aforementioned identification, detection and exclusion and may serve to discourage recidivism.

Therefore, the Legislature finds that assisting federal, state and local criminal justice and law-enforcement agencies through the use and development of DNA analysis is of the utmost importance and urgency in this state and that a DNA identification system shall be established as described in this article.


As used in this article the following terms have the meanings specified:

(a) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(b) "DNA record" means DNA identification information stored in any state DNA database pursuant to this article. The DNA record is the result obtained from DNA
tying tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also included as a "DNA record".

(c) "DNA sample" means the DNA extracted from a blood sample provided by any person convicted of offenses covered by this article or submitted to the division laboratory for analysis pursuant to a criminal investigation.

(d) "FBI" means the federal bureau of investigation.

(e) "State DNA database" means all DNA identification records included in the system administered by the West Virginia division of public safety.

(f) "State DNA databank" means the repository of DNA samples collected under the provisions of this article.

(g) "Division" means the West Virginia division of public safety.

§15-2B-4. Division of public safety to establish and administer DNA identification system; inspection of laboratories.

(a) The division shall establish a DNA identification system consisting of a state DNA database and a state DNA databank compatible with the procedures specified by the FBI.

(b) The division shall be the administrator of the state DNA databank and database and the DNA identification system.

(c) The division shall supervise all DNA forensic laboratories in this state to ensure that such laboratories are acting in compliance with applicable provisions of state and federal law. The division may inspect or monitor such facilities and may prohibit any such laboratory from participating in the exchange of information when the division finds that the facility has not acted in conformity with state and federal laws. The superintendent of the
division shall further promulgate a legislative rule pursuant to chapter twenty-nine-a of this code regarding the monitoring, inspection and prohibition on the exchange of information.

(d) The superintendent of the division shall further establish standards for testing and quality assurance of DNA testing and the exchange of information through the promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code.

(e) The superintendent of the division of public safety shall promulgate additional legislative rules pursuant to chapter twenty-nine-a of this code necessary to establish and administer the DNA database and databank consistent with the requirements of state and federal law and consistent with the systems employed by the FBI.

§15-2B-5. Authority of division to enter into cooperative agreements.

The division may enter into cooperative agreements with public or private agencies or entities to provide any service or facility associated with the administration of the DNA database and databank: Provided, That the division is authorized only to contract services and/or facilities for DNA typing, testing and research with Marshall University.


(a) Any person convicted of an offense described in section one, two, three, four, seven, nine, nine-a (when that offense constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article two, chapter sixty-one of this code or section twelve, article eight of said chapter (when that offense constitutes a felony), shall provide a blood sample to be used for DNA analysis as described in this article. Further, any person convicted of any offense described in article eight-b or eight-d of said chapter shall provide a blood sample to be used for DNA analysis as described in this article.
(b) All persons incarcerated in the state penitentiary or any regional jail in this state who are incarcerated due to the conviction of any offense listed in subsection (a) of this section who are incarcerated on the first day of July, one thousand nine hundred ninety-five, or who are convicted of any such offense on or after the first day of July, one thousand nine hundred ninety-five, shall have a blood sample drawn for purposes of analysis and storage of the DNA.

(c) When a person who is required to submit to blood testing as required by this section refuses to comply with any blood testing, the state shall apply to a circuit court for an order requiring the prisoner to permit a blood sample to be withdrawn for the purpose of DNA typing and testing. The circuit court shall order the prisoner to submit to blood testing in conformity with the provisions of this article.

§15-2B-7. Tests to be performed on blood sample.

The tests to be performed on each blood sample shall analyze and type the genetic markers contained in or derived from the DNA sample in accordance with rules promulgated under this article. Any such rule regarding the typing and analysis of the blood sample shall be consistent with any specifications required by federal law.


DNA records and samples shall be stored and maintained by the division in the state DNA database and databank, respectively. DNA samples, without personal identifying information, may also be stored in any DNA typing, testing and research laboratory selected by the division pursuant to section five of this article.


(a) Upon incarceration, the division of corrections, regional jails, county jails and felon facilities shall ensure that the blood is drawn from all persons described in section six of this article. When any person convicted of an
offense described in said section is not incarcerated, the sheriff in such county where the person is convicted shall ensure that blood is drawn from such person at the regional facility: Provided, That blood may be drawn at a county jail or at a prison, regional facility or local hospital unit when so ordered by the sentencing court. The sheriff shall transport such persons who are not incarcerated to the facility where the blood is drawn.

(b) The superintendent of the division shall promulgate a legislative rule pursuant to chapter twenty-nine-a of this code establishing which persons may withdraw blood and further establishing procedures to withdraw blood. At a minimum, these procedures shall require that when blood is withdrawn for the purpose of DNA identification testing, a previously unused and sterile needle and sterile vessel shall be used, the withdrawal shall otherwise be in strict accord with accepted medical practices and in accordance with any recognized medical procedures employing universal precautions as may be outlined by the national centers for disease control and prevention. No civil liability attaches to any person when the blood was drawn according to recognized medical procedures employing such universal precautions. No person is relieved of liability for negligence in the drawing of blood for purposes of DNA testing.

(c) The superintendent of the division shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code governing the procedures to be used in the withdrawal of blood samples, submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under this article which shall be compatible with recognized federal standards.

§15-2B-10. DNA database exchange.

(a) The division shall receive DNA samples, store, analyze, classify and file the DNA records consisting of all identification characteristics of DNA profiles from blood samples submitted pursuant to the procedures for conducting DNA analysis of blood samples.
(b) The division may furnish DNA records to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the state of West Virginia upon proper request stating that the DNA records requested will be used solely:

(1) For law-enforcement identification purposes by criminal justice agencies;

(2) In judicial proceedings, if otherwise expressly permitted by state or federal laws; or

(3) If personal identifying information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The superintendent of the division shall promulgate further legislative rules pursuant to chapter twenty-nine-a of this code governing the methods by which any law-enforcement agency or other authorized entity may obtain information from the state DNA database consistent with this section and federal law.

(d) The division may release DNA samples, without personal identifying information, to any agency or entity with which the division contracts pursuant to section five of this article.


(a) Any person whose DNA record or profile has been included in the state database and whose DNA sample is stored in the state databank or the state's designated DNA typing, testing and research laboratory may apply for expungement on the grounds that the felony conviction that resulted in the inclusion of the person's DNA record or profile in the state database or the inclusion of the person's DNA sample in the state databank has been reversed and the case dismissed. The person requesting expungement, either individually or through an attorney, may apply to the court for expungement of the record. A
copy of the application for expungement shall be served on the prosecuting attorney for the judicial district in which the felony conviction was obtained not less than twenty days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order of expungement.

(b) Upon receipt of an order of expungement, the division shall purge the DNA record and all other identifiable information from the state database and the DNA sample stored in the state databank covered by the order. If the individual has more than one entry in the state database and databank, then only the entry covered by the expungement order shall be deleted from the state database or databank.

§15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.

(a) All DNA profiles and samples submitted to the division of public safety pursuant to this article shall be treated as confidential except as provided in this article.

(b) Any person who, by virtue of employment or official position, has possession of or access to individually identifiable DNA information contained in the state DNA database or databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or be imprisoned in the county or regional jails for a period not to exceed one year, or both fined and imprisoned.

(c) Any person who, without authorization, willfully obtains individually identifiable DNA information from the state DNA database or databank is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or be imprisoned in the county or regional jails for a period not to exceed one year, or both fined and imprisoned.

(a) Any person who neglects or refuses to do or perform any act on his or her part to be done or performed in connection with the operation of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars or be imprisoned in the county or regional jail for a period of not more than sixty days, or both fined and imprisoned. Further, such neglect constitutes misfeasance in office and may subject that person to removal from office.

(b) Any person who willfully removes, destroys or mutilates any of the DNA samples, records or other information acquired or stored pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned in the county or regional jail not to exceed one year, or both fined and imprisoned.

CHAPTER 86

(Com. Sub. for H. B. 2263—By Delegates Yeager, Rowe, Manuel, Frederick, Adkins, Henderson and Burke)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter nineteen 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 causing death or injury to any trained dog or horse used by law-enforcement officials in the performance of their official duties; criminal penalties; and restitution.

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

ARTICLE 20. DOGS AND CATS.

§19-20-24. Causing death or injury to animals used by law-enforcement officials; criminal penalties.

Any person who, without justification, and with the unlawful intent to inflict serious physical injury or death, causes the death of any trained dog or horse used by law-enforcement officials in the performance of their official duties is guilty of a felony, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars and imprisoned in the penitentiary for a definite term of not more than three years.

Any person who, without justification, willfully and unlawfully causes physical injury to any trained dog or horse used by law-enforcement officials in the performance of their official duties is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail not more than six months, or both.

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency owning the animal for any veterinary bills and replacement costs of any disabled or killed animal.

CHAPTER 87

(Com. Sub. for H. B. 2233—By Delegates Douglas, Manuel, Faircloth, Doyle and Evans)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section eight, article twenty-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dogs and cats being permitted to run at large, subject to any quarantine established by the commissioner of agriculture; subject to such ordinances or rules relating to the control and management of dogs as may be promulgated by a county commission or municipality, with limited exemptions for hunting and farm dogs and dogs engaged in lawful training activity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-8. Vaccinated dogs and cats may run at large; confinement may be required by the commissioner of agriculture within the limits of any quarantine area or locality; and ordinances or rules may be promulgated by any county commission or municipality relating to the control and management of dogs within the county; providing limited exemption for hunting and farm dogs from county commission or municipality action.

Dogs or cats vaccinated in compliance with the provisions of this article may run at large in any area or locality: Provided, That the commissioner of agriculture may, pursuant to article nine of this chapter, exercise his discretion to establish a quarantined area or locality and to require all dogs and cats within the limits of any quarantined area or locality to be confined as provided in article nine: Provided, however, That a county commission or a municipality may adopt and enforce ordinances not inconsistent with the provisions of article twenty of this chapter of the code, as it considers necessary or conve-
nient for the control and management of all dogs in the
county, or a portion thereof, vaccinated or not, except as
further provided herein: Provided further, That any coun-
ty commission or municipality may not adopt any ordi-
nance which purports to keep any vaccinated dog from
running at large while engaged in any lawful hunting
activity; from running at large while engaged in any law-
ful training activity; or from running at large while en-
gaged in any lawful herding or other farm related activity:
And provided further, That the provisions of this section
shall not exempt any dog from any quarantine established
by or any confinement order required by the commission-
er relating to the establishment of a quarantine.

CHAPTER 88

(S. B. 567—By Senators Wooton, Wiedebusch, Anderson, Bowman, Buckalew,
Dittmar, Grubb, Miller, Ross, Scott, Wagner, White and Yoder)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections three-a, four, six, nine and ten, article
three, chapter forty-eight-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to repeal
sections three-a, seven and seven-a, article five of said chap-
ter; to amend and reenact section one, article two, chapter
five-f of said code; to amend and reenact section five-d,
article ten, chapter eleven of said code; to amend and reenact
section three, article two-e, chapter sixteen of said code; to
amend and reenact section eighteen-b, article five of said
chapter; to amend and reenact section two, article five-b of
said chapter; to further amend said article by adding thereto
a new section, designated section thirteen; to amend and
reenact section two, article twenty-one, chapter twenty-nine
of said code; to amend and reenact section twenty-seven-a,
article twenty-two of said chapter; to amend and reenact
sections fifteen-a and fifteen-b, article two, chapter
forty-eight of said code; to further amend said article by
adding thereto a new section, designated section thirty-seven;
to amend and reenact section three, article one, chapter
forty-eight-a of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact article two of said chapter; to amend article three of said chapter by adding thereto a new section, designated section eleven; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact sections one, three and eight, article five of said chapter; to amend and reenact sections one, three, four, five and six, article six of said chapter; to amend and reenact sections twelve and thirty-six, article seven of said chapter; and to amend and reenact section one, article two, chapter fifty-nine of said code, all relating generally to reorganizing the functions and offices of administrative agencies responsible for obtaining and enforcing support orders and establishing paternity; providing for the transfer and incorporation of agencies and boards and changing references from the child advocate office to the child support enforcement division; providing for the confidentiality and disclosure of tax returns and return information and changing references from the child advocate office to the child support enforcement division; authorizing the promulgation of legislative rules ensuring adequate care and accommodations for consumers of birthing centers and requiring birthing centers to implement a program for establishment of paternity; limiting the use of social security numbers by the division of vital statistics; requiring hospitals and institutions to implement a program for establishment of paternity as a condition of licensure; requiring public and private hospitals and birthing centers to establish a hospital-based paternity program; defining certain terms related to public defender services and removing a requirement that public defender services be provided in paternity actions; providing for the payment of prizes under the state lottery act to be made to the child support enforcement division; providing for medical support enforcement and changing references from the child advocate office to the child support enforcement division; providing for the withholding from income of amounts due as support and changing references from the child advocate office to the child support enforcement division; providing for the calculation of interest on support obligations arising from domestic relations actions; defining certain terms related to the enforcement of family obligations; providing for the calculation of interest on support obligations arising from actions to establish and enforce support orders; estab-
lishing the West Virginia support enforcement commission; prescribing the membership of the commission and qualifications and eligibility for membership; describing terms of office and conditions of membership; requiring members to subscribe to an oath of office; providing for a commission chairman; providing for compensation and expenses of commission members; prescribing meeting requirements; authorizing the governor to remove commission members for cause; prescribing the general duties of the commission; describing the general powers of the commission; requiring certain rule making by the commission; establishing the child support enforcement division within the department of health and human resources; providing for the appointment of a director of the division; providing for organization of the division and its employees; fixing supervisory responsibilities within the division; prescribing the general powers and duties of the division; requiring the promulgation of legislative rules establishing guidelines for child support awards; creating a "child support enforcement fund" in the state treasury; prescribing certain fees to be assessed in actions related to establishing and enforcing support orders; requiring certain provisions to be included in contracts for providing services to the division; providing that attorneys employed by the division or providing services to the division under contract represent the state or the division; requiring establishment of a parent locator service; requiring cooperation with other states in the enforcement of support obligations; providing for the disbursement of amounts collected as support; requiring support payments to be made to the division; authorizing the establishment of a data processing and retrieval system by the division; establishing procedures for obtaining support from federal tax refunds, state income tax refunds, and unemployment compensation benefits; requiring the division to provide obligees and obligors with statements of account; establishing a central registry of child support orders; authorizing the division to issue administrative subpoenas; requiring periodic investigation and review of support orders; providing for a form to identify child support payments; providing for billing of fees and costs; assenting to the purpose of federal laws; requiring the publicizing of the availability of support enforcement services; providing for the confidentiality of records of the division; prescribing when access may be had to information of the division; authorizing the governor, by executive order to
transfer the division and the commission to the department of tax and revenue or the department of administration; providing for the repeal of article three, chapter forty-eight-a by operation of law upon the promulgation by the commission of emergency legislative rules; providing for the budget of the family law master system; prescribing actions which may be brought to obtain an order of support; providing for the withholding from income of amounts payable as support; providing for procedures before a family law master if a person contests action proposed to be taken against him; prescribing a civil action to establish paternity; providing for medical testing procedures to aid in the determination of paternity and allocating the costs of such tests; providing for the establishment of paternity and the duty to support; providing for the representation of the parties in a paternity action; providing for the establishment of paternity through an acknowledgement by the natural father; providing that in interstate support proceedings, attorneys employed by the division and contract attorneys represent the division or the state; and providing for the waiver of payment of fees and costs by persons financially unable to pay.

Be it enacted by the Legislature of West Virginia:

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

Chapter
4. The Legislature.
5F. Reorganization of the Executive Branch of State Government.
11. Taxation.
29. Miscellaneous Boards and Officers.
48. Domestic Relations.
48A. Enforcement of Family Obligations.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

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

1 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; informa-

*Clerk’s Note: This section was also amended by S. B. 579 (Chapter 219), which passed subsequent to this act.
tion 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 support enforcement division; 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 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Council of finance and administration provided for in article one, chapter five-a of this code;

(4) Employee suggestion award board provided for in article one-a, chapter five-a of this code;

(5) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(6) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(7) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
(8) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(9) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(10) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(11) Division of personnel provided for in article six, chapter twenty-nine of this code;

(12) The West Virginia ethics commission provided for in article two, chapter six-b of this code;

(13) Consolidated public retirement board provided for in article ten-d, chapter five of this code; and

(14) The child support enforcement division designated in chapter forty-eight-a of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code.

The following boards are transferred to the office of miners' health, safety and training for purposes of administra-
58 tive support and liaison with the office of the governor:
59 (i) Board of coal mine health and safety and coal mine
60 safety and technical review committee provided for in
61 article six, chapter twenty-two-a of this code;
62 (ii) Board of miner training, education and certifica-
63 tion provided for in article seven, chapter twenty-two-a of
64 this code; and
65 (iii) Mine inspectors' examining board provided for in
66 article nine, chapter twenty-two-a of this code;
67 (C) The West Virginia development office provided
68 for in article two, chapter five-b of this code, which shall
69 include:
70 (i) Enterprise zone authority provided for in article
71 two-b, chapter five-b of this code; and
72 (ii) Economic development authority provided for in
73 article fifteen, chapter thirty-one of this code;
74 (D) Division of natural resources and natural resources
75 commission provided for in article one, chapter twenty of
76 this code. The Blennerhassett historical state park provid-
77 ed for in article eight, chapter twenty-nine of this code
78 shall be under the division of natural resources;
79 (E) Division of forestry provided for in article one-a,
80 chapter nineteen of this code;
81 (F) Geological and economic survey provided for in
82 article two, chapter twenty-nine of this code;
83 (G) Water development authority and board provided
84 for in article one, chapter twenty-two-c of this code;
85 (2) Bureau of employment programs provided for in
86 article one, chapter twenty-one-a of this code.
87 (3) Bureau of environment:
88 (A) Air quality board provided for in article five,
89 chapter twenty-two of this code;
90 (B) Solid waste management board provided for in
91 article three, chapter twenty-two of this code;
(C) Environmental quality board, or its successor
board, provided for in article three, chapter twenty-two-b
of this code;

(D) Division of environmental protection provided for
in article one, chapter twenty-two of this code;

(E) Surface mine board of review provided for in
article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided
for in article seven, chapter twenty-two-c of this code;

(G) Shallow gas well review board provided for in
article eight, chapter twenty-two-c of this code; and

(H) Oil and gas conservation commission provided for
in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are here-
by transferred to and incorporated in and shall be admin-
istered as a part of the department of education and the
arts:

(1) Library commission provided for in article one,
chapter ten of this code;

(2) Educational broadcasting authority provided for in
article five, chapter ten of this code;

(3) University of West Virginia board of trustees pro-
vided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system pro-
vided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occu-
pational education provided for in article three-a, chapter
eighteen-b of this code;

(6) Division of culture and history provided for in
article one, chapter twenty-nine of this code; and

(7) Division of rehabilitation services provided for in
section two, article ten-a, chapter eighteen of this code.
126 (d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

132 (1) Human rights commission provided for in article eleven, chapter five of this code;

134 (2) Division of human services provided for in article two, chapter nine of this code;

136 (3) Division of health provided for in article one, chapter sixteen of this code;

138 (4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

141 (5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

143 (6) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;

145 (7) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

147 (8) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

149 (9) The child support enforcement division designated in chapter forty-eight-a of this code.

151 (e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

157 (1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

159 (2) Armory board provided for in article six, chapter fifteen of this code;
(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) Division of public safety provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.

The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;

(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(4) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine
(5) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(6) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(7) Division of professional and occupational licenses which may be hereafter created by the Legislature;

(8) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(9) Lending and credit rate board provided for in chapter forty-seven-a of this code;

(10) Division of banking provided for in article two, chapter thirty-one-a of this code; and

(11) The child support enforcement division as designated in chapter forty-eight-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Road commission provided for in article two, chapter seventeen of this code;

(2) Division of highways provided for in article two-a, chapter seventeen of this code;

(3) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(4) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(5) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(6) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;
(7) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(8) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.
(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5d. Confidentiality and disclosure of returns and return information.

(a) General rule. — Except when required in an official investigation by the tax commissioner into the amount of tax due under any article administered under this article or in any proceeding in which the tax commissioner is a party before a court of competent jurisdiction to collect or ascertain the amount of such tax and except as provided in subsections (d) through (n) of this section, it shall be unlawful for any officer or employee of this state to divulge or make known in any manner the tax return, or any part thereof, of any person or disclose information concerning the personal affairs of any individual or the business of any single firm or corporation, or disclose the amount of income, or any particulars set forth or disclosed in any report, declaration or return required to be filed with the tax commissioner by any article of this chapter imposing
any tax administered under this article or by any rule or
regulation of the tax commissioner issued thereunder, or
disclosed in any audit or investigation conducted under
this article.

(b) Definitions. — For purposes of this section:

(1) Background file document. — The term "background file document", with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the state tax department and any person outside the state tax department in connection with the written determination received before issuance of the written determination.

(2) Disclosure. — The term "disclosure" means the making known to any person in any manner whatsoever a return or return information.

(3) Inspection. — The terms "inspection" and "inspected" mean any examination of a return or return information.

(4) Return. — The term "return" means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the tax commissioner by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to, or part of, the return so filed.

(5) Return information. — The term "return information" means:

(A) A taxpayer's identity; the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, fur-
nished to or collected by the tax commissioner with re-
spect to a return or with respect to the determination of the
existence, or possible existence, of liability (or the amount
thereof) or by any person under the provisions of this
article (or any article of this chapter administered under
this article) for any tax, additions to tax, penalty, interest,
fine, forfeiture or other imposition or offense; and

(B) Any part of any written determination or any
background file document relating to such written deter-
mination. "Return information" does not include, howev-
er, data in a form which cannot be associated with, or oth-
erwise identify, directly or indirectly, a particular taxpayer.
Nothing in the preceding sentence, or in any other provi-
sion of this code, shall be construed to require the disclo-
sure of standards used or to be used for the selection of
returns for examination or data used or to be used for
determining such standards.

(6) Tax administration. — The term "tax administra-
tion" means:

(A) The administration, management, conduct, direc-
tion and supervision of the execution and application of
the tax laws or related statutes of this state and the devel-
opment and formulation of state tax policy relating to
existing or proposed state tax laws, and related statutes of
this state; and

(B) Includes assessment, collection, enforcement, liti-
gation, publication and statistical gathering functions un-
der the laws of this state.

(7) Taxpayer identity. — The term "taxpayer identity"
means the name of a person with respect to whom a return
is filed, his mailing address, his taxpayer identifying num-
ber or a combination thereof.

(8) Taxpayer return information. — The term "taxpay-
er return information" means return information as de-
fining in subdivision (5) of this subsection which is filed
with, or furnished to, the tax commissioner by or on be-
half of the taxpayer to whom such return information
relates.
(9) Written determination. — The term "written determination" means a ruling, determination letter, technical advice memorandum or letter or administrative decision issued by the tax commissioner.

(c) Criminal penalty. — Any officer or employee (or former officer or employee) of this state who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

(d) Disclosure to designee of taxpayer. — Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for such purpose and such period as he shall therein state. The tax commissioner may, subject to such requirements and conditions as he may prescribe, thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article, but only to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, return information shall not be disclosed to such person or persons if the tax commissioner determines that such disclosure would seriously impair administration of this state's tax laws.

(e) Disclosure of returns and return information for use in criminal investigations.—

(1) In general. — Except as provided in subdivision (3) of this subsection, any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge, federal magistrate or circuit court judge of this state, under subdivision (2) of this subsection, be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency, or of any agency of this state, who personally and directly engaged in:

(A) Preparation for any judicial or administrative
proceeding pertaining to the enforcement of a specifically
designated state or federal criminal statute to which this
state, the United States or such agency is or may be a par-
ty;
(B) Any investigation which may result in such a pro-
ceeding; or
(C) Any state or federal grand jury proceeding per-
taining to enforcement of such a criminal statute to which
this state, the United States or such agency is or may be a
party.
Such inspection or disclosure shall be solely for the
use of such officers and employees in such preparation, in-
vestigation, or grand jury proceeding.
(2) Application of order. — Any United States attor-
ney, any special prosecutor appointed under Section 593
of Title 28, United States Code, or any attorney in charge
of a United States justice department criminal division
organized crime strike force established pursuant to Sec-
tion 510 of Title 28, United States Code, may authorize an
application to a circuit court judge or magistrate, as appro-
priate, for the order referred to in subdivision (1) of this
subsection. Any prosecuting attorney of this state may
authorize an application to a circuit court judge of this
state for the order referred to in subdivision (1) of this
subsection. Upon such application, such judge or magis-
trate may grant such order if he determines on the basis of
the facts submitted by the applicant that:
(A) There is reasonable cause to believe, based upon
information believed to be reliable, that a specific criminal
act has been committed;
(B) There is reasonable cause to believe that the return
or return information is or may be relevant to a matter
relating to the commission of such act; and
(C) The return or return information is sought exclu-
sively for use in a state or federal criminal investigation or
proceeding concerning such act, and the information
sought to be disclosed cannot reasonably be obtained,
under the circumstances, from another source.
(3) The tax commissioner shall not disclose any return
or return information under subdivision (1) of this subsec-
tion if he determines and certifies to the court that such
disclosure would identify a confidential informant or
seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest. —
The tax commissioner may, pursuant to legislative regula-
tions promulgated by him, and upon such terms as he may
require, disclose a return or return information to a person
having a material interest therein: Provided, That such
disclosure shall only be made if the tax commissioner
determines, in his discretion, that such disclosure would
not seriously impair administration of this state's tax laws.

(g) Statistical use. — This section shall not be con-
strued to prohibit the publication or release of statistics so
classified as to prevent the identification of particular
returns and the items thereof.

(h) Disclosure of amount of outstanding lien. — If
notice of lien has been recorded pursuant to section twelve
of this article, the amount of the outstanding obligation
secured by such lien may be disclosed to any person who
furnishes written evidence satisfactory to the tax commis-
sioner that such person has a right in the property subject
to such lien or intends to obtain a right in such property.

(i) Reciprocal exchange. — The tax commissioner
may, pursuant to written agreement, permit the proper
officer of the United States, or the District of Columbia or
any other state, or any political subdivision of this state, or
his authorized representative, who is charged by law with
responsibility for administration of a similar tax, to inspect
reports, declarations or returns filed with the tax commis-
sioner or may furnish to such officer or representative a
copy of any such document, provided such other jurisdic-
tion grants substantially similar privileges to the tax com-
missioner or to the attorney general of this state. Such
disclosure shall be only for the purpose of, and only to the
extent necessary in, the administration of tax laws: Pro-
vided, That such information shall not be disclosed to the
extent that the tax commissioner determines that such
disclosure would identify a confidential informant or
seriously impair any civil or criminal tax investigation.

(j) Inspection of business and occupation tax returns by municipalities. — The tax commissioner shall, upon the written request of the mayor of any West Virginia municipality having a business and occupation tax or privilege tax, allow the duly authorized agent of such municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of such municipality. Such inspection or copying shall only be for the purposes of securing information for municipal tax purposes and shall only be allowed if such municipality allows the tax commissioner the right to inspect or make copies of the municipal business and occupation tax returns of such municipality.

(k) Release of administrative decisions. — The tax commissioner shall release to the public his administrative decisions, or a summary thereof: Provided, That unless the taxpayer appeals the administrative decision to circuit court or waives in writing his rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to such an extent so as to not disclose the name or identity of the taxpayer.

(I) Release of taxpayer information. —

(1) If the tax commissioner believes that enforcement of the tax laws administered under this article will be facilitated and enhanced thereby, he shall disclose, upon request, the names and address of persons:

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.

(C) Who are licensed collection agencies.

(D) Who are licensed to sell drug paraphernalia.

(E) Who are distributors of gasoline or special fuel.

(F) Who are contractors.

(G) Who are transient vendors.
(H) Who are authorized by law to issue a sales or use tax exemption certificate.

(I) Who are required by law to collect sales or use taxes.

(J) Who are foreign vendors authorized to collect use tax.

(K) Whose business registration certificate has been suspended or canceled or not renewed by the tax commissioner.

(L) Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).

(M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.

(N) Who have been convicted of a criminal violation of this state's tax laws.

(m) Disclosure of return information to child support enforcement division. —

(1) State return information. — The tax commissioner may, upon written request, disclose to the child support enforcement division created by article two, chapter forty-eight-a of this code:

(A) Available return information from the master files of the tax department relating to the social security account number, address, filing status, amounts and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and

(B) Available state return information reflected on any state return filed by, or with respect to any individual described in paragraph (A) of this subdivision, relating to the amount of such individual's gross income, but only if such information is not reasonably available from any other source.
(2) Restrictions on disclosure. — The tax commissioner shall disclose return information under subdivision (1) of this subsection only for purposes of, and to the extent necessary in, collecting child support obligations from, and locating individuals owing such obligations.

(n) Disclosure of names and addresses for purposes of jury selection. —

The tax commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within thirty calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the tax commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to the tax commissioner that the lists have been destroyed.

CHAPTER 16. PUBLIC HEALTH.

Article.

2E. Birthing Centers.


5B. Hospitals and Similar Institutions.

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

The director of health shall promulgate rules and regulations not in conflict with any provision of this article, as it finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the director shall be
limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment, such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises. Such regulations shall require that all birthing centers submit satisfactory evidence that the center has implemented the paternity program created pursuant to section thirteen of this article along with any application for licensure.

The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within sixty days of passage of this article, the director of health shall proceed to promulgate such rules and regulations under the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

ARTICLE 5. VITAL STATISTICS.

§16-5-18b. Limitation on use of social security numbers.

(a) A social security account number obtained in accordance with the provisions of this article with respect to the filing of: (1) A certificate of birth; (2) an application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. Such social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar, county clerk or other issuing authority, if any. Such social security account numbers shall be made available by the state registrar to the child support enforcement division created by article forty-eight-a upon the request
of the division, to be used solely in connection with the
enforcement of child support orders.

(b) A parent who desires not to furnish a social security
account number as required by the provisions of this
article or article six, chapter forty-eight-a of this code shall
file with the person responsible for obtaining personal
data from the parent, a request that he or she not be re-
quired to furnish such number. The request shall be made
on a form prescribed by the state registrar of vital statistics
or in a substantially similar instrument and shall set forth
the reasons that the parent declines or is unable to furnish
such number. Supplies of a form for the request shall be
made available to hospitals, circuit clerks and other per-
sons responsible for obtaining personal data from parents,
and shall be provided to any parent who states that he or
she desires not to be required to furnish such number. A
request, when received, shall be transmitted in the same
manner as a record of a social security account number.
The board of health shall promulgate legislative rules in
accordance with the provisions of chapter twenty-nine-a of
this code which shall establish the procedural means and
substantive criteria by which the state registrar may deter-
mine whether there exists good cause for not requiring the
furnishing of such number. In proposing the promulga-
tion of such rules, the board of health shall give due con-
sideration to related regulations prescribed by the secre-
tary of health and human services of the United States.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-2. Hospitals and institutions to obtain license; qualifications of
applicant.

§15-5B-13. Hospital-based paternity program.

§16-5B-2. Hospitals and institutions to obtain license; quali-
fications of applicant.

No person, partnership, association, corporation or any
local governmental unit or any division, department, board
or agency thereof may continue to operate an existing
ambulatory health care facility, ambulatory surgical facili-
ty, hospital or extended care facility operated in connec-
tion with a hospital, or open an ambulatory health care
facility, ambulatory surgical facility, a hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the state department of health that he is not less than eighteen years of age, of reputable and responsible character and otherwise qualified. In the event the applicant is an association, corporation or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his ability to comply with the minimum standards and with all rules and regulations lawfully promulgated. Every applicant shall further submit satisfactory evidence that he has implemented the paternity program created pursuant to section thirteen of this article.

§16-5B-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to section two of this article and every birthing center licensed pursuant to section two, article two-e of this chapter, that provides obstetrical services in West Virginia shall participate in the hospital-based paternity program.

(b) The child support enforcement division as described in section twelve, article two, chapter forty-eight-a of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An affidavit of paternity fulfilling the requirements of section six, article six, chapter forty-eight-a of this code; and
(3) The telephone contact number for the child support enforcement division that a parent may call for further information regarding the establishment of paternity.

(c) Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself out to be the natural father of the child:

(1) Information regarding the establishment of paternity;

(2) An affidavit of paternity fulfilling the requirements of section six, article six, chapter forty-eight-a of this code; and

(3) The telephone contact number for the child support enforcement division that a parent may call for further information regarding the establishment of paternity.

(d) The child support enforcement division shall notify the state department of health of any failure of any hospital or birthing center to conform with the requirements of this section.

(e) Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.


As used in this article, the following words and phrases are hereby defined:

(1) "Eligible client": Any person who meets the re-
quirements established by this article to receive publicly
funded legal representation in an eligible proceeding as
defined herein;

(2) "Eligible proceeding": Criminal charges which
may result in incarceration, juvenile proceedings, proceed-
ings to revoke parole or probation if the revocation may
result in incarceration, contempt of court, child abuse and
neglect proceedings which may result in a termination of
parental rights, mental hygiene commitment proceedings,
extradition proceedings, proceedings brought in aid of an
eligible proceeding and appeals from or post conviction
challenges to the final judgment in an eligible proceeding.
Legal representation provided pursuant to the provisions
of this article is limited to the court system of the state of
West Virginia, but does not include representation in mu-
nicipal courts unless the accused is at risk of incarceration;

(3) "Legal representation": The provision of any legal
services or legal assistance consistent with the purposes
and provisions of this article;

(4) "Private practice of law": The provision of legal
representation by a public defender or assistant public
defender to a client who is not entitled to receive legal
representation under the provisions of this article, but does
not include, among other activities, teaching;

(5) "Public defender": The staff attorney employed
on a full-time basis by a public defender corporation who,
in addition to providing direct representation to eligible
clients, has administrative responsibility for the operation
of the public defender corporation. The public defender
may be a part-time employee if the board of directors of
the public defender corporation finds efficient operation
of the corporation does not require a full-time attorney
and the executive director approves such part-time em-
ployment;

(6) "Assistant public defender": A staff attorney pro-
viding direct representation to eligible clients whose salary
and status as a full-time or part-time employee are fixed
by the board of directors of the public defender corpora-
tion;
(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients; and

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the child support enforcement division.

(a) Upon notification by the child support enforcement division created by article two, chapter forty-eight-a of this code that a person entitled to a prize or any winning ticket is delinquent in the payment of child support or spousal support, the director shall forward to said child support enforcement division such portion of any prize distributed directly from the state lottery office and that is available to pay all or any portion of the delinquent support payment.

(b) The director shall enter into a written agreement with the child support enforcement division for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section which shall include a method by which the child support enforcement division may receive the names of lottery winners as expeditiously as possible.

CHAPTER 48. DOMESTIC relations.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

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

§48-2-15b. Withholding from income.

§48-2-37. Calculation of interest.

§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, psy-
chiatric 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 wel-
fare arrangement, hospital or medical services corporation,
trust, group health plan, as defined in 29 U.S.C. §1167,
Section 607(1) of the Employee Retirement Income Secu-
rity 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 medi-
cal 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 insur-
ance 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 insur-
ance coverage which provides more comprehensive bene-
fits. 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 support enforcement division created by article two, chapter forty-eight-a of this code 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 seventeen, article two, chapter forty-eight-a of this code.

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

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

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

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

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;
(2) The custodian for the child serves written notice by mail at the obligated parent's last known address of intention to enforce the order requiring insurance coverage for the child; and
(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.
(g) (1) Upon service of the order requiring insurance coverage for the children, the employer, multi-employer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages.

(2) If more than one plan is offered by the employer, multi-employer trust or union, the child shall be enrolled in the 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 support enforcement division;

(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 insur-
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;

(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; and

(4) In addition to other remedies available under law, the child support enforcement division 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.

§48-2-15b. Withholding from income.

(a) Every order entered or modified under the provisions of this article, not described in subsection (d) of this section, which requires the payment of child support or spousal support shall include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every such order as described in subsection (a) of this section shall contain language authorizing income withholding to commence without further court action, as follows:

(1) The order shall provide that income withholding will begin immediately, without regard to whether there is an arrearage: (A) When a child for whom support is ordered is included or becomes included in a grant of assistance from the division of human services or a similar agency of a sister state for aid to families with dependent children benefits, medical assistance only benefits or foster care benefits; or (B) when the support obligee has applied for services from the child support enforcement division created pursuant to article two, chapter forty-eight-a of this code, or the support enforcement agency of another state or is otherwise receiving services from the child support enforcement division as provided for in said chapter. In any case where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately.

(2) The order shall also provide that income withholding will begin immediately upon the occurrence of any of the following:

(A) When the payments which the obligor has failed to make under the order are at least equal to the support payable for one month, if the order requires support to be
paid in monthly installments;

(B) When the payments which the obligor has failed to make under the order are at least equal to the support payable for four weeks, if the order requires support to be paid in weekly or biweekly installments;

(C) When the obligor requests the child support enforcement division to commence income withholding; or

(D) When the obligee requests that such withholding begin, if the request is approved by the court in accordance with procedures and standards established by rules and regulations promulgated by the commission pursuant to this section and to chapter twenty-nine-a of this code.

(c) On and after the first day of January, one thousand nine hundred ninety-four, the wages of an obligor shall be subject to withholding, regardless of whether child support payments are in arrears, on the date the order for child support is entered: Provided, That where one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or in any case where there is filed with the court a written agreement between the parties which provides for an alternative arrangement, such order shall not provide for income withholding to begin immediately.

(d) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

(e) Every support order entered by a circuit court of this state prior to the effective date of this section shall be considered to provide for an order of income withholding, by operation of law, which complies with the provisions of this section, notwithstanding the fact that such support order does not in fact provide for such order of withholding.

(f) The court shall consider the best interests of the child in determining whether "good cause" exists under this section. The court may also consider the obligor's
payment record in determining whether "good cause" has been demonstrated.

(g) The commission as defined in section one, article two, chapter forty-eight-a of this code shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code further defining the duties of the child support enforcement division and the employer in wage withholding.

§48-2-37. Calculation of interest.

If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code. On or after the effective date of this section, interest shall accrue only upon the outstanding principal of such obligation. This section shall be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which has accrued on unpaid installments accruing before the effective date of this section may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the effective date of this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article.

2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.
3. Children's Advocate.
4. Proceeding Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3a. Calculation of interest.


As used in this chapter:

1. "Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

(A) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(i) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(ii) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(iii) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(iv) Delinquency and enforcement activities;

(B) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;

(C) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;
(D) To provide access to the records of the department of health and human resources or aid to families with dependent children in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(E) To provide for security against unauthorized access to, or use of, the data in such system;

(F) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and

(G) To provide management information on all cases from initial referral or application through collection and enforcement.

(2) "Chief judge" means the following:

(A) The circuit judge in a judicial circuit having only one circuit judge; or

(B) The chief judge of the circuit court in a judicial circuit having two or more circuit judges.

(3) "Child advocate office" and "child support enforcement division" mean the agency created under the provisions of article two of this chapter, or any public or private entity or agency contracting to provide a service. The "child advocate office" or "child support enforcement division" is that agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the secretary of the federal department of health and human services.

(4) "Children's advocate" or "advocate" means any public or private agency, entity or person providing child support enforcement services required by this chapter.
The term includes those persons or agencies or entities providing services under the direction of or pursuant to a contract with the child support enforcement division as provided for in article two of this chapter and in any such contract.

(5) "Court" means a circuit court of this state, unless the context in which such term is used clearly indicates that reference to some other court is intended.

(6) "Court of competent jurisdiction" means a circuit court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

(7) "Custodial parent" or "custodial parent of a child" means a parent who has been granted custody of a child by a court of competent jurisdiction. "Noncustodial parent" means a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child.

(8) "Director" means any person appointed pursuant to section thirteen, article two of this chapter, who directs all child support establishment and enforcement services for the child support enforcement division.

(9) "Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.

(10) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those
earnings of any amounts required by law to be withheld.

(11) "Employer" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays an individual for his services.

(12) "Guardian of the property of a child" means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

(13) "Income" includes, but is not limited to, the following:

(A) Commissions, earnings, salaries, wages and other income due or to be due in the future to an obligor from his employer and successor employers;

(B) Any payment due or to be due in the future to an obligor from a profit-sharing plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation, supplemental employment benefits, workers' compensation benefits, state lottery winnings and prizes and overtime pay;

(C) Any amount of money which is owing to the obligor as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state or any other legal entity which is indebted to the obligor.

(14) "Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act" means:

(A) An individual who has applied for or is receiving services from the child support enforcement division and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian of the property of a child
when:

(i) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

(ii) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(B) An individual who has applied for or is receiving services from the child support enforcement division and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated alimony or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past; or

(C) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.

(15) "Master" or "family law master" means a person appointed to such position under the provisions of section one, article four of this chapter.

(16) "Obligee" means:

(A) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(C) An individual seeking a judgment determining parentage of the individual's child.
"Obligor" means an individual or the estate of a decedent:

(A) Who owes or is alleged to owe a duty of support;

(B) Who is alleged, but has not been adjudicated, to be a parent of a child; or

(C) Who is liable under a support order.

"Office of the children's advocate" or "child support enforcement division" means the agency created in section twelve, article two of this chapter or any public or private entity or agency contracting with the child support enforcement division to provide these services pursuant to article two of this chapter.

"Primary caretaker of a child" means a parent or other person having actual physical custody of a child without a court order granting such custody and who has been primarily responsible for exercising parental rights and responsibilities with regard to such child.

"Secretary" means the secretary of the department in which the child support enforcement division is located according to section forty-two, article two of this chapter.

"Source of income" means an employer or successor employer or any other person who owes or will owe income to an obligor.

"Support" means the payment of money including interest:

(A) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, decree or judgment of such court, and the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;

(B) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health
§48A-2-1. Creation of support enforcement commission; number of members.

The West Virginia support enforcement commission, consisting of nine members, is hereby created in the department of health and human resources and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the department of health and human resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter and all other powers necessary and proper to establish policies and procedures for fully and effectively carrying out the purposes of administering, regulating, overseeing and enforcing the provisions of this chapter and chapter forty-eight of this code which relate to the establishment and enforcement of support obligations.

The commission is a part-time commission whose members make policy and have such other powers and perform such other duties as specified in this chapter or set forth in legislative rules promulgated by the commission. The ministerial duties of the commission shall be administered and carried out by the director of the child support enforcement division, with the assistance of such staff of the department of health and human resources as the secretary may assign.

Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the six members appointed by the governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the director are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b of this code.

§48A-2-2. Appointment of members of support enforcement commission; qualifications and eligibility.

(a) Of the nine members of the commission, three
shall be members by virtue of the public offices which they hold, and the remaining six members are to be appointed by the governor. No more than five members of the commission may belong to the same political party:

(1) One member is to be the secretary of the department of health and human resources;

(2) One member is to be the secretary of the department of tax and revenue;

(3) One member is to be the secretary of the department of administration;

(4) One member is to be a lawyer licensed by, and in good standing with, the West Virginia state bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(5) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;

(6) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

(7) One member is to be a person selected from a list of nominees submitted by the West Virginia judicial association: Provided, That the list of nominees shall not include any person currently exercising the powers of the judicial department; and

(8) Two members are to be representatives of the public at large.

(b) Each member of the commission is to be a citizen of the United States, a resident of the state of West Virginia and at least twenty-one years of age.

§48A-2-3. Terms of commission members; conditions of membership.

(a) The term of office for each member of the commission who serves as a member by virtue of the public
office held is for a period concurrent with that person's tenure in the office. The term of office for each member of the commission appointed by the governor is four years, except that for an initial period, the terms of office of the initial six commission members appointed by the governor commence from an initial date of appointment not later than the first day of July, one thousand nine hundred ninety-five, and run as follows:

(1) Two members shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred ninety-seven;

(2) Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-eight; and

(3) Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-nine.

(b) After the initial appointments made pursuant to the provisions of subdivisions (1), (2) and (3), subsection (a) of this section, members appointed by the governor shall thereafter be appointed or reappointed for terms of office which end on the thirtieth day of June in the fourth year following the expiration date of the previous term or terms.

(c) Appointments to fill vacancies on the commission are for the unexpired term of the member replaced.

(d) At the expiration of a member's term, the member shall continue to serve until a successor is appointed and qualified.


Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia.


In making the initial appointments to the commis-
sion, the governor shall designate a member to serve as chairman for a term ending on the thirtieth day of June, one thousand nine hundred ninety-six. The member so designated shall serve in such capacity until his or her successor as chairman is elected by the commission as hereinafter provided.

Following the term of the initial chairman, thereafter the chairman shall be elected by the commission from among its members, and the member so elected shall: (1) Serve as chairman for a term of two years and until his or her successor shall have been elected; or (2) shall serve in such capacity throughout his or her service as a member of the commission, whichever period is shorter. In the event that a successor chairman is not elected by the commission members within ninety calendar days after the expiration of a chairman's term, a vacancy shall be deemed to exist, and the governor shall designate a chairman from among the members of the commission. A member may not serve more than two consecutive terms as chairman.

§48A-2-6. Compensation of members; reimbursement for expenses.

(a) Each member of the commission shall receive one hundred dollars for each day or portion thereof spent in the discharge of his or her official duties.

(b) Each member of the commission shall be reimbursed for all actual and necessary expenses and disbursements involved in the execution of official duties.

§48A-2-7. Meeting requirements.

(a) The commission shall meet within the state at least once per calendar quarter and at such other times as the chairman may decide. The commission shall also meet upon a call of five or more members upon seventy-two hours written notice to each member.

(b) Five members of the commission are a quorum for the transaction of any business and for the performance of any duty.
(c) A majority vote of the members present is required for any final determination by the commission.

(d) The commission may elect to meet in executive session after an affirmative vote of a majority of its members present according to section four, article nine-a, chapter six of this code.

(e) The commission shall keep a complete and accurate record of all its meetings according to section five, article nine-a, chapter six of this code.


Notwithstanding the provisions of section four, article six, chapter six of this code, the governor may remove any commission member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.


The support enforcement commission shall have general responsibility for establishing policies and procedures for obtaining and enforcing support orders and establishing paternity according to this chapter, as herein-after provided, including, without limitation, the responsibility for the following:

(a) To propose for promulgation, according to the provisions of chapter twenty-nine-a of this code, such legislative rules as in its judgment may be necessary to fulfill the policies of this chapter;

(b) To undertake directly, or by contract, legal or policy research related to obtaining and enforcing support orders and establishing paternity;

(c) To serve as a clearinghouse for information;

(d) To keep a record of all commission proceedings available for public inspection;

(e) To file a written annual report to the governor, the president of the Senate and the speaker of the House of Delegates on or before the thirtieth day of January of
§48A-2-10. General powers of support enforcement commission.

In establishing policies and procedures for enforcing the provisions of this chapter, the commission shall have the following power and authority:

1. To establish and maintain procedures under which expedited processes, administrative or judicial, are in effect for obtaining and enforcing support orders and establishing paternity according to this chapter;

2. To monitor the child support enforcement system of this state and from time to time to advise the child support enforcement division and other agencies of the state of West Virginia regarding the establishment and enforcement of child support orders;

3. To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a of this code as are required by this chapter: Provided, That all rules which are in effect at the time of the implementation of this section shall continue in full force and effect until the commission promulgates a rule or rules regarding the same subject matter;

4. To promulgate legislative rules pursuant to chapter twenty-nine-a of this code establishing guidelines for child support awards;

5. To promulgate legislative rules pursuant to chapter twenty-nine-a of this code relating to the structure of the child support enforcement division, including, but not limited to, the designation of administrative and legal tasks and the location of offices for the division throughout the state. This rule shall constitute an emergency rule within the meaning of section fifteen, article three, chapter twenty-nine-a of this code;

6. To adopt standards for staffing, recordkeeping, reporting, intergovernmental cooperation, training, physical structures and time frames for case processing;
(7) To review the state plan for child and spousal support to determine its conformance or nonconformance with the provisions of 42 U.S.C. §654, and make recommendations or to promulgate legislative rules based upon such review;

(8) To cooperate with judicial organizations and the private bar to provide training to persons involved in the establishment and enforcement of child support orders;

(9) To study the issues involving retroactive and reimbursement child support payments which are ordered following the establishment of paternity and to make a recommendation to the Legislature on or before the first day of December, one thousand nine hundred ninety-five, regarding any statutory or regulatory action which should be implemented to ensure that fathers are not ordered to pay retroactive or reimbursement child support or medical expenses when such payments would be unconscionable or inequitable given the totality of the circumstances arising from the facts of a given case; and

(10) To promulgate such further legislative rules pursuant to chapter twenty-nine-a of this code which may aid the child support enforcement division in the establishment and enforcement of child support orders. In addition to the specific designation of such rules that constitute emergency rules within the meaning of section fifteen, article three, chapter twenty-nine-a of this code, the commission may promulgate other rules as emergency rules when such rule is necessary to ensure that the state is awarded federal funds for the actions described in the rule or when the promulgation of such rule is necessary to prevent substantial harm to the public interest by ensuring that child support is timely collected and disbursed.


The commission shall, without limitation on the powers conferred in section ten of this article, include within its legislative rules the following specific provisions according to the provisions of this chapter:
(1) Prescribing the methods and forms of proposal that a prospective contractor shall follow and complete before consideration of a proposal by the commission, which rules shall require such plans as shall assure the commission that the proposal conforms with the requirements of this chapter and all applicable federal statutes and regulations;

(2) Prescribing standards and guidelines for contractors providing professional services to ensure the maintenance of the highest quality of service and professional standards, the preservation of the attorney-client relationship, and the protection of the integrity of the adversarial process from any impairment in furnishing legal representation;

(3) Requiring the division, and any contractors providing professional services or collection services to the division, to adopt procedures for the provision of such services which will best advance the needs and interests of the obligees and dependents who seek assistance in obtaining and enforcing support orders and establishing paternity according to this chapter, without regard to whether such procedures optimize or maximize the profits derived by the contractor or result in the payment of reimbursements or financial incentives to the division;

(4) Prescribing standards and guidelines for contractors providing professional services to ensure that appropriate training and support services are provided to employees of the contractor who are engaged in activities to obtain and enforce support orders and establish paternity according to this chapter;

(5) Prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a contractor providing collection services, including provisions for the safeguarding of support payments, the recording of receipts and evidence of nonpayment by obligors, and the maintenance of reliable records, accounts and reports of transactions, operations and events, including reports to the commission;

(6) Providing for a minimum uniform standard of
accounting methods, procedures and forms; a uniform
code of accounts and accounting classifications; and other
standard operating procedures, as may be necessary to
assure consistency, comparability and effective disclosure
of all financial information by a contractor providing
collection services; and

(7) Requiring periodic financial reports and the
form thereof, including an annual audit prepared by a
certified public accountant licensed to do business in this
state, attesting to the financial condition of a contractor
providing collection services and disclosing whether the
accounts, records and control procedures examined are
maintained by the contractor as required by this chapter.

§48A-2-12. Establishment of the child support enforcement
division; cooperation with the division of human services.

(a) Effective the first day of July, one thousand nine
hundred ninety-five, there is hereby established in the
department of health and human resources the child sup-
port enforcement division. The division is under the im-
mediate supervision of the director, who is responsible for
the exercise of the duties and powers assigned to the divi-
sion under the provisions of this chapter. The division is
designated as the single and separate organizational unit
within this state to administer the state plan for child and
spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate
with the child support enforcement division. At a mini-
mum, such cooperation shall require that the division of
human services:

(1) Notify the child support enforcement division
when the division of human services proposes to terminate
or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a
former or current recipient to the extent permitted by Title
IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or inter-
est in support payments and forward a copy of the assign-

(a) There is hereby created the position of director whose duties include the ministerial management and administration of the office of the support enforcement commission. The director shall:

(1) Be appointed by the secretary;

(2) Serve at the will and pleasure of the secretary;

(3) Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment, while serving as director;

(4) Be a lawyer licensed by, and in good standing with, the West Virginia state bar; and

(5) Have responsible administrative experience, possess management skills, and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.

Before entering upon the discharge of the duties as commissioner, the director shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia.

(b) The duties of the director shall include the following:

(1) To direct and administer the daily operations of the commission;

(2) To administer the child support enforcement fund created pursuant to section eighteen of this article;

(3) To keep the records and papers of the commission, including a record of each proceeding;

(4) To prepare, issue and submit reports of the commission; and

(5) To perform any other duty that the commission directs.
(c) All payments to the director as compensation shall be made from the child support enforcement fund. The director is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

(2) Reimbursement for expenses under the standard state travel regulations.


(a) The director shall organize the work of the division in such offices or other organizational units as he or she may determine to be necessary for effective and efficient operation.

(b) The secretary may transfer employees and resources of the department to the child support enforcement division as may be necessary to fulfill the duties and responsibilities of the division under this chapter: Provided, That the secretary may not transfer employees of other divisions and agencies within the department to the child support enforcement division without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated. On the first day of July, one thousand nine hundred ninety-five, the secretary shall transfer and allocate to the division all functions, offices, personnel and equipment of the child advocate office previously created within the division of human services by the prior enactment of section one of this article.

(c) The director, if he or she deems such action necessary, may hire legal counsel for the division, notwithstanding the provisions of section two, article three, chapter five of this code or any other code provision to the contrary, or may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the division. The attorney general, in pursuance of such request, may select and appoint assistant attorneys general, to serve during the will and pleasure of the attorney general, and such assistants shall be paid out of any funds allocated and appropriated to the child
support enforcement fund.

(d) The director may employ such staff or employees as may be necessary to administer and enforce this chapter.

§48A-2-15. Supervisory responsibilities within the child support enforcement division.

The director shall have control and supervision of the child support enforcement division and shall be responsible for the work of each of its organizational units. Each organizational unit shall be headed by an employee of the division appointed by the director who shall be responsible to the director for the work of his or her organizational unit.


In carrying out the policies and procedures for enforcing the provisions of this chapter, the division shall have the following power and authority:

(1) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;

(2) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

(3) To undertake directly, or by contract, activities to collect and disburse support payments;

(4) To contract for professional services with any person, firm, partnership, professional corporation, association or other legal entity to provide representation for the division and the state in administrative or judicial proceedings brought to obtain and enforce support orders and establish paternity;

(5) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as pro-
mulgated by the supreme court of appeals;

(6) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(7) To ensure the compliance of contractors and their employees with the provisions of this chapter and legislative rules promulgated pursuant to this chapter, and to terminate, after notice and hearing, the contractual relationship between the division and a contractor who fails to comply;

(8) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(9) To locate parents who owe a duty to pay child support;

(10) To cooperate with other agencies of this state and other states to search their records to help locate absent parents;

(11) To cooperate with other states in establishing and enforcing support obligations;

(12) If the child support enforcement division is transferred to the department of tax and revenue pursuant to section forty-two of this article, the director of the child support enforcement division may exercise any power available to him or her as director, or to the tax commissioner, in order to accomplish the purposes of this chapter, including, but not limited to, the powers associated with gaining access to all information gained and maintained by the department of tax and revenue in the collection of taxes, and any and all powers to levy, through distraint or seizure by any means, upon all property or rights to property without the need to obtain a separate court order for the attachment;

(13) To exercise such other powers as may be neces-
§48A-2-17. Guidelines for child support awards.

(a) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There shall be a rebuttable presumption, in any proceeding before a family law master or circuit court judge for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. The guidelines shall not be followed:

(1) When the child support award proposed to be made pursuant to the guidelines has been disclosed to the parties and each party has made a knowing and intelligent waiver of said amount, and the support obligors have entered into an agreement which provides for the custody and support of the child or children of the parties; or

(2) When the child support award proposed to be made pursuant to the guidelines would be contrary to the best interests of the child or children, or contrary to the best interests of the parties.

(b) The Legislature, by the enactment of this article, recognizes that children have a right to share in their natural parents' level of living. Accordingly, guidelines promulgated under the provisions of this section shall not be based upon any schedule of minimum costs for rearing children based upon subsistence level amounts set forth by various agencies of government. The Legislature recognizes that expenditures in families are not made in accordance with subsistence level standards, but are rather made in proportion to household income, and as parental in-
comes increase or decrease, the actual dollar expenditures
for children also increase or decrease correspondingly. In
order to ensure that children properly share in their par-
ents' resources, regardless of family structure, the guide-
lines shall be structured so as to provide that after a con-
sideration of respective parental incomes, that child sup-
port will be related, to the extent practicable, to the level of
living which such children would enjoy if they were living
in a household with both parents present.

(c) The guidelines promulgated under the provisions
of this section shall take into consideration the financial
contributions of both parents. The Legislature recognizes
that expenditures in households are made in aggregate
form and that total family income is pooled to determine
the level at which the family can live. The guidelines shall
provide for examining the financial contributions of both
parents in relationship to total income, so as to establish
and equitably apportion the child support obligation.
Under the guidelines, the child support obligation of each
parent will vary proportionately according to their individ-
ual incomes.

(d) The guidelines shall be structured so as to take
into consideration any preexisting support orders which
impose additional duties of support upon an obligor out-
side of the instant case and shall provide direction in cases
involving split or shared custody.

(e) The guidelines shall have application to cases of
divorce, paternity, actions for support and modifications
thereof.

(f) In determining the child support obligation of a
parent whose employment income consists, in part, of
compensation for overtime hours worked, the guidelines
shall provide for a child support order which includes a
consideration of such overtime compensation, balancing
the interest of children to share in the resources of such
parent with the interest of the parent in not being penal-
ized for accepting overtime work. Any formula which is
used to compute anticipated overtime compensation shall
allow for the irregular nature of such compensation.
(g) In determining the child support obligation of a parent whose employment income consists of compensation for seasonal employment, the guidelines shall provide for discretionary use of alternative payment schedules which may vary the periodic amounts required to be paid.

(h) The guidelines promulgated shall provide that in determining the child support obligation of a parent whose support obligation extends to the children of more than one family, the guidelines shall be structured so as to equitably provide for all children to whom the obligor owes a duty of support. The commission, in promulgating guidelines in conformity to this section, shall formulate a policy regarding whether a remarried parent's spouse's income affects a support obligation, and a policy regarding the consideration to be given to the costs of multiple family child raising obligations, other than the costs for those children for whom the support action was brought. The policy of the commission shall be declared explicitly in the guidelines, and if it is the policy of the commission that the amount of support ordered should be altered because of a consideration of these factors, then the formula for calculating the alteration under the guidelines shall be explicitly stated.

(i) The guidelines shall incorporate standards for the computation of child support payments for persons when the parent's combined monthly net income is less than six hundred dollars or more than ten thousand dollars. The guidelines shall provide for crediting third party payments as child support when such third party payments are ordered by a court in a child support order.

(j) In promulgating the legislative rule provided for under the provisions of this section, the commission shall be directed by the following legislative findings:

1. That amounts to be fixed as child support should not include awards for alimony, notwithstanding the fact that any amount fixed as child support may impact upon the living conditions of custodial parents;

2. That parental expenditures on children represent a relatively constant percentage of family consumption as
family consumption increases, so that as family income increases, the family's level of consumption increases, and the children should share in and benefit from this increase;

(3) That parental expenditures on children represent a declining proportion of family income as the gross income of the family increases, so that while total dollar outlays for children have a positive relationship to the family's gross income, the proportion of gross family income allotted for the children has a negative relationship to gross income;

(4) That expenditures on children vary according to the number of children in the family, and as the number of children in the family increases, the expenditures for the children as a group increase and the expenditures on each individual child decrease; so that due to increasing economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children; and

(5) That as children grow older, expenditures on children increase, particularly during the teenage years.

(k) Prior to the first day of May, one thousand nine hundred ninety-six, the commission shall review the guidelines and propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine of this code to amend and update the guidelines required by this section. Such proposed rule shall include, but not be limited to, provisions which specifically address the requirements set forth in subsections (f), (g) and (h) of this section. In preparing such legislative rule to be proposed for promulgation, the commission is directed to study the feasibility and desirability of basing support guidelines on an income shares formula. Notwithstanding the provisions of this section to the contrary, the commission may, in its discretion, propose for promulgation support guidelines based on an income shares formula. In preparing such legislative rule to be proposed for promulgation, the commission is directed to study the feasibility and desirability of limiting the maximum amount to be paid as child support in cases involving a
parent or parents with high incomes, and to also study the
possible alternative disposition of available income to an
educational trust or other investment through which the
child or children hold the beneficial interest, and the com-
mission may, in its discretion, propose for promulgation
support guidelines which address these issues.

(I) The commission shall review the guidelines at least
once every four years to ensure that their application re-
results in the determination of appropriate child support
awards. Such four-year period shall begin on the first day
of July, two thousand.

§48A-2-18. Creation of child support enforcement fund; pur-
pose; funding; disbursements.

(a) There is hereby created in the state treasury a
separate special revenue account, which shall be an interest
bearing account, to be known as the "child support en-
forcement fund". The special revenue account shall con-
sist of all incentive payments paid by the federal govern-
ment pursuant to 42 U.S.C §658 as a percentage of the
total amount of support collected directly or by contract
by the child support enforcement division, all amounts
appropriated by the Legislature to maintain and operate
the child support enforcement division according to this
chapter, and all interest or other earnings from moneys in
the fund. Any agency or entity receiving federal matching
funds for services of the child support enforcement
division shall enter into an agreement with the secretary
whereby all federal matching funds paid to and received
by that agency or entity for the activities of the child sup-
port enforcement division shall be paid into the child
support enforcement fund. Said agreement shall provide
for advance payments into the fund by such agencies,
from available federal funds, pursuant to Title IV-D of the
Social Security Act and in accordance with federal regula-
tions. No expenses incurred under this section shall be a
charge against the general funds of the state.

(b) Moneys in the special revenue account shall be
appropriated to the department and used exclusively, in
accordance with appropriations by the Legislature, to pay
costs, fees and expenses incurred, or to be incurred for the
following purpose: The provision of child support services authorized pursuant to Title VI, Part D of the Social Security Act and any further duty as set forth in this chapter, including, but not limited to, the duties assigned to the division by virtue of its being designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to section twelve of this article.

(c) Any balance remaining in the special revenue account at the end of any state fiscal year shall not revert to the general revenue fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section: Provided, That for the three succeeding fiscal years after the effective date of this section, any appropriation made to the special revenue account from general revenue shall be repaid to the general revenue fund from moneys available in the special revenue account.

(d) Disbursements from the special revenue account shall be authorized by the director.


(a) When the child support enforcement division provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the child support enforcement division shall, upon written notice to the obligor, charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to the amount of child support which was ordered by the court. The fee shall be deposited in the child support enforcement fund. The service fee assessed may not exceed ten percent of the monthly court ordered child support and may not be assessed against any obligor who is current in payment of the monthly court ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the child support enforcement division who are applying for or receiving public assistance from the
division of human services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of twenty-five dollars.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee the child support enforcement division shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the child support enforcement fund established pursuant to section eighteen of this article.

(d) In any action brought by the child support enforcement division, the family law master shall order that the obligor shall pay attorney fees for the services of the attorney representing the child support enforcement division in an amount calculated at a rate similar to the rate paid to court appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code, and all court costs associated with the action: Provided, That no such award shall be made when the family law master or circuit judge finds that the award of attorneys fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the child support enforcement division may not collect such fees until the obligor is current in the payment of child support. No court may order the child support enforcement division to pay attorney’s fees to any party in any action brought pursuant to this chapter or chapter forty-eight of this code.

(e) This section shall not apply to the extent it is inconsistent with the requirements of federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title 42, Sections 651 to 662.
59. (f) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, describe the circumstances under which fees charged by the child support enforcement division may be modified or waived, and such rule shall provide for the waiver of any fee, in whole or in part, when such fee would otherwise be required to be paid under the provisions of this chapter. Further, such rule shall initially be promulgated as an emergency rule pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

§48A-2-20. Contracts for services.

(a) Contracts with persons, firms, partnerships, corporations, associations or other legal entities to provide services to the child support enforcement division shall, at a minimum:

(1) Provide for the employment and training of personnel necessary to perform the services;

(2) Provide that any federal incentive payment that is payable shall be payable to the fund established pursuant to section eighteen of this article;

(3) Delegate responsibility that is consistent with the rules promulgated pursuant to this article;

(4) Include any and all provisions required by state or federal law and specifically include terms regarding cancellation and renewal of the contract;

(5) Provide for the assessment of penalties for the failure to fully or timely provide services included in the agreement;

(6) Prohibit the assignment of the contract or the subcontracting of services to be provided under the contract without first obtaining the express written approval of the director;

(7) Provide that the contractor consents to performance audits of its operations by the performance evaluation and research division, legislative auditor's office of the West Virginia Legislature; and
(8) Establish reasonable administrative and fiscal requirements for providing and continuing services and reimbursement.

(b) Prior to entering into such agreement, the director shall provide all proposals to the members of the commission who may review and comment on those proposals.

(c) The director shall enter into such agreement only when the director finds that based upon the information provided to the director and upon the comments made by members of the commission, that the provider of services is capable of carrying out the responsibilities of the agreement.

(d) All contracts entered into pursuant to this section shall meet all requirements for such agreements as detailed in article three, chapter five-a of this code: Provided, That when the commission, after reviewing any contract, finds that the contract meets all requirements as set forth in this section and further that the child support enforcement division should enter into such contract, the contract shall not be subject to the requirements as detailed in article three, chapter five-a of this code.

(e) Any agreement entered into pursuant to this section may include a provision relating to the loan of equipment in the possession of the child support enforcement division.


(a) Attorneys employed by the child support enforcement division may represent this state or another state in an action brought under the authority of federal law of this chapter.

(b) An attorney employed by the child support enforcement division or employed by a person or agency or entity pursuant to a contract with the child support enforcement division represents the interest of the state or the division and not the interest of any other party. The child support enforcement division shall, at the time an application for child support services is made, inform the applicant that any attorney who provides services for the
child support enforcement division is the attorney for the state of West Virginia and that the attorney providing those services does not provide legal representation to the applicant.

(c) An attorney employed by the child support enforcement division or pursuant to a contract with the child support enforcement division may not be appointed or act as a guardian ad litem or attorney ad litem for a child or another party.


(a) The child support enforcement division shall establish a parent locator service to locate obligors, utilizing all sources of information and available records and the parent locator service in the federal department of health and human services. Any person, agency or entity providing services to the child support enforcement division pursuant to a contract shall have access to such service when the contract includes a provision to ensure that the confidentiality of such information is maintained.

(b) Upon entering into an agreement with the secretary of the federal department of health and human services for the use of that department's parent locator service, the child support enforcement division shall accept and transmit to the secretary of the department of health and human services requests for information to be furnished by such federal parent locator service to authorized persons. The child support enforcement division shall charge a reasonable fee sufficient to cover the costs to the state and to the federal department of health and human services incurred by reason of such requests, and shall transfer to that department from time to time, so much of the fees collected as are attributable to the costs incurred by that department.

§48A-2-23. Cooperation with other states in the enforcement of child support.

(a) The child support enforcement division shall cooperate with any other state in the following:

(1) In establishing paternity;
(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;

(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and

(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The commission shall, by legislative rule, establish procedures necessary to extend the child support enforcement division's system of withholding under section three, article five of this chapter so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child's custodial parent.

§48A-2-24. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the child support enforcement division shall be distributed within ten days of receipt, except as otherwise specifically provided in this chapter. Such amounts shall, except as otherwise provided under the provisions of subsection (c) of this section, be distributed as follows:

(1) The first fifty dollars of such amounts as are collected periodically which represent monthly support payments shall be paid to the obligee without affecting the eligibility of such person's family for assistance from the department of health and human resources or decreasing any amount otherwise payable as assistance to such family during such month;

(2) Such amounts as are collected periodically which are in excess of any amount paid to the family under
subdivision (1) of this subsection and which represent monthly support payments shall be paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the federal government to the extent of its participation in the financing);

(3) Such amounts as are in excess of amounts required to reimburse the department of health and human resources under subdivision (2) of this subsection and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the obligee; and

(4) Such amounts as are in excess of amounts required to be distributed under subdivisions (1), (2) and (3) of this subsection shall be: (A) Paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources (with appropriate reimbursement of the federal government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the department has not been reimbursed; or (B) if no assistance payments have been made by the department which have not been repaid, such amounts shall be paid to the obligee.

(b) (1) Whenever a family for whom support payments have been collected and distributed under the provisions of this chapter ceases to receive assistance from the department of health and human resources, the child support enforcement division shall provide notice to the family of their rights with regard to a continuation of services. Unless notified by the family that services are no longer desired, the child support enforcement division shall continue to collect amounts of support payments which represent monthly support payments from the obligor and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other
obligees who are not receiving assistance from the department of health and human resources.

(2) So much of any amounts of support so collected as are in excess of the payments required to be made in subdivision (1) of this subsection shall be paid, first, to the obligee until all past due support owed to the family by the obligor has been paid. After all arrearages owing to the family have been paid, any amounts of support collected which are in excess of the required support payments shall be distributed in the manner provided by paragraphs (A) and (B), subdivision (4), subsection (a) of this section with respect to excess amounts described in said subsection.

(c) (1) Notwithstanding the preceding provisions of this section, amounts collected by the child support enforcement division as child support for months in any period on behalf of a child for whom the department of health and human resources is making foster care maintenance payments shall:

(A) Be paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources to the extent necessary to reimburse the department for foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the federal government to the extent of its participation in financing);

(B) Be paid to the appropriate administrative unit of the department of health and human resources to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but do not exceed the amounts required by a court order to be paid as support on behalf of the child during such period; and the department of health and human resources may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and
(C) Be paid to the appropriate administrative unit of the department of health and human resources if any portion of the amounts collected remains after making the payments required under paragraphs (A) and (B) of this subdivision, to the extent that such portion is necessary to reimburse the department of health and human resources (with appropriate reimbursement to the federal government to the extent of its participation in the financing), for any past foster care maintenance payments, or payments of aid to families with dependent children which were made with respect to the child (and with respect to which past collections have not previously been retained);

(2) Any balance of the amounts required to be paid under the provisions of subdivision (1) of this subsection shall be paid to the appropriate administrative unit of the department of health and human resources, for use by the department in accordance with paragraph (B) of said subdivision.

(d) Any payment required to be made under the provisions of this section to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

(e) The commission shall establish bonding requirements for employees of the child support enforcement division who receive, disburse, handle or have access to cash.

(f) The director shall maintain methods of administration which are designed to assure that employees of the child support enforcement division or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the director may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

(g) No penalty or fee may be collected by or distributed to a recipient of child support enforcement division
services from the state treasury or from the child support enforcement fund when child support is not distributed to the recipient in accordance with the time frames established herein.

§48A-2-25. Payment of support to the child support enforcement division.

All support payments owed to an obligee who is an applicant for or recipient of the services of the child support enforcement division shall be paid to the child support enforcement division. Any other obligee owed a duty of support under the terms of a support order entered by a court of competent jurisdiction may request that the support payments be made to the child support enforcement division. In such case, the child support enforcement division shall proceed to receive and disburse such support payments to or on behalf of the obligee as provided by law.


In accordance with an initial and annually updated advance data processing planning document approved by the secretary of the federal department of health and human services, the child support enforcement division may establish an automatic data processing and retrieval system designed effectively and efficiently to assist the director in carrying out the provisions of this chapter.

§48A-2-27. Obtaining support from federal tax refunds.

The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, place in effect procedures necessary for the child support enforcement division to obtain payment of past due support from federal tax refunds from overpayments made to the secretary of the treasury of the United States. The child support enforcement division shall take all steps necessary to implement and utilize such procedures.


(a) The tax commissioner shall establish procedures
necessary for the child support enforcement division to obtain payment of past due support from state income tax refunds from overpayment made to the tax commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish procedures necessary for the child support enforcement division to enforce a support order through a notice to the tax commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the child support enforcement division shall serve on the obligor or submit to the tax commissioner notices of past due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the tax commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the tax commissioner for the full cost of applying the procedure whereby past due support is obtained from state income tax refunds; and

(E) Circumstances when the child support enforcement division may deduct a twenty-five dollar fee from the obligor's state income tax refund. Such rule may not require that an applicant who is a recipient of assistance from the department of human services in the form of aid to families with dependent children.

(2) Withholding from state income tax refunds may not be pursued unless the child support enforcement division has examined the obligor's pattern of payment of support and the obligee's likelihood of successfully pursuing other enforcement actions, and has determined that the
amount of past due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars or more, the child support enforcement division shall consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the child support enforcement division first agreed to enforce the support order.

(c) The director of the child support enforcement division shall enter into agreements with the secretary of the treasury and the tax commissioner, and other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, in order to provide notice between such agencies to aid the child support enforcement division in requesting state income tax deductions, and to aid the tax commissioner in enforcing such deductions. In each such case, the tax commissioner, in processing the state income tax deduction, shall notify the child support enforcement division of the obligor's home address and social security number or numbers. The child support enforcement division shall provide this information to any other state involved in processing the support order.

(d) For the purposes of this section, "past due support" means the amount of unpaid past due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living, regardless of whether the amount has been reduced to judgment or not.

(e) The child support enforcement division may, under the provisions of this section, enforce the collection of past due support on behalf of a child who has reached the age of majority.

(f) The legislative rule promulgated by the commission pursuant to the provisions of this section and pursuant to chapter twenty-nine-a of this code, shall, at a minimum, provide that prior to notifying the tax commissioner of past due support, a notice to the obligor as prescribed
under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the child support enforcement division that past due support is owed or the amount of the past due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the child support enforcement division is notified by the tax commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past due support which is involved has not been assigned to the department of human services, the child support enforcement division may delay distribution of the amount withheld until such time as the tax commissioner notifies the child support enforcement division that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the tax commissioner under the provisions of this section and paid to the child support enforcement division, if the child support enforcement division subsequently determines that the amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past due support, or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return.

(i) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a, structure the time and method by which all amounts received by the child support enforcement division, as payments of past due support from state income tax refunds, are distributed. In
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I 117 a case where an obligee is an applicant for the services of
118 the child support enforcement division, but is not a current
119 recipient of assistance from the department of human
120 services in the form of aid to families with dependent
121 children, such method of distribution shall give priority to
122 the obligee and the family of the obligee by paying such
123 amounts to the obligee first rather than using them first to
124 reimburse the department of human services.

§48A-2-29. Obtaining support from unemployment compensation benefits.

(a) The director shall determine on a periodic basis
whether individuals receiving unemployment compensa-
tion owe child support obligations which are being en-
forced or have been requested to be enforced by the child
support enforcement division. If an individual is receiving
such compensation and owes any such child support obli-
gation which is not being met, the child support enforce-
ment division shall enter into an agreement with such
individual to have specified amounts withheld otherwise
payable to such individual, and shall submit a copy of
such agreement to the bureau of employment programs.
In the absence of such agreement, the child support en-
forcement division shall bring legal process to require the
withholding of amounts from such compensation.

(b) The secretary shall enter into a written agreement
with the bureau of employment programs for the purpose
of withholding unemployment compensation from indi-
viduals with unmet support obligations being enforced by
the child support enforcement division. The child support
enforcement division shall agree only to a withholding
program that it expects to be cost effective, and, as to re-
imbursement, shall agree only to reimburse the bureau of
employment programs for its actual, incremental costs of
providing services to the child support enforcement divi-
sion.

(c) The commission shall promulgate a procedural
rule for selecting cases to pursue through the withholding
of unemployment compensation for support purposes.
This rule shall be designed to ensure maximum case selec-
tion and minimal discretion in the selection process.
(d) The director shall, not less than annually, provide a receipt to an individual who requests a receipt for the support paid through the withholding of unemployment compensation, if receipts are not provided through other means.

(e) The director shall, through direct contact with the bureau of employment programs, process cases through the bureau of employment programs in this state, and shall process cases through support enforcement agencies in other states. The director shall receive all amounts withheld by the bureau of employment programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

(f) At least one time per year, the commission shall review and document program operations, including case selection criteria established under subsection (c) of this section, and the costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the bureau of employment programs to improve program and cost effectiveness.

(g) For the purposes of this section:

(1) "Legal process" means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order to such court or pursuant to state or local law.

(2) "Unemployment compensation" means any compensation under state unemployment compensation law (including amounts payable in accordance with agreements under any federal unemployment compensation law). It includes extended benefits, unemployment compensation for federal employees, unemployment compensation for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Federal Redwood National Park Expansion Act.


The child support enforcement division shall provide
annual statements of their account to each obligor and
obliger without charge. Additional statements of account
shall be provided at a fee of five dollars, unless such fee is
waived pursuant to a rule promulgated by the commission.
Statements provided under this subsection are in addition
to statements provided for judicial hearings. The director
shall establish procedures whereby an obligor or obligee
can contest or correct a statement of account.

§48A-2-31. Providing information to consumer reporting
agencies.

(a) For purposes of this section, the term "consumer
reporting agency" means any person who, for monetary
fees, dues, or on a cooperative nonprofit basis, regularly
engages, in whole or in part, in the practice of assembling
or evaluating consumer credit information or other infor-

mation on consumers for the purpose of furnishing con-
sumer reports to third parties.

(b) The commission shall propose and adopt a proce-
dural rule in accordance with the provisions of sections
four and eight, article three, chapter twenty-nine of this
code, establishing procedures whereby information re-
garding the amount of overdue support owed by an obli-
gor residing in this state will be made available by the
child support enforcement division to any consumer re-
porting agency, upon the request of such consumer re-
porting agency.

(c) (1) When the amount of any overdue support is
equal to or less than the amount of arrearage which would
cause the mailing of a notice as provided for in subsection
(b), section three, article five of this chapter, information
regarding such amount may not be made available;

(2) When the amount of any overdue support ex-
ceeds the amount of arrearage which would cause the
mailing of a notice as provided for in subsection (b), sec-
tion three, article five of this chapter, information regard-
ing such amount shall be made available.

(d) The procedural rule proposed and adopted shall
provide that any information with respect to an obligor
shall be made available only after notice has been sent to
such obligor of the proposed action, and such obligor has
been given a reasonable opportunity to contest the accura-
cy of such information.

(e) The procedural rule proposed and adopted shall
afford the obligor with procedural due process prior to
making information available with respect to the obligor.

(f) The information made available to the requesting
consumer reporting agency regarding overdue support
may be in the same form as information submitted to the
secretary of the treasury of the United States.

(g) The child support enforcement division may
impose a fee for furnishing such information, not to ex-
ceed the actual cost thereof.


The child support enforcement division shall estab-
lish and maintain a central registry of child support or-
ders. All orders in cases when any party receives any
service provided by the child support enforcement divi-
sion shall be included in the registry. Any other support
order shall be included upon the request of any party.
The child support enforcement division, upon receipt of
any information regarding a new hire provided pursuant
to section three, article five of this chapter shall compare
information received to determine if the new hire's income
is subject to wage withholding and notify the employer
pursuant to that section.


In order to obtain financial and medical insurance
information pursuant to the establishment, enforcement
and modification provisions set forth in this chapter or
chapter forty-eight of this code, the child support enforce-
ment division may serve, by certified mail or personal
service, an administrative subpoena on any person, corpo-
ration, partnership, financial institution, labor union or
state agency, for an appearance or for production of fi-
nancial or medical insurance information. In case of
disobedience to the subpoena, the child support enforce-
ment division may invoke the aid of any circuit court in requiring the appearance or production of records and financial documents.

§48A-2-34. Employment and income reporting.

(a) Except as provided in subsections (b) and (c) of this section, all employers doing business in the state of West Virginia shall report to the child support enforcement division:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(2) The rehiring or return to work of any employee who resides or works in this state.

(b) Employers are not required to report the hiring, rehiring or return to work of any person who:

(1) Is employed for less than one month's duration; or

(2) Is employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or

(3) Has gross earnings of less than three hundred dollars per month.

(c) The commission may establish additional exemptions to reduce unnecessary or burdensome reporting through promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code.

(d) Employers shall report by mailing to the child support enforcement division a copy of the employee's W-4 form. However, an employer may transmit such information through another means if approved in writing by the child support enforcement division prior to the transmittal.

(e) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. The report shall include the employee's
name, address, social security number and date of birth
and the employer's name and address, any different ad-
dress of the payroll office and the employer's federal tax
identification number.

(f) An employer of an obligor shall provide to the
child support enforcement division, upon its written re-
quest, information regarding the obligor's employment,
wages or salary, medical insurance and location of em-
ployment.

(g) Any employer who fails to report in accordance
with the provisions of this section shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined not
less than five hundred dollars nor more than one thousand
dollars.

(h) Employers required to report under this section
may assess each employee so reported one dollar for the
administrative costs of reporting.

§48A-2-35. Investigations of support orders; notice and hear-
ing upon modifications; petition for change.

(a) Every three years after the entry of a final judg-
ment containing a child support order has been entered in
a domestic relations matter, the child support enforcement
division shall examine the records and conduct any inves-
tigation considered necessary to determine whether the
child support amount should be increased or decreased in
view of a temporary or permanent change in physical
custody of the child which the court has not ordered, in-
creased need of the child or changed financial conditions.

(b) Upon the written request by an obligee or obli-
gor, the child support enforcement division shall examine
the record and conduct any investigation considered nec-
essary to determine whether the child support amount
should be increased or decreased in view of a temporary
or permanent change in physical custody of the child
which the court has not ordered, increased need of the
child or other financial conditions.

(c) Notwithstanding the requirements imposed by
this section, the child support enforcement division is not
required to review the matter when:

(1) The child is being supported, in whole or in part, by assistance payments from the division of human services, the child support enforcement division has determined that such a review would not be in the best interests of the child and neither parent has requested a review; or

(2) Neither parent has requested a review.

(d) The child support enforcement division shall notify both parents of their right to request a review of a child support order, and shall give each parent at least thirty days' notice before commencing any review, and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to petition to seek modification or of a proposal that there should be no change.

(e) When the result of the review is a proposal to petition to seek modification, then each parent shall be given thirty days' notice of the hearing on the petition, the notice to be directed to the last known address of each party by first class mail.

When the result of the review is a proposal that there be no change, then any parent disagreeing with that proposal may, within thirty days of the notice of the results of the review, file with the court a petition for modification setting forth in full the grounds therefor.

(f) The child support enforcement division shall petition the court for modification of the amount of a child support order if modification is determined to be necessary under subsection (a) of this section. A written report and recommendation shall accompany the petition.

(g) As used in this section, "changed financial conditions" means increases or decreases in the resources available to either party from any source. Changed financial conditions includes, but is not limited to, the application for or receipt of any form of public assistance payments, unemployment compensation and workers' compensation.

§48A-2-36. Adoption of form to identify payments.
The commission shall recommend to the secretary a form for the purpose of identification of child support payments which shall include, at a minimum, any amount of child support obligation paid under an income withholding order, the name and address of the payee, and the availability of health insurance. The form may include other information needed to ensure the proper credit and distribution of such payments. The secretary shall adopt any revised form no later than the first day of July, one thousand nine hundred ninety-six, which shall include all information listed herein. Following the adoption of such form, the commission shall promulgate such legislative rules pursuant to chapter twenty-nine-a as may be necessary to ensure that all information provided on the form is correct. This rule shall constitute an emergency rule within the meaning of section fifteen, article three, chapter twenty-nine-a of this code.


(a) When any filing, copying or other service is provided to the child support enforcement division, the state or county official or the clerk of any court providing such fee for a charge, shall bill the child support enforcement division monthly.

(b) When any filing, copying or other service is provided to a person, agency or entity who is providing services for the child support enforcement division pursuant to a contract, the state or county official or the clerk of any court providing such fee for a charge, shall bill the entity, agency, person or child support enforcement division monthly, in accord with the terms of the contract. The child support enforcement division shall provide the relevant terms of such agreement to those officials upon implementation of any agreement.

(c) A state or county official and the clerk of any court who charges a deposit, library fee, filing fee for filing and copying documents or their service, if the filing, copying or services is for the child support enforcement division or for a person, entity or agency providing services pursuant to a contract as described in this article, shall bill the child support enforcement division monthly or the
§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other forms of assistance by the child support enforcement division for expenditure, disbursement and distribution by the division in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

(b) Insofar as such actions are consistent with the laws of this state granting authority to the division and the director, the division shall comply with such requirements and standards as the secretary of the federal department of health and human services may have determined, as of the effective date of this section, to be necessary for the establishment of an effective program for locating obligors, establishing paternity, obtaining support orders and collecting support payments.


The child support enforcement division shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.


(a) All records in the possession of the child support enforcement division, including records in the possession of the division concerning an individual case of child or spousal support, shall be kept confidential and shall not be released except as provided below:
(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.

(2) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision (3) of this subsection, to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the division as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.

(3) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the division shall mail a notice by first class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support, or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this section in order to determine what records the child support enforcement division may have. In the event of any objection, the division shall determine whether or not the information shall be released.
(4) Information in specific cases may be released as is necessary or to determine the identity, location, employment, income and assets of an obligor.

(5) Information and records may be disclosed to the department of vital statistics, department of employment security, the department of workers' compensation, state tax department and the internal revenue service, or other state or federal agencies or departments as may be necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

(b) Any person who willfully violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in jail not more than six months, or both fined and imprisoned.


(a) All state, county and municipal agencies, offices and employers receiving a request for information and assistance from the child support enforcement division shall cooperate with the division in the location of parents who have abandoned and deserted children and shall provide the division with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the division that the information is needed to locate a parent for the purpose of collecting child support, provide the division with the following information about the parent: Full name, social security number, date of birth, home address, wages and number of dependents listed for income tax purposes: Provided, That no entity may provide any information obtained in the course of providing legal services, medical treatment or medical services.
§48A-2-42. Authorization for transfer of functions, offices and equipment of the support enforcement commission and the child support enforcement division.

The governor may, by executive order, transfer and reallocate all of the functions, offices and equipment of the commission and the child support enforcement division to the department of tax and revenue or the department of administration, with such transfer and reallocation to take effect on the first day of December, one thousand nine hundred ninety-five. The authority to make transfers and reallocations by executive order as provided for in this section shall expire on the first day of December, one thousand nine hundred ninety-five.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-11. Repeal of article.

All procedures and requirements established in the previous enactment of sections one, two, three, seven and eight of this article shall continue in effect until the promulgation of an emergency rule by the commission regarding the duties of child support enforcement division, their salary and their location throughout the state. Upon promulgation of this rule and the filing of such rule with the secretary of state in accord with section fifteen, article three, chapter twenty-nine-a of this code, this article and any rule promulgated pursuant to those sections of this article shall be repealed.

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-22. Budget of the family law master system.

The budget for the payment of the salaries and benefits of the family law masters and clerical and secretarial assistants shall be included in the appropriation for the supreme court of appeals. The family law master administration fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a special fund administered by the state auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of the family law master
system. All agencies or entities receiving federal matching funds for the services of family law masters and their staff, including, but not limited to, the director of the child support enforcement division and the secretary of the department of health and human resources, shall enter into an agreement with the administrative office of the supreme court of appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family law masters and staff of the program shall be paid into the family law master administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-1. Action to obtain an order for support of minor child.

(a) An action may be brought in circuit court to obtain an order for the support of a minor child when:

(1) Such child has a parent and child relationship with an obligor;

(2) Such obligor is not the primary caretaker or guardian of the child;

(3) The obligor is not meeting an obligation to support the child;

(4) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and

(5) There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

(b) An action may be brought under the provisions
of subsection (a) of this section by:

(1) A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;

(2) A primary caretaker of a child;

(3) A guardian of the property of a child or the committee for a child; or

(4) The child support enforcement division, on behalf of the department of health and human resources, when the department is providing assistance on behalf of the child in the form of aid to families with dependent children, and an assignment of any right to support has been assigned to the department or any other case wherein a party has applied for child support enforcement services from the child support enforcement division.

(c) An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

(d) When an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.

(e) Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code.

(f) At any time after the entry of an order for support, the court may, upon the verified petition of an obligee or the obligor, revise or alter such order, and make a new order, as the altered circumstances or needs of a child, an obligee, or the obligor may render necessary to meet the ends of justice.

§48A-5-3. Withholding from income of amounts payable as support.
(a) The withholding from an obligor's income of amounts payable as spousal or child support shall be enforced by the child support enforcement division in accordance with the provisions of section fifteen-a or fifteen-b, article two, chapter forty-eight of this code. Every support order heretofore or hereafter entered by a circuit court or a magistrate of this state and every support order entered by a court of competent jurisdiction of another state shall be considered to provide for an order of income withholding in accordance with the provisions of said sections, notwithstanding the fact that such support order does not in fact provide for such an order of withholding.

(b) When immediate income withholding is not required due to the findings required by subsection (c), section fifteen-b, article two, chapter forty-eight of this code, the child support enforcement division shall mail a notice to the obligor pursuant to this section when the support payments required by the order are in arrears in an amount equal to:

1. One month's support, if the order requires support to be paid in monthly installments;
2. Four weeks' support, if the order requires support to be paid in weekly or biweekly installments; or
3. Two biweekly installments, if biweekly payments are provided.

(c) When notice required by subsection (b) of this section is appropriate, the child support enforcement division shall determine the time for a meeting between the obligor and the child support enforcement division and the time for a hearing before the family law master, and shall then set forth in such notice the times and places at which the meeting and hearing will be held if withholding is contested. The meeting and hearing may be scheduled on the same date, but in no case shall the meeting with the child support enforcement division be scheduled less than fifteen days after the date the notice is mailed nor shall the hearing before the master be scheduled more than twenty-one days after the date the notice is mailed. The child support enforcement division shall send such notice
by first class mail to the delinquent obligor. The notice shall inform the delinquent obligor of the following:

(1) The amount owed;

(2) That it is proposed that there be withholding from the obligor's income of amounts payable as support, and that if withholding is uncontested, or is contested but determined appropriate, the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;

(3) The definition of "income" as defined in section three, article one of this chapter;

(4) That the withholding will apply to the obligor's present source of income and to any future source of income;

(5) That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;

(6) That payment of the arrearage after the date of the notice is not a bar to such withholding;

(7) That if the obligor fails to appear at the meeting, withholding will automatically occur as described in the notice;

(8) That a mistake of fact exists only when there is an error in the amount of current or overdue support claimed in the notice, or there is a mistake as to the identity of the obligor;

(9) That matters such as lack of visitation, inappropriateness of the support award, or changed financial circumstances of the obligee or the obligor will not be considered at any hearing held pursuant to the notice, but may be raised by the filing of a separate petition;

(10) That if the obligor contests the withholding, in writing, a meeting with the child support enforcement division will be held at a time and place set forth in the notice, for the purpose of attempting to settle any issues
which are contested, and that a hearing before the family
law master cannot be held until after the meeting with the
child support enforcement division occurs;

(11) That if the meeting with the child support en-
forcement division fails to resolve the issues being contest-
ed, a hearing before the family law master shall be held at
a time and place set forth in the notice, and that following
such hearing, the master will make a recommended order
to the circuit court;

(12) That a master's recommended order as to with-
holding will become effective when it is confirmed and
entered by the circuit court, and that if the obligor dis-
agrees with the master's recommended order, he or she will
be given the opportunity to make objections known to the
circuit court; and

(13) That if, while the withholding is being contested,
it is determined that the obligor is in arrears in an amount
equal to or greater than one month's support obligation,
but the amount of the arrearage is disputed, then income
withholding for the current payment of support will be
instituted, and may not be stayed pending a final determi-
nation as to the amount of arrearage due.

(d) Withholding shall occur when the support order
provides for immediate income withholding, or if immedi-
ate income withholding is not so provided, and the with-
holding is contested, then after entry of the master's rec-
ommended order by the circuit court. When withholding
is ordered or otherwise required, the source of income
shall withhold so much of the obligor's income as is nec-
necessary to comply with the order authorizing such with-
holding, up to the maximum amount permitted under
applicable law. Such withholding, unless otherwise termi-
nated under the provisions of this section, shall apply to
any subsequent source of income or any subsequent peri-
od of time during which income is received by the obli-
gor.

(e) Notwithstanding any other provision of this code
to the contrary which provides for a limitation upon the
amount which may be withheld from earnings through
legal process, the amount of an obligor's aggregate disposable earnings for any given workweek which may be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

(1) After ascertaining the status of the payment record of the obligor under the terms of the support order, the payment record shall be examined to determine whether any arrearage is due for amounts which should have been paid prior to a twelve-week period which ends with the workweek for which withholding is sought to be enforced.

(2) When none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor's disposable earnings for that week.

(3) When a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor's disposable earnings for that week.

(4) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a
further limitation that when current payments plus
arrearages are being withheld from salaries or wages in no
case shall the total amounts withheld for current payments
plus arrearage exceed the amounts withheld for current
payments by an amount greater than ten percent of the
 obligor's disposable income.

(5) The provisions of this subsection shall apply
directly to the withholding of disposable earnings of an
obligor regardless of whether the obligor is paid on a
weekly, biweekly, monthly or other basis.

(6) When an obligor acts so as to purposefully mini-
mize his or her income and to thereby circumvent the
provisions of this section which provide for withholding
from income of amounts payable as support, the amount
to be withheld as support payments may be based upon
the obligor's potential earnings rather than his or her actu-
al earnings, and such obligor may not rely upon the per-
centage limitations set forth in this subsection which limit
the amount to be withheld from disposable earnings.

(f) The source of income of any obligor who is sub-
ject to withholding, upon being given notice of withhold-
ing, shall withhold from such obligor's income the amount
specified by the notice and pay such amount to the child
support enforcement division for distribution. The notice
given to the source of income shall contain only such
information as may be necessary for the source of income
to comply with the withholding order. Such notice to the
source of income shall include, at a minimum, the follow-
ing:

(1) The amount to be withheld from the obligor's
disposable earnings, and a statement that the amount to be
withheld for support and other purposes, including the fee
specified under subdivision (3) of this subsection, may not
be in excess of the maximum amounts permitted under
Section 303(b) of the federal Consumer Credit Protection
Act or limitations imposed under the provisions of this
code;

(2) That the source of income shall send the amount
to be withheld from the obligor's income along with such
identifying information as may be required by the child
support enforcement division to the child support enforce-
ment division the same day that the obligor is paid;

(3) That, in addition to the amount withheld under
the provisions of subdivision (1) of this subsection, the
source of income may deduct a fee, not to exceed one
dollar, for administrative costs incurred by the source of
income, for each withholding;

(4) That withholding is binding on the source of
income until further notice by the child support enforce-
ment division or until the source of income notifies the
child support enforcement division of a termination of the
obligor's employment in accordance with the provisions of
subsection (1) of this section;

(5) That the source of income is subject to a fine for
discharging an obligor from employment, refusing to
employ, or taking disciplinary action against any obligor
because of the withholding;

(6) That when the source of income fails to withhold
income in accordance with the provisions of the notice, the
source of income is liable for the accumulated amount the
source of income should have withheld from the obligor's
income;

(7) That the withholding under the provisions of this
section shall have priority over any other legal process
under the laws of this state against the same income, and
shall be effective despite any exemption that might other-
wise be applicable to the same income;

(8) That when an employer has more than one em-
ployee who is an obligor who is subject to wage withhold-
ing from income under the provisions of this code, the
employer may combine all withheld payment to the child
support enforcement division when the employer properly
identifies each payment with the information listed in this
section. A source of income is liable to an obligee, in-
cluding the state of West Virginia or the department of
health and human resources where appropriate, for any
amount which the source of income fails to identify with
the information required by this section and is therefore
not received by the obligee;

(9) That the source of income shall implement with-
holding no later than the first pay period or first date for
payment of income that occurs after fourteen days follow-
ing the date the notice to the source of income was mailed;
and

(10) That the source of income shall notify the child
support enforcement division promptly when the obliger
terminates his or her employment or otherwise ceases
receiving income from the source of income, and shall
provide the obliger's last known address and the name and
address of the obliger's new source of income, if known.

(g) The commission shall, by administrative rule,
establish procedures for promptly refunding to obligors
amounts which have been improperly withheld under the
provisions of this section.

(h) After implementation in accordance with the
provisions of subsection (k) of this section, a source of
income shall send the amount to be withheld from the
obliger's income to the child support enforcement division
and shall notify the child support enforcement division of
the date of withholding, the same date that the obliger is
paid.

(i) In addition to any amounts payable as support
withheld from the obliger's income, the source of income
may deduct a fee, not to exceed one dollar, for administra-
tive costs incurred by the source of income, for each with-
holding.

(j) Withholding of amounts payable as support under
the provisions of this section is binding on the source of
income until further notice by the child support enforce-
ment division or until the source of income notifies the
child support enforcement division of a termination of the
obliger's employment in accordance with the provisions of
subsection (l) of this section.

(k) Every source of income who receives a notice of
withholding under the provisions of this section shall im-
implement withholding no later than the first pay period or first date for the payment of income which occurs after fourteen days following the date the notice to the source of income was mailed.

(l) A source of income who employs or otherwise pays income to an obligor who is subject to withholding under the provisions of this section shall notify the child support enforcement division promptly when the obligor terminates employment or otherwise ceases receiving income from the source of income, and shall provide the child support enforcement division with the obligor's last known address and the name and address of the obligor's new source of income, if known.

(m) When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the child support enforcement division when the employer properly identifies each payment with the information listed in this section. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify in accordance with this section and is therefore not received by the obligee.

(n) A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under subsection (f) of this section: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

(o) Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor's income of amounts payable as support, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars.
307 (p) When the child support enforcement division
308 makes a written request to a source of income to provide
309 information as to whether the source of income has paid
310 income to a specific obligor, within the preceding
311 sixty-day period, the source of income shall, within four-
312 teen days thereafter, respond to such request, itemizing all
313 such income, if any, paid to the obligor during such
314 sixty-day period. A source of income shall not be liable,
315 civilly or criminally, for providing such information in
316 good faith.

317 (q) Support collection under the provisions of this
318 section shall have priority over any other legal process
319 under the laws of this state against the same income, and
320 shall be effective despite any exemption that might other-
321 wise be applicable to the same income.

322 (r) Any source of income who discharges from em-
323 ployment, refuses to employ, or takes disciplinary action
324 against any obligor subject to income withholding re-
325 quired by this section because of the existence of such
326 withholding and the obligations or additional obligations
327 which it imposes on the source of income, shall be guilty
328 of a misdemeanor, and, upon conviction thereof, shall be
329 fined not less than five hundred dollars nor more than one
330 thousand dollars.

§48A-5-8. Procedures before the child support enforcement
division.

1 (a) In any case arising under the provisions of this
2 article wherein a notice is served upon a person requiring
3 him or her to notify the child support enforcement divi-
4 sion if the person is contesting action proposed to be tak-
5 en against him:

6 (1) If the person so notified does not submit written
7 reasons for contesting the action within the time set to
8 contest the proposed action, and does not request a meet-
9 ing with the child support enforcement division, then the
10 child support enforcement division shall proceed with the
11 proposed action; or

12 (2) If the person so notified does submit written rea-
sons for contesting the action within the time set to contest
the proposed action, and requests a meeting with the child
support enforcement division, then the child support en-
forcement division shall schedule a meeting at the earliest
practicable time with the person and attempt to resolve the
matter informally.

(b) If the matter cannot be resolved informally, the
child support enforcement division shall make a determi-
nation as to whether the proposed action is proper and
should actually occur.

(c) The determination of the child support enforce-
ment division shall be made within forty-five days from
the date of the notice which first apprised the person of
the proposed action. Upon making the determination, the
child support enforcement division shall inform the parties
as to whether or not the proposed action will occur, and, if
it is to occur, of the date on which it is to begin, and in the
case of withholding from income, shall furnish the obligor
with the information contained in any notice given to an
employer under the provisions of subsection (h), section
three of this article with respect to such withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.
§48A-6-3. Medical testing procedures to aid in the determination of paterni-
ty.
§48A-6-4. Establishment of paternity and duty of support.
§48A-6-5. Representation of parties.
§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-1. Paternity proceedings.

(a) A civil action to establish the paternity of a child
and to obtain an order of support for the child may be
instituted, by verified complaint, in the circuit court of the
county where the child resides: Provided, That if such
venue creates a hardship for the parties, or either of them,
or if judicial economy requires, the court may transfer the
action to the county where either of the parties resides.

(b) A "paternity proceeding" is a summary proceed-
ing, equitable in nature and within the domestic relations
jurisdiction of the courts, wherein a circuit court upon the
petition of the state or another proper party may intervene
to determine and protect the respective personal rights of a
child for whom paternity has not been lawfully estab-
lished, of the mother of the child and of the putative father
of the child.

(c) The sufficiency of the statement of the material
allegations in the complaint set forth as grounds for relief
and the grant or denial of the relief prayed for in a partic-
ular case shall rest in the sound discretion of the court, to
be exercised by the court according to the circumstances
and exigencies of the case, having due regard for prece-
dent and the provisions of the statutory law of this state.

(d) A decree or order made and entered by a court in
a paternity proceeding shall include a determination of the
filial relationship, if any, which exists between a child and
his or her putative father, and, if such relationship is estab-
lished, shall resolve dependent claims arising from family
rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any
of the following persons:

(1) An unmarried woman with physical or legal cus-
tody of a child to whom she gave birth;

(2) A married woman with physical or legal custody
of a child to whom she gave birth, if the complaint alleges
that:

(A) The married woman lived separate and apart
from her husband preceding the birth of the child;

(B) The married woman did not cohabit with her
husband at any time during such separation and that such
separation has continued without interruption; and

(C) The defendant, rather than her husband, is the
father of the child;

(3) The state of West Virginia, including the child
support enforcement division defined in article two of this
chapter;
(4) Any person who is not the mother of the child, but who has physical or legal custody of the child;

(5) The guardian or committee of the child;

(6) The next friend of the child when the child is a minor;

(7) By the child in his own right at any time after the child's eighteenth birthday but prior to the child's twenty-first birthday; or

(8) A man purporting to be the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

(a) The court may, on its own motion, or shall upon the motion of any party, order the mother, her child and the man to submit to blood tests or tissue tests to aid the court in proving or disproving paternity. Such motion may be made, upon ten days' written notice to the mother and alleged father, without the necessity of filing a complaint. When the tests are ordered, the court shall direct that the inherited characteristics, including, but not limited
to, blood types be determined by appropriate testing pro-
cedures at a hospital, independent medical institution or
independent medical laboratory duly licensed under the
laws of this state, or any other state, and shall appoint an
expert qualified as an examiner of genetic markers to
analyze and interpret the results and to report to the court.
The court shall consider the results as follows:

(1) Blood or tissue test results which exclude the man
as the father of the child are admissible and shall be clear
and convincing evidence of nonpaternity and the court
shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical
probability of paternity of less than ninety-eight percent
are admissible and shall be weighed along with other evi-
dence of the defendant's paternity.

(3) Undisputed blood or tissue test results which show
a statistical probability of paternity of more than
ninety-eight percent shall, when filed with the court, legally
establish the man as the father of the child for all pur-
poses and child support may be established pursuant to
the provisions of this chapter.

(4) When the defendant desires to challenge the re-
results of the blood or tissue tests or the expert's analysis of
inherited characteristics, he shall file a written protest with
the family law master or circuit court within thirty days of
the filing of such test results and serve a copy of such
protest upon the other party. The written protest shall be
filed at least thirty days prior to any hearing involving the
test results. The court, upon reasonable request of a party,
shall order that additional tests be made by the same labo-
rary or another laboratory within thirty days of the entry
of the order, at the expense of the party requesting addi-
tional testing. When the results of the blood or tissue tests
or the expert's analysis which show a statistical probability
of paternity of more than ninety-eight percent are con-
firmed by the additional testing, then the results are admis-
sible evidence which is clear and convincing evidence of
paternity. The admission of the evidence creates a pre-
sumption that the defendant is the father.

(b) Documentation of the chain of custody of the
blood or tissue specimens is competent evidence to estab-
lish the chain of custody. A verified expert's report shall
be admitted at trial unless a challenge to the testing proce-
dures or a challenge to the results of test analysis has been
made before trial. The costs and expenses of making the
tests shall be paid by the parties in proportions and at
times determined by the court.

(c) When a blood test is ordered pursuant to this
section, the moving party shall initially bear all costs asso-
ciated with the blood test unless that party is determined
by the court to be financially unable to pay those costs.
This determination shall be made following the filing of
an affidavit pursuant to section one, article two, chapter
fifty-nine of this code. When the court finds that the mov-
ing party is unable to bear that cost, the cost shall be borne
by the state of West Virginia. Following the finding that a
person is the father based on the results of a blood test
ordered pursuant to this section, the court shall order that
the father be ordered to reimburse the moving party for
the costs of the blood tests unless the court determines,
based upon the factors set forth in this section, that the
father is financially unable to pay those costs.

§48A-6-4. Establishment of paternity and duty of support.

(a) When the defendant, by verified responsive
pleading, admits that the man is the father of the child and
owes a duty of support, or if after a trial on the merits, the
court shall find, by clear and convincing evidence that the
man is the father of the child, the court shall order support
in accordance with the provisions of this section.

(b) The court shall give full faith and credit to a de-
termination of paternity made by any other state, based
on the laws of that state, whether established through vol-
untary acknowledgment or through administrative or
judicial process.

§48A-6-5. Representation of parties.

Notwithstanding any provision of this code to the
contrary, no parent in any proceeding brought pursuant to
this article may have counsel appointed for them accord-
ing to section two, article twenty-one, chapter twenty-nine
of this code or otherwise receive legal services provided solely by the state in such action. The child support enforcement division providing representation to the state of West Virginia shall solely represent the state of West Virginia and does not provide any representation to any party.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

(a) A written, notarized acknowledgment by both the man and woman that the man is the father of the named child legally establishes the man as the father of the child for all purposes and child support may be established under the provisions of this chapter. The acknowledgment of paternity is irrevocable from the time of execution, unless a court of competent jurisdiction finds that such acknowledgment was obtained by fraud or duress.

(b) The written acknowledgment shall include:

(1) Filing instructions;

(2) The parents' social security numbers and addresses; and

(3) A statement regarding the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child.

(c) Failure or refusal to include all information required by subsection (b) of this section shall not affect the validity of the written acknowledgment, in the absence of a finding by a court of competent jurisdiction that the acknowledgment was obtained by fraud or duress.

(d) The original written acknowledgment should be filed with the state registrar of vital statistics. Upon receipt of any acknowledgment executed pursuant to this section, the registrar shall forward the copy of the acknowledgment to the child support enforcement division and the parents, if the address of the parents is known to the registrar. If a birth certificate for the child has been previously issued which is incorrect or incomplete, a new birth certificate shall be issued.
§48A-7-12. Child support enforcement division to represent the state.

§48A-7-36. Attorney for child support enforcement division to represent state.

§48A-7-12. Child support enforcement division to represent the state.

When this state is acting as an initiating state, any attorney employed by the child support enforcement division or agency or entity pursuant to article two of this chapter, represents the interest of the state and not the interest of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the attorney and any other party. The child support enforcement division shall, at the time an application for child support services is made, inform the applicant that any attorney who provides services for the child support enforcement division is the attorney for the state of West Virginia and that the attorney providing those services does not provide legal representation to the applicant.

§48A-7-36. Attorney for child support enforcement division to represent state.

When this state is acting either as a rendering or a registering state, any attorney employed by the child support enforcement division or agency or entity pursuant to a contract with the division pursuant to article two of this chapter, represents the interest of the state and not the interest of any other party. The provision of services by an attorney under this chapter does not create an attorney-client relationship between the attorney and any other party.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

(a) A natural person who is financially unable to pay the fees or costs attendant to the commencement, prosecu-
tion or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepay-
ment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

(1) The clerk of the court and all other officers of the court shall issue and serve all process and perform all duties in such cases.

(2) Judgment may be rendered for costs at the conclusion of the action, where otherwise authorized by law, and be taxable against a losing party who has not been determined to be financially unable to pay.

(3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal in a civil case from a circuit court to the supreme court of appeals, the supreme court of appeals may direct payment by the administrative office of the supreme court of appeals of the expenses of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the transcript, shall be provided by the court reporter without cost: Provided, That actual expenses of the court reporter for supplies used in preparing the transcript may be paid when authorized by the director of the administrative office of the supreme court of appeals.

(b) The supreme court of appeals or the chief justice thereof shall establish and periodically review and update financial guidelines for determining the eligibility of civil litigants to proceed in forma pauperis.

(c) The supreme court of appeals shall adopt a financial affidavit form for use by persons seeking a waiver of fees, costs or security pursuant to the provisions of this section. Copies of the form shall be available to the public in the offices of the clerk of any court of this state. The affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or she is entitled to redress. The form shall elicit information from the affiant which will enable the court in which it is filed to consider the following factors in determining whether the affiant is
financially unable to pay fees, costs or security:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds and other assets which may be liquidated to provide funds to pay fees, costs or security;

(3) Fixed debts and obligations, including federal, state and local taxes and medical expenses;

(4) Child care, transportation and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person has paid or will pay counsel fees, or whether counsel will be provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services attorney, or some other attorney at no cost or a reduced cost to the affiant; and

(7) The consequences for the individual if a waiver of fees, costs or security is denied.

(d) When the information set forth in the affidavit or the evidence submitted in the action reveals that the person filing the affidavit is financially able to pay the fees and costs, the court or the family law master may order the person to pay the fees and costs in the action.

(e) No other party in any proceeding may initiate an inquiry by motion or other pleading or participate in any proceeding relevant to the issues raised pursuant to this section.

(f) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this section. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.
AN ACT to amend article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine, relating to allowing school bus drivers to present their complaints directly to a magistrate without first presenting the complaint to the prosecuting attorney or other law-enforcement agency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-9. School bus drivers may present complaint directly to magistrate.

1 Notwithstanding any other provision of this code to the contrary, a person authorized by law to operate a school bus, as that term is defined in section seven, article one, chapter seventeen-c, may submit a complaint directly to a magistrate without first presenting the complaint to the prosecuting attorney or other law-enforcement agency, if the complaint is based upon a violation of subsection (a), section seven, article twelve, chapter seventeen-c.

9 The complaint shall be in the form of a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn before a magistrate in the county where the offense is alleged to have occurred.

14 If it appears from the complaint, or from an affidavit
or affidavits filed with the complaint, that there is probable
cause to believe that an offense has been committed and
that the defendant committed it, a warrant for the arrest of
the defendant shall be issued to any officer authorized by
law to arrest persons charged with offenses against the
state.

CHAPTER 90

(Com. Sub. for H. B. 2073—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section
five-d; to amend and reenact section twenty-six of said arti-
cle; to amend article five of said chapter by adding thereto
three new sections, designated sections fifteen-f, forty-two
and forty-three; to amend and reenact section two, article
five-a of said chapter; to amend and reenact sections one and
one-a, article five, chapter eighteen-a of said code; to amend
article two, chapter sixty-one of said code by adding thereto
two new sections, designated sections nine-b and fourteen-f;
and to amend and reenact section eleven-a, article seven of
said chapter, all relating to education generally; the duty of
the state board to report guidelines for productive and safe
schools to the governor and the Legislature; requiring re-
gional educational service agencies to submit a monthly
report on turnaround time and be responsible for computer
installation, maintenance and repair; the duty of the parent to
affirm, upon registration, that their child is not currently
under suspension or expulsion; the creation of a county-wide
council on productive and safe schools; the duty of the
county board of education to report the county-wide plans to
the state board of education; the involvement of the local school improvement councils in the productive and safe school plans; the authority of teachers and other school personnel to exclude students from the classroom or school bus; the implementation of the responsible students program and the peer mediation program by the county board of education; the suspension and expulsion, discretionary and mandatory, of pupils from the school or school bus; the due process requirements for suspension and expulsion; the authority of the county board of education to lessen mandatory periods of expulsion; the temporary removal of a disabled child from the school; the re-enrollment of students who have been expelled from school, whether such expulsion was in state or out of state; the penalties for malicious assault of a child near a school; the penalties for abduction of a child near a school; the possession of firearms or deadly weapons on premises of educational facilities.

*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 five-d; that section twenty-six of said article be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated sections fifteen-f, forty-two and forty-three; that section two, article five-a of said chapter be amended and reenacted; that sections one and one-a, article five, chapter eighteen-a of said code be amended and reenacted; that article two, chapter sixty-one of said code be amended by adding thereto two new sections, designated sections nine-b and fourteen-f; and that section eleven-a, article seven of said chapter be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.
61. Crimes and Their Punishment.

**CHAPTER 18. EDUCATION.**
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5d. Duty of board to report guidelines for productive and safe schools.

On or before the first day of December, one thousand nine hundred ninety-five, the board shall assess and report to the governor and to the legislative oversight commission on education accountability the guidelines adopted by the county boards of education, as described in section forty-three, article five, chapter eighteen of this code. The board shall report the estimated costs associated for alternative instructional proposals stated in such guidelines. The board shall further incorporate its recommendations for the use of the peer mediation program in cases involving school violence.

§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 education...
(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 ad-
ministrative 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.

(g) Each regional educational service agency shall submit a report and evaluation of the services provided and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the
services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school’s plan as to development of new programs and enhancement of existing programs. The reports shall be due by the first day of January of each year commencing with the year one thousand nine hundred ninety-one and shall be made available to the state board of education, standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(h) A regional board shall be empowered to receive and disburse funds from the state and federal governments, member counties, gifts and grants.

(i) Notwithstanding any other provision of the code to the contrary, employees of regional educational service agencies shall be reimbursed for travel, meals and lodging at the same rate as state employees under the travel management office of the department of administration.

(j) Regional educational service agencies shall hold at least one half of their regular meetings during hours other than those of a regular school day.

(k) Regional educational service agencies shall serve as the lead agency for computer installation, maintenance and repair for the Basic Skills Computer Program. By the first day of October, one thousand nine hundred ninety-five, and quarterly thereafter, each regional educational service agency shall submit a status report on turn around time for computer installation, maintenance and repair to the state superintendent of schools who shall then submit a report to the legislative oversight commission on education accountability. The above-mentioned status report for turn around time for computer installation, maintenance and repair shall be based on the following suggested time schedules:

Network File Servers. . . . . . . . . . forty-eight hours
Local Area Networks .......... forty-eight hours
West Virginia Education
Information System .......... twenty-four hours
Computer workstations .......... three to five days
Printers ........................ three to five days
Other peripherals ............... three to five days

Regional educational service agencies shall also submit an audit report to the legislative oversight commission on education accountability each year.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

§18-5-42. County-wide council on productive and safe schools.

§18-5-43. Duty of the county board of education to report the county-wide productive and safe school plans to the West Virginia board of education.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

(a) Prior to the admission of a pupil to any public school in West Virginia, the county superintendent shall require the pupil's parent(s), guardian(s) or custodian(s) to provide, upon registration, a sworn statement or affirmation indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in West Virginia or another state. Any person willfully making a materially false statement or affirmation shall be guilty of a misdemeanor, and upon conviction the penalty shall be the same as provided for "false swearing" pursuant to section three, article five, chapter sixty-one of this code.

(b) Notwithstanding any other provision of this code to the contrary, any pupil who has been suspended or expelled from school pursuant to section one-a, article five, chapter eighteen-a of this code, or who has been
suspended or expelled from a public or private school in another state, due to actions described in section one-a, article five, chapter eighteen-a of this code, may not be admitted to any public school within the state of West Virginia until the period of suspension or expulsion has expired.

§18-5-42. County-wide council on productive and safe schools.

(a) On or before the thirtieth day of April, one thousand nine hundred ninety-five, each county shall develop a county-wide council on productive and safe schools, which shall be comprised of the following members:

(1) The county superintendent, who shall serve as the chair of the county-wide council on productive and safe schools;

(2) One representative from each local school improvement council, to be elected by a majority vote of each local school improvement council;

(3) The prosecuting attorney or his or her designee;

(4) A representative of the department of health and human resources created pursuant to the provisions of section two, article one, chapter five-f of this code, to be appointed in a manner determined by the secretary of the department;

(5) A representative of the law-enforcement agencies situated in the county in which the school is situated to be recommended by the county sheriff;

(6) A representative of the county board of education for the county in which the school is situated to be appointed by the president of the county board of education;

(7) The county board of education's supervisor of transportation; and

(8) A representative of the regional comprehensive behavioral health center as designated by the office of
behavioral health services in which the county school
system is situated, to be appointed by the executive direc-
tor of the center.

(9) When the members listed in subdivisions (1) through (8) do not include at least two classroom teachers, then the county superintendent shall appoint additional members so that at least two classroom teachers are mem-
ers of the county-wide council.

(10) When the members listed in subdivisions (1) through (8) do not include at least two school principals, then the county superintendent shall appoint additional members so that at least two school principals are mem-
ers of the county-wide council.

(b) The county superintendent shall call an organiza-
tional meeting of the council as soon as practicable after the effective date of this section.

(c) On or before the first day of October, one thou-
sand nine hundred ninety-five, the council shall compile the local school improvement council's guidelines devel-
oped pursuant to subsection (f), section two, article five-a of this chapter and shall report and deliver such guidelines to the county board of education, along with the council's assessment and recommendations regarding the guide-
lines. The council also shall provide a report of the esti-
mated cost for any proposed alternative settings or pro-
grams.

(d) No meetings of the county-wide council shall be held during instructional time.

§18-5-43. Duty of the county board of education to report the county-wide productive and safe school plans to the West Virginia board of education.

On or before the first day of November, one thousand nine hundred ninety-five, each county board of education shall deliver, together with its assessment, the recommen-
dations and guidelines developed by the county-wide
council on productive and safe schools to the West Virginia board of education.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.

(a) A local school improvement council shall be established at every school consisting of the following:

1. The principal, who shall serve as an ex officio member of the council and be entitled to vote;

2. Three teachers elected by the faculty senate of the school;

3. Two school service personnel elected by the school service personnel employed at the school;

4. Three parent(s), guardian(s) or custodian(s) of students enrolled at the school elected by the parent(s), guardian(s) or custodian(s) members of the school's parent teacher organization: Provided, That if there is no parent teacher organization, the parent(s), guardian(s) or custodian(s) members shall be elected by the parent(s), guardian(s) or custodian(s) of students enrolled at the school in such manner as may be determined by the principal;

5. Two at-large members appointed by the principal, one of whom resides in the school's attendance area and one of whom represents business or industry, neither of whom is eligible for membership under any of the other elected classes of members;

6. In the case of vocational-technical schools, the vocational director: Provided, That if there is no vocational director, then the principal may appoint no more than two additional representatives, one of whom represents business and one of whom represents industry;

7. In the case of a school with students in grade seven or higher, the student body president or other student in
grade seven or higher elected by the student body in those grades.

(b) The principal shall arrange for such elections to be held prior to the fifteenth day of September of each school year to elect a council and shall give notice of the elections at least one week prior to the elections being held. To the extent practicable, all elections to select council members shall be held within the same week. Parent(s), guardian(s) or custodian(s), teachers and service personnel elected to the council shall serve a two-year term, and elections shall be arranged in such a manner that no more than two teachers, no more than two parent(s), guardian(s) or custodian(s), and no more than one service person are elected in a given year. All other non-ex-officio members shall serve one-year terms. Council members may only be replaced upon death, resignation, failure to appear at three consecutive meetings of the council for which notice was given, or a change in personal circumstances so that the person is no longer representative of the class of members from which appointed. In the case of replacement, an election shall be held to elect another qualified person to serve the unexpired term of the person being replaced.

(c) As soon as practicable after the election of council members, and no later than the first day of October of each school year, the principal shall convene an organizational meeting of the school improvement council. The principal shall notify each member in writing at least two employment days in advance of the organizational meeting. At this meeting, the principal shall provide each member with a copy of the current applicable section of this code and any state board rule or regulation promulgated pursuant to the operation of these councils. The council shall elect from its membership a chair and two members to assist the chair in setting the agenda for each council meeting. The chair shall serve a term of one year and no person may serve as chair for more than two consecutive terms. If the chair's position becomes vacant for
any reason, the principal shall call a meeting of the council to elect another qualified person to serve the unexpired term.

(d) Once elected, the chair is responsible for notifying each member of the school improvement council in writing two employment days in advance of any council meeting.

School improvement councils shall meet at least once every nine weeks or equivalent grading period at the call of the chair or by three fourths of its members.

(e) School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter, and may receive and expend such grants for the purposes provided in such section.

In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams shall be deemed to have jurisdiction.

In order to promote innovations and improvements in the environment for teaching and learning at the school, a school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

1. Encourage the involvement of parent(s), guardian(s) or custodian(s) in their child's educational process and in the school;
2. Encourage businesses to provide time for their employees who are parent(s), guardian(s) or custodian(s) to meet with teachers concerning their child's education;
3. Encourage advice and suggestions from the business community;
(4) Encourage school volunteer programs and mentorship programs; and

(5) Foster utilization of the school facilities and grounds for public community activities.

(f) On or before the eighth day of June, one thousand nine hundred ninety-five, each local school improvement council shall develop and deliver a report to the county-wide council on productive and safe schools. The report shall include guidelines for the instruction and rehabilitation of pupils who have been excluded from the classroom, suspended from the school, or expelled from the school, the description and recommendation of in-school suspension programs, a description of possible alternative settings, schedules for instruction, and alternative education programs and an implementation schedule for such guidelines. The guidelines shall include the following:

(1) A system to provide for effective communication and coordination between school and local emergency services agencies;

(2) A preventive discipline program which may include the responsible students program devised by the West Virginia board of education as adopted by the county board of education, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code; and

(3) A student involvement program, which may include the peer mediation program or programs devised by the West Virginia board of education as adopted by the county board of education, pursuant to the provisions of subsection (e), section one, article five, chapter eighteen-a of this code.

(g) The council may include in its report to the county-wide council on productive and safe schools provisions of the state board of education policy 4373, Student Code of Conduct, or any expansion of such policy which
increases the safety of students in schools in this state and is consistent with the policies and other laws of this state.

(h) Councils may adopt their own guidelines established under this section. In addition, the councils may adopt all or any part of the guidelines proposed by other local school improvement councils, as developed under this section, which are not inconsistent with the laws of this state, the policies of West Virginia board of education or the policies of the county board of education.

(i) The state board of education shall provide assistance to a local school improvement council upon receipt of a reasonable request for that assistance.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

(a) The teacher shall stand in the place of the parent(s), guardian(s) or custodian(s) in exercising authority over the school, and shall have control of all pupils enrolled in the school from the time they reach the school until they have returned to their respective homes, except that where transportation of pupils is provided, the driver in charge of the school bus or other mode of transportation shall exercise such authority and control over the children while they are in transit to and from the school.
(b) Subject to the rules of the state board of education, the teacher shall exclude from the school any pupil or pupils known to have or suspected of having any infectious disease, or any pupil or pupils who have been exposed to such disease, and shall immediately notify the proper health officer, or medical inspector, of such exclusion. Any pupil so excluded shall not be readmitted to the school until such pupil has complied with all the requirements of the rules governing such cases, or has presented a certificate of health signed by the medical inspector or other proper health officer.

(c) The teacher shall have authority to exclude from his or her classroom or school bus, any pupil who is guilty of disorderly conduct; who in any manner interferes with an orderly educational process; who threatens, abuses, or otherwise intimidates or attempts to intimidate a school employee or a pupil; or who willfully disobeys a school employee; or who uses abusive or profane language directed at a school employee. Any pupil excluded shall be placed under the control of the principal of the school or a designee. The excluded pupil may be admitted to the classroom or school bus only when the principal, or a designee, provides written certification to the teacher that the pupil may be readmitted and specifies the specific type of disciplinary action, if any, which was taken. If the principal finds that disciplinary action is warranted, he shall provide written and, if possible, telephonic notice of such action to the parent(s), guardian(s) or custodian(s). When a teacher excludes the same pupil from his or her classroom or from a school bus three times in one school year, and after exhausting all reasonable methods of classroom discipline provided in the school discipline plan, the pupil may be readmitted to the teacher's classroom only after the principal, teacher and, if possible, the parent(s), guardian(s) or custodian(s) of the pupil have held a conference to discuss the pupil's disruptive behavior patterns, and the teacher and the principal agree on a course of discipline for the pupil and inform the parent(s), guardian(s) or custodian(s) of the course of action. Thereafter, if the
pupil's disruptive behavior persists, upon the teacher's request, the principal may, to the extent feasible, transfer the pupil to another setting.

(d) Corporal punishment of any pupil by a school employee is prohibited.

(e) The West Virginia board of education and county boards of education shall adopt policies consistent with the provisions of this section encouraging the use of alternatives to corporal punishment, providing for the training of school personnel in alternatives to corporal punishment and for the involvement of parent(s), guardian(s) or custodian(s) in the maintenance of school discipline. The county boards of education shall provide for the immediate incorporation and implementation in the schools of a preventive discipline program, which may include the responsible student program, and a student involvement program, which may include the peer mediation program, devised by the West Virginia board of education. Each board may modify such programs to meet the particular needs of the county. The county boards shall provide in-service training for teachers and principals relating to assertive discipline procedures and conflict resolution. The county boards of education may also establish cooperatives with private entities to provide middle educational programs, which may include programs focusing on developing individual coping skills, conflict resolution, anger control, self-esteem issues, stress management, and decision making for students and any other program related to preventive discipline.

(f) For the purpose of this section: (1) "Pupil or student" shall include any child, youth or adult who is enrolled in any instructional program or activity conducted under board authorization and within the facilities of or in connection with any program under public school direction: Provided, That in the case of adults the pupil-teacher relationship shall terminate when the pupil leaves the school or other place of instruction or activity; (2) "teacher" shall mean all professional educators as defined in
section one, article one of this chapter and shall include the driver of a school bus or other mode of transportation.

(g) Teachers shall exercise such other authority and perform such other duties as may be prescribed for them by law or by the rules of the state board of education not inconsistent with the provisions of this chapter and chapter eighteen of this code.

§18A-5-la. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception.

(a) A principal shall suspend a pupil from school or from transportation to or from the school on any school bus if the pupil, in the determination of the principal, after an informal hearing pursuant to subsection (d) of this section, has: (i) Violated the provisions of subsection (b), section fifteen, article two, chapter sixty-one of this code; (ii) violated the provisions of subsection (b), section eleven-a, article seven, chapter sixty-one of this code; or (iii) sold a narcotic drug, as defined in section one hundred one, article one, chapter sixty-a of this code, on the premises of an educational facility, at a school-sponsored function or on a school bus. If a student has been suspended pursuant to this subsection, the principal shall, within twenty-four hours, request that the county superintendent recommend to the county board of education that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board of education that the student be expelled. Upon such recommendation, the county board of education shall conduct a hearing in accordance with subsections (e) and (f) of this section to determine if the student committed the alleged violation. If the county board of education finds that the student did commit the alleged
violation, the county board of education shall expel the
student.

(b) A principal shall suspend a pupil from school, or
from transportation to or from the school on any school
bus, if the pupil, in the determination of the principal after
an informal hearing pursuant to subsection (d) of this
section, has: (i) Committed an act or engaged in conduct
that would constitute a felony under the laws of this state if
committed by an adult; or (ii) unlawfully possessed on the
premises of an educational facility or at a school-spon-
sored function a controlled substance governed by the
Uniform Controlled Substances Act as described in chap-
ter sixty-a of this code. If a student has been suspended
pursuant to this subsection, the principal may request that
the superintendent recommend to the county board of
education that the student be expelled. Upon such recom-
mendation by the county superintendent, the county
school board may hold a hearing in accordance with the
provisions of subsections (e) and (f) of this section to
determine if the student committed the alleged violation.
If the county board of education finds that the student did
commit the alleged violation, the county board of educa-
tion may expel the student.

(c) A principal may suspend a pupil from school, or
transportation to or from the school on any school bus, if
the pupil, in the determination of the principal after an
informal hearing pursuant to subsection (d) of this sec-
tion: (i) Threatened to injure, or in any manner injured, a
pupil, teacher, administrator or other school personnel; (ii)
willfully disobeyed a teacher; (iii) possessed alcohol in an
educational facility, on school grounds, a school bus, or at
any school-sponsored function; (iv) used profane lan-
guage directed at a school employee or pupil; (v) inten-
tionally defaced any school property; (vi) participated in
any physical altercation with another person while under
the authority of school personnel; or (vii) habitually vio-
lated school rules or policies. If a student has been sus-
pended pursuant to this subsection, the principal may
request that the superintendent recommend to the county board of education that the student be expelled. Upon such recommendation by the county superintendent, the county school board may hold a hearing in accordance with the provisions of subsections (e) and (f) of this section to determine if the student committed the alleged violation. If the county board of education finds that the student did commit the alleged violation, the county board of education may expel the student.

(d) The actions of any pupil which may be grounds for his or her suspension or expulsion under the provisions of this section shall be reported immediately to the principal of the school in which the pupil is enrolled. If the principal determines that the alleged actions of the pupil would be grounds for suspension, he or she shall conduct an informal hearing for the pupil immediately 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 shall be suspended immediately and a hearing held as soon as practicable after the suspension.

The pupil and his or her parent(s), guardian(s) or custodian(s), as the case may be, shall be given telephonic notice, if possible, 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 or she admits or denies the charges. If the pupil does not admit the charges, he or she shall be given an explanation of the evidence possessed by the principal and an opportunity to present his or her version of the occurrence. At the conclusion of the hearing or upon the failure of the noticed student to appear, the principal may suspend the pupil for a maximum of ten school days, including the time prior to the hearing, if any, for which the pupil has been excluded.
from school.

The principal shall report any suspension the same day it has been decided upon, in writing, to the parent(s), guardian(s) or custodian(s) of the pupil by certified mail, return receipt requested, to the county superintendent and to the faculty senate of the school at the next meeting after the suspension.

(e) Prior to a hearing before the county board of education, 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 or her parent(s), guardian(s) or custodian(s), as the case may be. Such notice shall set forth a date and time at which such hearing shall be held, which date shall be within the ten-day period of suspension imposed by the principal.

(f) The board of education shall hold the scheduled hearing to determine if the pupil should be reinstated or should, or under the provisions of this section, must be expelled from school. At this hearing the pupil may be represented by counsel, may call his or her own witnesses to verify his or her version of the incident and may confront and cross-examine witnesses supporting the charge against him or her. The hearing shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing may be postponed for good cause shown by the pupil but he or she 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 or her 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.

(g) Pupils may be expelled pursuant to the provisions of this section for a period not to exceed one school year, except that if a pupil is determined to have violated the
provisions of subsection (a) of this section the pupil shall be expelled for a period of not less than twelve consecutive months: Provided, That the county superintendent may lessen the mandatory period of twelve consecutive months for the expulsion of the pupil if the circumstances of the pupil's case demonstrably warrant. Upon the reduction of the period of expulsion, the county superintendent shall prepare a written statement setting forth the circumstances of the pupil's case which warrant the reduction of the period of expulsion. The county superintendent shall submit the statement to the county board of education, the principal, the faculty senate and the local school improvement council for the school from which the pupil was expelled.

(h) 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.

An exceptional child may not be suspended or expelled for conduct that is the proximate result of the child's disability: Provided, That an exceptional child may be temporarily removed from school for his own protection, the protection of school personnel, or the protection of other pupils.

An exceptional child may be temporarily removed, suspended or expelled for a period in excess of three consecutive school days or ten cumulative school days only when such student has committed an act involving the possession of a firearm, as defined in section two, article seven, chapter sixty-one of this code. Such child may be placed in an alternative educational setting by the individualized education program committee, as described in section one, article twenty, chapter eighteen of this code, for a period of not more than forty-five days. During this time, the parent(s), guardian(s) or custodian(s) may re-
quest a hearing to contest such placement of the child. Said child shall remain in the alternative placement until the hearing is held notwithstanding any provisions of the code to the contrary.

For purposes of this section, exceptional child does not include gifted children.

(i) In all hearings under this section, facts shall be found by a preponderance of the evidence.

(j) For purposes of this section, nothing herein shall be construed to be in conflict with the federal provisions of the Individuals with Disabilities Education Act of 1990 (PL 101-476).

(k) Principals may exercise any other authority and perform any other duties to discipline pupils consistent with state and federal law, including policies of the state board of education.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
2. Crimes Against the Person.
7. Dangerous Weapons.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.

§61-2-14f. Penalties for abduction of a child near a school.

§61-2-9b. Penalties for malicious or unlawful assault or assault of a child near a school.

Any person who, under the provisions of section nine of this article, maliciously assaults a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

§61-2-14f. Penalties for abduction of a child near a school.
Any person who, under the provisions of section fourteen of this article, abducts a child sixteen years of age or under within one thousand feet of a school is guilty of a felony, and, upon conviction, shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver license; possessing deadly weapons on premises housing courts of law and in offices of family law master.

(a) The Legislature hereby finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending, and the persons employed by, schools in this state and for those persons employed with the judicial department of this state. It is for the purpose of providing such assurances of safety, therefore, that subsections (b), (g) and (h) of this section are enacted as a reasonable regulation of the manner in which citizens may exercise those rights accorded to them pursuant to section twenty-two, article three of the Constitution of the state of West Virginia.

(b) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any school bus as defined in section one, article one, chapter seventeen-a of this code, or in or on any public or private primary or secondary education building, structure, facility or grounds thereof, including any vocational education building, structure, facility or grounds thereof where secondary vocational education programs are conducted or at any school-sponsored function.

(2) This subsection shall not apply to:

(A) A law-enforcement officer acting in his or her official capacity;

(B) A person specifically authorized by the board of
education of the county or principal of the school where
the property is located to conduct programs with valid
educational purposes;

(C) A person who, as otherwise permitted by the provi-
sions of this article, possesses an unloaded firearm or
deadly weapon in a motor vehicle, or leaves an unloaded
firearm or deadly weapon in a locked motor vehicle;

(D) Programs or raffles conducted with the approval
of the county board of education or school which include
the display of unloaded firearms; or

(E) The official mascot of West Virginia University,
commonly known as "The Mountaineer", acting in his or
her official capacity.

(3) Any person violating this subsection shall be guilty
of a felony, and, upon conviction thereof, shall be impris-
oned in the penitentiary of this state for a definite term of
years of not less than two years nor more than ten years,
or fined not more than five thousand dollars, or both.

(c) It shall be the duty of the principal of each school
subject to the authority of the state board of education to
report any violation of subsection (b) of this section dis-
covered by such principal to the state superintendent of
schools within seventy-two hours after such violation oc-
curs. The state board of education shall keep and main-
tain such reports and may prescribe rules establishing
policy and procedures for the making and delivery of the
same as required by this subsection. In addition, it shall
be the duty of the principal of each school subject to the
authority of the state board of education to report any
violation of subsection (b) of this section discovered by
such principal to the appropriate local office of the divi-
sion of public safety within seventy-two hours after such
violation occurs.

(d) In addition to the methods of disposition provided
by article five, chapter forty-nine of this code, any court
which adjudicates a person who is fourteen years of age or
older as delinquent for a violation of subsection (b) of this section may, in its discretion, order the division of motor vehicles to suspend any driver's license or instruction permit issued to such person for such period of time as the court may deem appropriate, such suspension, however, not to extend beyond such person's nineteenth birthday; or, where such person has not been issued a driver's license or instruction permit by this state, order the division of motor vehicles to deny such person's application for the same for such period of time as the court may deem appropriate, such denial, however, not to extend beyond such person's nineteenth birthday. Any suspension ordered by the court pursuant to this subsection shall be effective upon the date of entry of such order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward the same to the division of motor vehicles.

(e) (1) If a person eighteen years of age or older is convicted of violating subsection (b) of this section, and if such person does not act to appeal such conviction within the time periods described in subdivision (2) of this subsection, such person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in subdivision (1) of this subsection shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward such transcript when the person convicted has not requested an appeal within twenty days of the sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward such transcript when the person convicted has not filed a notice of intent to file
a petition for appeal or writ of error within thirty days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner shall determine that the person was convicted as described in subdivision (1) of this subsection, the commissioner shall make and enter an order revoking such person's license or privilege to operate a motor vehicle in this state for a period of one year, or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of section two, article five-a, chapter seventeen-c of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. Such request for hearing shall be made within ten days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when such person enters a plea of guilty or is found guilty by a court or jury.

(f) (1) It shall be unlawful for any parent(s), guardian(s) or custodian(s) of a person less than eighteen years of age who knows that said person is in violation of sub-
section (b) of this section, or who has reasonable cause to believe that said person's violation of said subsection is imminent, to fail to immediately report such knowledge or belief to the appropriate school or law-enforcement officials.

(2) Any person violating this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or shall be confined in jail not more than one year, or both.

(g) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any premises which houses a court of law or in the offices of a family law master.

(2) This subsection shall not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over such premises or offices.

(3) Any person violating this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or shall be confined in jail not more than one year, or both.

(h) (1) It shall be unlawful for any person to possess any firearm or any other deadly weapon on any premises which houses a court of law or in the offices of a family law master with the intent to commit a crime.

(2) Any person violating this subsection shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary of this state for a definite term of years of not less than two years nor more than ten years, or fined not more than five thousand dollars, or both.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.
CHAPTER 91
(S. B. 237—By Senators Jackson, Miller, Blatnik, Grubb,
Schoonover, Oliverio, Plymale and Helmick)

[Passed March 2, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one-c, three and five, article twenty of said chapter, all relating to extending the deadlines for plans for inclusion; and the requirements as to the assistance, training and information to be provided to the affected classroom teacher.

Be it enacted by the Legislature of West Virginia:

That section five, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one-c, three and five, article twenty of said chapter be amended and reenacted, all to read as follows:

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 sched-
ule 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 con-
ferred 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 specifi-
cally 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 allot-
ted 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 aca-
demic 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 behav-
ior, increase academic achievement, improve self-esteem
and address the problems of students at-risk. The remain-
der of funds shall be expended for academic materials,
supplies or equipment in accordance with a budget ap-
proved 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 repre-
sentatives 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 thirtieth day of June, 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 implementation of collaborative planning and instruction; and (H) training for all regular classroom teachers who serve students with exceptional needs in integrated classrooms.

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.

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 indi-
vidual 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 education student prior to 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 program and shall also sign the individualized education program as developed. In all cases the teacher shall receive a copy of the individualized education program for the special education student prior to or at the time of the placement of the student into the regular classroom. Any teacher disagreeing with the individualized education program committee’s recommendation shall file a written explanation outlining his or her disagreement or recommendation;

(3) Participation by referring teachers in all eligibility committees and participation by referring and receiving teachers in all 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 promote accomplishment of the program’s goals and objectives: Provided, That aides in the area of special education cannot be reassigned to more
§18-20-3. County reports.

Each county shall, after having received from the faculty senates in its schools the strategic plans mandated by subsection (13), section five, article five-a of this chapter, develop a county strategic plan to manage the integration of special needs students into the regular classroom and submit said strategic plan to the state superintendent of schools prior to the first day of October, one thousand ninety-five.

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 and regional jails 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 first day of December, one thousand nine hundred ninety-five.

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 92

(Com. Sub. for H. B. 2600—By Delegates Browning and Kiss)

[Passed March 10, 1995; in effect from passage. Became law without Governor's signature.]
AN ACT to amend and reenact sections seven and nine, article seven-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to teachers' retirement systems; providing for reentry into the defined benefit plan; and authorizing a study of the feasibility of allowing members to make additional voluntary contributions to the teachers' defined benefit contribution retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers' retirement system.

§18-7B-9. Members' contributions; annuity account established.

§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers' retirement system.

1 Beginning the first day of July, one thousand nine hundred ninety-one, the teachers' defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

13 Notwithstanding the provisions of section twenty-three,
article seven-a of this chapter, any employee whose em-
ployment terminates after the thirtieth day of June, one
thousand nine hundred ninety-one, who is later reem-
ployed by an employer shall be eligible for membership
only in the teachers' defined contribution system: Provided,
That if such reemployment with an existing employer
occurs not more than six months after the employee's
previous employment, he or she shall be entitled to read-
mission to the existing retirement system in which he or
she was originally a member: Provided, however, That if
such employee has five or more years of credited service
in the existing retirement system, he or she shall be enti-
tled to readmission into the existing retirement system in
which he or she was originally a member so long as he or
she has not withdrawn his or her contributions from the
existing retirement system: Provided further, That if such
employee has withdrawn his or her contribution from the
existing retirement system, then readmission shall not be
permitted and the employee will be entitled only to the
defined contribution system.

An employee whose employment with an employer
was suspended or terminated while he or she served as an
officer with a statewide professional teaching association is
eligible for readmission to the existing retirement system
in which he or she was a member. Any employee reem-
ployed with an employer on or after the first day of July,
one thousand nine hundred ninety-one, who had five or
more years credited service in the teachers' defined benefit
retirement system may elect readmission to the teachers'
defined benefit retirement system in which he or she was
originally a member. Any employee reemployed between
the first day of July, one thousand nine hundred
ninety-one, and the first day of July, one thousand nine
hundred ninety-five, and who was required to participate
in the teachers' defined contribution system but now elects,
pursuant to the provisions of this section, readmission to
the teachers' defined benefit retirement system shall pay
an additional contribution to the teachers' defined benefit
An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by the board, is eligible for readmission to the existing retirement system in which he or she was a member.

In all cases where a question exists as to readmission to membership in the existing retirement system, the board shall decide the question.

§18-7B-9. Members' contributions; annuity account established.

Each employee who is a member of the defined contribution system shall contribute four and one-half percent of his or her gross compensation by salary reduction. Such salary reductions shall be made by the employer at the normal payroll intervals and shall be remitted within five working days to the private pension, insurance, annu-
ity, mutual fund, or other qualified company or companies designated by the board to administer the day-to-day operations of the system.

All member contributions shall be immediately deposited to an account or accounts established in the name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The board shall promulgate by the thirtieth day of June, one thousand nine hundred ninety-one, pursuant to section six of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

The consolidated public employees retirement board shall study the feasibility of employees making personal contributions to the defined contribution system in addition to those required by this section and the impact of the United States Internal Revenue Code of one thousand nine hundred eighty-six, as amended, upon such contributions. The results of said study and recommendations for legislation to authorize such additional payments shall be presented to the committee on pensions and retirement of each house of the Legislature on or before the first day of October, one thousand nine hundred ninety-six.

Such rules, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

1. Lump sum distributions;
2. Joint and survivor annuities;
3. Other annuity forms in the discretion of the board;
4. Variable annuities which gradually increase monthly retirement payments: Provided, That said in-
creased payments are funded solely by the existing
current value of the member's account at the time the
member's retirement payments commencement and not, to
any extent, in a manner which would require additional
employer or employee contributions to any member's
account after retirement or after the cessation of
employment; and

(5) The instances in which, if any, distributions or loans
can be made to members from their annuity account
balances prior to having attained the age of fifty-five.

CHAPTER 93
(H. B. 2020—By Delegate Leach)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section one, article eight, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to compulsory
school attendance and home instruction; and correcting an
error made in the last amendment to this section.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Commencement and termination of compulsory
school attendance; exemptions.

Compulsory school attendance shall begin with the
school year in which the sixth birthday is reached prior to
the first day of September of such year or upon enrolling
in a publicly supported kindergarten program and continue to the sixteenth birthday.

Exemption from the foregoing requirements of compulsory public school attendance shall be made on behalf of any child for the following causes or conditions, each such cause or condition being subject to confirmation by the attendance authority of the county:

Exemption A. Instruction in a private, parochial or other approved school. — Such instruction shall be in a school approved by the county board of education and for a time equal to the school term of the county for the year. In all such schools it shall be the duty of the principal or other person in control, upon the request of the county superintendent of schools, to furnish to the county board of education such information and records as may be required with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years;

Exemption B. Instruction in home or other approved place. — (a) Such instruction shall be in the home of such child or children or at some other place approved by the county board of education and for a time equal to the school term of the county. If such request for home instruction is denied by the county board of education, good and reasonable justification for such denial must be furnished in writing to the applicant by the county board of education. The instruction in such cases shall be conducted by a person or persons who, in the judgment of the county superintendent and county board of education, are qualified to give instruction in subjects required to be taught in the free elementary schools of the state. It shall be the duty of the person or persons providing the instruction, upon request of the county superintendent, to furnish to the county board of education such information and records as may be required from time to time with respect to attendance, instruction and progress of pupils enrolled between the entrance age and sixteen years receiving such instruction. The state department of
education shall develop guidelines for the homeschooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(b) Notwithstanding the provisions of subsection (a) of this Exemption B, the person or persons providing home instruction meet the requirements for Exemption B when the conditions of this subsection are met: Provided, That the county superintendent shall have the right to seek from the circuit court of the county an order denying the home instruction, which order may be granted upon a showing of clear and convincing evidence that the child will suffer educational neglect or that there are other compelling reasons to deny home instruction.

(1) The person or persons providing home instruction present to the county superintendent or county board of education a notice of intent to provide home instruction and the name and address of any child of compulsory school age to be instructed: Provided, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing such child from public school;

(2) The person or persons providing home instruction submit satisfactory evidence of: (i) A high school diploma or equivalent; and (ii) formal education at least four years higher than the most academically advanced child for whom the instruction will be provided;

(3) The person or persons providing home instruction outline a plan of instruction for the ensuing school year; and

(4) The person or persons providing home instruction shall annually obtain an academic assessment of the child for the previous school year. This shall be satisfied in one of the following ways:

(i) Any child receiving home instruction annually takes a standardized test, to be administered at a public
school in the county where the child resides, or
administered by a licensed psychologist or other person
authorized by the publisher of the test, or administered by
a person authorized by the county superintendent or
county board of education. The child shall be adminis-
tered a test which has been normed by the test publisher
on that child's age or grade group. In no event may the
child's parent or legal guardian administer the test. Where
a test is administered outside of a public school, the child's
parent or legal guardian shall pay the cost of adminis-
tering the test. The public school or other qualified person
shall administer to children of compulsory school age the
Comprehensive Test of Basic Skills, the California
Achievement Test, the Stanford Achievement Test, or the
Iowa Tests of Basic Skills, achievement and proficiency, or
an individual standardized achievement test that is
nationally normed and provides statistical results which
test will be selected by the public school, or other person
administering the test, in the subjects of language, reading,
social studies, science and mathematics; and shall be
administered under standardized conditions as set forth by
the published instructions of the selected test. No test shall
be administered if the publication date is more than ten
years from the date of the administration of the test. Each
child's test results shall be reported as a national percentile
for each of the five subjects tested. Each child's test results
shall be made available on or before the thirtieth day of
June of the school year in which the test is to be
administered to the person or persons providing home
instruction, the child's parent or legal guardian and the
county superintendent. Upon request of a duly authorized
representative of the West Virginia department of edu-
cation, each child's test results shall be furnished by the
person or persons providing home instruction, or by the
child's parent or legal guardian, to the state superintendent
of schools. Upon notification of the mean of the child's
test results for any single year has fallen below the fortieth
percentile, the county board of education shall notify the
parents or legal guardian of said child, in writing, of the
services available to assist in the assessment of the child's
 Provided, That the identification of a disability shall not preclude the
continuation of home schooling.

If the mean of the child's test results for any single
year for language, reading, social studies, science and
mathematics fall below the fortieth percentile on the
selected tests, then the person or persons providing home
instruction shall initiate a remedial program to foster
achievement above that level and the student shall show
improvement. If, after two calendar years, the mean of the
child's test results fall below the fortieth percentile level,
home instruction shall no longer satisfy the compulsory
school attendance requirement exemption; or

(ii) The county superintendent is provided with a
written narrative indicating that a portfolio of samples of
the child's work has been reviewed and that the child's
academic progress for the year is in accordance with the
child's abilities. This narrative shall be prepared by a
certified teacher or other person mutually agreed upon by
the parent or legal guardian and the county super-
intendent. It shall be submitted on or before the thirtieth
day of June of the school year covered by the portfolio.
The parent or legal guardian shall be responsible for
payment of fees charged for the narrative; or

(iii) Evidence of an alternative academic assessment of
the child's proficiency mutually agreed upon by the
parent or legal guardian and the county superintendent is
submitted to the county superintendent by the thirtieth
day of June of the school year being assessed. The parent
or legal guardian shall be responsible for payment of fees
charged for the assessment.

The superintendent or a designee shall offer such
assistance, including textbooks, other teaching materials
and available resources, as may assist the person or
persons providing home instruction subject to their
availability. Any child receiving home instruction may,
upon approval of the county board of education, exercise
the option to attend any class offered by the county board of education as the person or persons providing home instruction may deem appropriate subject to normal registration and attendance requirements;

Exemption C. Physical or mental incapacity. — Physical or mental incapacity shall consist of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to attend, the written statement of a licensed physician or authorized school nurse shall be required under the provisions of this article: Provided, That in all cases incapacity shall be narrowly defined and in no case shall the provisions of this article allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped child otherwise entitled to a free appropriate education;

Exemption D. Residence more than two miles from school or school bus route. — The distance of residence from a school, or school bus route providing free transportation, shall be reckoned by the shortest practicable road or path, which contemplates travel through fields by right of permission from the landholders or their agents. It shall be the duty of the county board of education, subject to written consent of landholders, or their agents, to provide and maintain safe foot bridges across streams off the public highways where such are required for the safety and welfare of pupils whose mode of travel from home to school or to school bus route must necessarily be other than along the public highway in order for said road or path to be not over two miles from home to school or to school bus providing free transportation;

Exemption E. Hazardous conditions. — Conditions rendering school attendance impossible or hazardous to the life, health or safety of the child;

Exemption F. High school graduation. — Such exemption shall consist of regular graduation from a
192 standard senior high school;

193 Exemption G. Granting work permits. — The county
194 superintendent may, after due investigation, grant work
195 permits to youths under sixteen years of age, subject to
196 state and federal labor laws and regulations: Provided,
197 That a work permit may not be granted on behalf of any
198 youth who has not completed the eighth grade of school;

199 Exemption H. Serious illness or death in the
200 immediate family of the pupil. — It is expected that the
201 county attendance director will ascertain the facts in all
202 cases of such absences about which information is
203 inadequate and report same to the county superintendent
204 of schools;

205 Exemption I. Destitution in the home. — Exemption
206 based on a condition of extreme destitution in the home
207 may be granted only upon the written recommendation of
208 the county attendance director to the county superin-
209 tendent following careful investigation of the case. A copy
210 of the report confirming such condition and school
211 exemption shall be placed with the county director of
212 public assistance. This enactment contemplates every
213 reasonable effort that may properly be taken on the part
214 of both school and public assistance authorities for the
215 relief of home conditions officially recognized as being so
216 destitute as to deprive children of the privilege of school
217 attendance. Exemption for this cause shall not be allowed
218 when such destitution is relieved through public or private
219 means;

220 Exemption J. Church ordinances; observances of
221 regular church ordinances. — The county board of
222 education may approve exemption for religious
223 instruction upon written request of the person having legal
224 or actual charge of a child or children: Provided, That
225 such exemption shall be subject to the rules prescribed by
226 the county superintendent and approved by the county
227 board of education;

228 Exemption K. Alternative private, parochial, church
or religious school instruction. — In lieu of the provisions of Exemption A hereinabove, exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of article twenty-eight, chapter eighteen of the code of West Virginia.

The completion of the eighth grade shall not exempt any child under sixteen years of age from the compulsory attendance provision of this article: Provided, That there is a public high school or other public school of advanced grades or a school bus providing free transportation to any such school, the route of which is within two miles of the child's home by the shortest practicable route or path as hereinbefore specified under Exemption D of this section.

CHAPTER 94

(Com. Sub. for H. B. 2085—By Delegates Smirl, Johnson, Jenkins and Hubbard)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact section eleven, article eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring school attendance as condition for licensing for privilege of operation of motor vehicle; and providing that enrollment in an institution of higher education qualifies a person under the age of eighteen to be issued a license or instruction permit.

Be it enacted by the Legislature of West Virginia:

That section eleven, article eight, 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 8. COMPULSORY SCHOOL ATTENDANCE.

§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; (3) is excused from such requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.

(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 docu-
36 mentation of compliance with the provisions of this
37 section is received by the division of motor vehicles before
38 such time.
39
(c) For the purposes of this section, withdrawal shall
40 be defined as more than ten consecutive or fifteen days
41 total unexcused absences during a single semester. For the
42 purposes of this section, suspension or expulsion from
43 school or imprisonment in a jail or a penitentiary is not a
44 circumstance beyond the control of such person.
45
(d) Whenever the withdrawal from school of such
46 student, or such student's failure to enroll in a course
47 leading to or to obtain a GED or high school diploma, is
48 beyond the control of such student, or is for the purpose
49 of transfer to another school as confirmed in writing by
50 the student's parent or guardian, no such notice shall be
51 sent to the division of motor vehicles to suspend the
52 student's motor vehicle operator's license, and if the
53 student is applying for a license, the attendance director or
54 chief administrator shall provide the student with docu-
55 mentation to present to the division of motor vehicles to
56 excuse such student from the provisions of this section.
57 The school district superintendent (or the appropriate
58 school official of any private secondary school) with the
59 assistance of the county attendance director and any other
60 staff or school personnel shall be the sole judge of
61 whether such withdrawal is due to circumstances beyond
62 the control of such person.

CHAPTER 95

(H. B. 2559—By Delegates J. Martin, Varner, Givens, Thompson,
Sprouse and Calvert)

[Passed March 10, 1995; in effect July 1, 1995. Approved by the Governor.]
AN ACT to amend and reenact section six-a, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring inter-governmental transfers from the West Virginia rehabilitation center special revenue account to the medical services trust fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-6a. West Virginia rehabilitation center special account; expenditures.

(a) There is hereby established in the state treasury a separate account which shall be designated the "West Virginia rehabilitation center special account." The director of vocational rehabilitation shall deposit promptly into the account all fees received for services provided by the West Virginia rehabilitation center from whatever source, including the federal government, state government or from other third-party payers or personal payments.

(b) A five-year West Virginia rehabilitation center long-range plan shall be developed by the director and shall be adopted by the secretary of education and the arts. The West Virginia rehabilitation center's long-range plan shall be updated and revised at least every two years.

(c) The director is authorized to expend the moneys deposited in the West Virginia rehabilitation center special account in accordance with federal laws and regulations, and with the laws of this state as is necessary for the development of the five-year center long-range plan and subsequent revisions: Provided, That all disproportionate share hospital funds received into the account shall be transferred by intergovernmental transfer to the medical services trust fund created in section two-a, article four-a, chapter nine of this code, except for funds appropriated
(d) Except for disproportionate share hospital funds transferred pursuant to subsection (c) of this section, the director is authorized to expend the moneys deposited in the West Virginia rehabilitation center special account as provided in the center's long-range plan at such times and in such amounts as the director determines to be necessary for the purpose of maintaining or improving the delivery of rehabilitation center services or for the purpose of maintaining or obtaining certification at the rehabilitation center: Provided, That during the budget preparation period which occurs prior to the convening of the Legislature, the director shall submit for inclusion in the executive budget document and budget bill his recommended capital expenditures, recommended priorities, estimated costs and request for appropriations for maintaining or improving the delivery of vocational rehabilitation services and for maintaining or obtaining certification at the rehabilitation center in such amounts as the director determines to be necessary to implement the five-year rehabilitation center long-range plan and any subsequent revisions thereto.

(e) The director shall make an annual report to the Legislature on the status of the rehabilitation center revenue account, including the previous year's expenditures and projected expenditures for the next year.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. ANTIHAZING LAW.

§18-16-1. Short title.

This article shall be known and may be cited as the "Antihazing Law".

§18-16-2. Definitions.

(a) "Hazing" means to cause any action or situation which recklessly or intentionally endangers the mental or physical health or safety of another person or persons or causes another person or persons to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher education. The term includes, but is not limited to, any brutality of a physical nature, such as whipping, beating, branding, forced consumption of any food, liquor, drug or other substance, or any other forced physical activity which could adversely affect the physical health and safety of the individual or individuals, and includes any activity which would subject the individual or individuals to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental
Any person or persons who causes hazing is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in a county or regional jail, not more than nine months, or both fined and imprisoned: Provided, That if the act would otherwise be deemed a felony as defined in this code, the person committing such act may be found guilty of such felony and be subject to penalties provided for such felony.

§18-16-4. Enforcement by institution.

(a) Antihaezing policy. — The university of West Virginia board of trustees created pursuant to article two, chapter eighteen-b of this code and the board of directors of the state college system created pursuant to article three of said chapter shall by the first day of August, one thousand nine hundred ninety-five, promulgate guidelines for antihaezing policies.

(b) Enforcement and penalties. —

(1) Each institution shall provide a program for the enforcement of such rules and shall adopt appropriate penalties for violations of such rules to be administered by the person or agency at the institution responsible for the sanctioning or recognition of such organizations.

(2) In the case of an organization which authorizes hazing in blatant disregard of such rules, penalties may also include recision of permission for that organization to operate on campus property or to otherwise operate under the sanction or recognition of the institution.
(3) All penalties imposed under the authority of this section shall be in addition to any penalty imposed for violation of section three of this article or of any of the criminal laws of this state or for violation of any other institutional rule to which the violator may be subject.

(4) Rules adopted pursuant hereto apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing.

CHAPTER 97

(Com. Sub. for H. B. 2050—By Delegate Kiss) (By Request)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-eight, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting private, parochial and religious schools who exclusively service special education students or students with learning disabilities from complying with the requirements that they administer only group tests and that achievement be above the fortieth percentile.

Be it enacted by the Legislature of West Virginia:

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

§18-28-3. Standardized testing requirements.

(a) Each private, parochial or church school or school of a religious order or other nonpublic school electing to operate under this statute in lieu of the approval requirements set forth as part of section one, article eight, chapter eighteen, exemption A shall administer on an annual basis during each school year to every child enrolled therein between the ages of seven and sixteen years either the
comprehensive test of basic skills, the California achievement test, the Stanford achievement test or the Iowa tests of basic skills tests of achievement and proficiency, which test will be selected by the chief administrative officer of each school in the subjects of English, grammar, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test: Provided, That any private, parochial, church school, school of a religious order or other nonpublic school that exclusively teaches special education students or children with learning disabilities shall not be required to comply with this subsection or subsection (d) of this section, but shall academically assess every child enrolled therein between the ages of seven and sixteen years on an annual basis during each school year by one or more of the following methods: (1) A standardized group achievement test; (2) a standardized individual achievement test; (3) a written narrative of an evaluation of a portfolio of samples of a child's work; (4) an alternative academic assessment of the child's proficiency as mutually agreed by the county superintendent, parent(s) or legal guardian(s) and the school.

(b) Each child's testing results and the school composite test results shall be made available to such child's parents or legal guardians. Upon request of a duly authorized representative of the West Virginia department of education, the school composite test results shall be furnished by the school or by a parents organization composed of the parents or guardians of children enrolled in said school to the state superintendent of schools.

(c) Each school to which this article applies shall:

(1) Establish curriculum objectives, the attainment of which will enable students to develop the potential for becoming literate citizens.

(2) Provide an instructional program that will make possible the acquisition of competencies necessary to become a literate citizen.
(d) If such school composite test results for any single year for English, grammar, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, the school as herein described shall initiate a remedial program to foster achievement above that level. If after two consecutive calendar years school composite test results are not above the fortieth percentile level, attendance at the school may no longer satisfy the compulsory school attendance requirement exemption of exemption K, section one, article eight, chapter eighteen, until such time as the percentile standards herein set forth are met.

CHAPTER 98

(H. B. 2700—By Delegate Prezioso)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor’s signature.]

AN ACT to amend article three, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-d, relating to beginning principal internship programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2d. Beginning principal internships.

(a) Every person hired for the first time in a county school system as an assistant principal, principal or vocational administrator after the first day of July, one thousand nine hundred ninety-five, shall complete a one
school year, beginning principal internship program under the provisions of this section.

(b) The beginning principal internship program is a county school system based program intended to provide appropriate orientation activities and supervision to beginning assistant principals, principals or vocational administrators of this state. The beginning principal internship shall consist of the following components:

(1) An orientation program to be conducted prior to the beginning of the instructional term, but within the employment term, developed by the county school system: Provided, That if a beginning principal is hired during the instructional term the orientation program shall be conducted during the instructional term;

(2) The scheduling of no less than three regular meetings per semester during the school year between the mentor and beginning principal. Topics for each meeting may consist of, but are not limited to, the following: Evaluation of personnel, budgeting, scheduling, instructional leadership, discipline, public relations, conferencing skills or other topics determined by the mentor and intern;

(3) The provision of necessary release time from regular duties for the mentor as agreed to by the county superintendent and the beginning principal and a stipend of at least six hundred dollars for the mentor for duties as a mentor, to be paid by the state department of education; and

(4) Documentation of the beginning principal internship recorded on the evaluation form currently developed by the local county school district.

(c) Mentors are selected by the county superintendent and must have a minimum of five years of administrative experience as an assistant principal, principal or vocational administrator. Mentors must complete a staff development program approved by the West Virginia department of education prior to their employment as a mentor. The mentor must not be responsible for or a participant in any evaluation or supervision of the beginning principal intern.
CHAPTER 99

(Com. Sub. for S. B. 547—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to repeal section four, article three-a, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section forty-eight, article three, chapter five-a of said code; to amend and reenact section eleven, article three, chapter twelve of said code; to amend and reenact section four, article twenty-nine, chapter eighteen of said code; to amend and reenact sections one-a, one-b, two, eight and eight-a, article one, chapter eighteen-b of said code; to further amend said article by adding thereto two new sections, designated sections one-c and one-d; to amend and reenact sections one, three and four, article three of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact section one, article four of said chapter; to amend and reenact sections four, five, six and seven, article five of said chapter; to further amend said article by adding thereto three new sections, designated sections two-b, two-c and eight; to amend and reenact section one, article six of said chapter; to amend and reenact section one, article seven of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections two and twelve, article nine of said chapter; to further amend said article by adding thereto a new section, designated section six; to amend and reenact section one, article ten of said chapter; to amend article eleven of said chapter by adding thereto a new section, designated section five; and to amend article fourteen of said chapter by adding thereto a new section, designated section five, all relating to achieving goals for higher education; exempting higher education governing boards and their institutions from rules relating to travel and purchase of vehicles; ex-
tending default provision at level one for grievances and requiring dual filing for cases relating to higher education; deleting obsolete language; expressing goals relating to relevance and quality for post-secondary education and expressing goals for student access, entrepreneurial programs and good citizenship; requiring governing boards to report strategic plans relating to salary targets and resource allocation exceptions; increasing flexibility and capacity for change relating to retirement and separation incentives, pilot flexibility initiatives and consolidation of administrative functions; revising definitions; updating powers and duties of governing boards generally and authorizing employment of legal counsel; requiring governing boards to adopt rules providing for the collection, analysis and dissemination of higher education report cards; adding three members to the board of directors of the state college system; establishing community and technical college education; creating positions of vice chancellor for instructional technology and vice chancellor for community and technical education; updating purchasing and bidding procedures for institutions of higher education; extending terms for members of the institutional board of advisors for faculty and classified employees; retaining bumping rights for classified employees involuntarily transferred; eliminating the five-percent salary provision for probationary employees; providing compensatory time off in lieu of overtime for employees of governing boards; creating an institute for instructional technology; and authorizing governing boards to sell property.

Be it enacted by the Legislature of West Virginia:

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

Chapter
   5A. Department of Administration.
   18. Education.
   18B. Higher Education.

CHAPTER 5A. DEPARTMENT
OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

*§5A-3-48. Travel rules; exceptions.

1 The secretary of administration shall promulgate rules
2 relating to the ownership, purchase, use, storage, mainte-
3 nance and repair of all motor vehicles and aircraft owned
4 by the state of West Virginia and in the possession of any
5 department, institution or agency thereof: Provided, That
6 the provisions of sections forty-eight through fifty-three

*Clerk's Note: This section was also amended by H. B. 2242 (Chapter
117), which passed prior to this act.
of this article shall not apply to the division of highways
of the department of transportation, the division of public
safety of the department of military affairs and public
safety, the division of natural resources, the division of
forestry, the department of agriculture and the higher
education governing boards and their institutions: Provided,
however, That the higher education governing boards
and their institutions shall report annually to the secretary
of education and the arts and the legislative oversight
commission on education accountability in a form and
manner as required by the secretary of education and the
arts. Such report shall include at least the following: The
number of vehicles purchased and the purchase price, the
number of donated vehicles, and the cost of lease agree-
ments on leased vehicles.

If, in the judgment of the secretary of administration,
economy or convenience indicate the expediency thereof,
the secretary may require all vehicles and the aircraft sub-
ject to regulation by this article, or such of them as he or
she may designate, to be kept in such garages, and other
places of storage, and to be made available in such manner
and under such terms for the official use of such depart-
ments, institutions, agencies, officers, agents and employ-
ees of the state as the secretary may designate by any such
rule as he or she may from time to time promulgate. The
secretary also has the authority to administer the travel
regulations promulgated by the governor in accordance
with section eleven, article three, chapter twelve of this
code, unless otherwise determined by the governor.

Provisions of this section relating to the governing
boards of higher education and the institutions under their
jurisdiction shall expire on the first day of July, two thou-
sand one, unless the continuation thereof is authorized by
the legislative oversight commission on education ac-
countability.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.
ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia higher education governing boards; moving expenses of employees of West Virginia higher education governing boards.

The governor shall promulgate rules and regulations concerning out-of-state travel by state officials and employees, except those in the legislative and judicial branches of the state government and except for the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture and their employees, and the higher education governing boards and institutions under their jurisdiction. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer, board of investments, commissioner of agriculture and the higher education governing boards shall promulgate rules and regulations concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules and regulations shall be filed with the auditor, and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules and regulations so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for a higher education governing board to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any
It shall be lawful for a higher education governing board to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his household furniture, effects and immediate family to his place of employment; and (2) all or part of the reasonable expense incurred by an employee of the board in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months.

Provisions of this section relating to the governing boards of higher education and the institutions under their control shall expire on the first day of July, two thousand one, unless the continuation thereof is authorized by the legislative oversight commission on education accountability.

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-4. Procedural levels and procedure at each level.

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.
The conference with the immediate supervisor concerning the grievance shall be conducted within ten days of the request therefor, and any discussion shall be by the grievant in the grievant's own behalf or by both the grievant and the designated representative.

(2) The immediate supervisor shall respond to the grievance within ten days of the conference.

(3) Within ten days of receipt of the response from the immediate supervisor following the informal conference, a written grievance may be filed with said supervisor, or in the case where the grievance involves an event under the jurisdiction of a state institution of higher education, the grievance shall be filed with said supervisor and the office of personnel, by the grievant or the designated representative on a form furnished by the employer or agent.

(4) The immediate supervisor shall state the decision to such filed grievance within ten days after the grievance is filed.

(b) Level two.

Within five days of receiving the decision of the immediate supervisor, the grievant may appeal the decision to the chief administrator, and such administrator or his or her designee shall conduct a hearing in accordance with section six of this article within five days of receiving the appeal and shall issue a written decision within five days of such hearing. Such decision may affirm, modify or reverse the decision appealed from. Level four hearing examiners or the chief administrator shall have the authority to subpoena witnesses and documents for level two and level three hearings in accordance with the provision of section one, article five, chapter twenty-nine-a of this code, and may issue a subpoena upon the written request of any party to the grievance.

(c) Level three.
Within five days of receiving the decision of the chief administrator, the grievant may appeal the decision to the governing board of the institution or may proceed directly to level four. An appeal to the governing board shall set forth the reasons why the grievant is seeking a level three review of the decision of the chief administrator. Within five days of receiving the appeal, such governing board may conduct a hearing in accordance with section six of this article, may review the record submitted by the chief administrator and render a decision based on such record or may waive the right granted herein and shall notify the grievant of such waiver. Any decision by the governing board, including a decision to waive participation in the grievance, shall be in writing and shall set forth the reasons for such decision, including the decision to waive participation in the grievance. If a hearing is held under the provisions of this subsection, the governing board shall issue a decision affirming, modifying or reversing the decision of the chief administrator within five days of such hearing.

(d) Level four.

(1) If the grievant is not satisfied with the action taken by the chief administrator or, if appealed to level three, the action taken by the governing board, within five days of the written decision the grievant may request, in writing, on a form furnished by the employer, that the grievance be submitted to a hearing examiner as provided for in section five of this article, such hearing to be conducted in accordance with section six of this article within ten days following the request therefor: Provided, That such hearing may be held within thirty days following the request or within such time as is mutually agreed upon by the parties, if the hearing examiner gives reasonable cause, in writing, as to the necessity for such delay.

(2) Within thirty days following the hearing, the hearing examiner shall render a decision in writing to all parties setting forth findings and conclusions on the issues
submitted. Subject to the provisions of section seven of this article, the decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court.

All information and data generated by the board and in its custody relative to level four decisions and copies of such decisions shall be provided at reasonable cost to any individual requesting it.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
3. Board of Directors of the State College System.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Other Boards and Advisory Councils.
9. Classified Employee Salary and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.

ARTICLE 1. GOVERNANCE.

§18B-1-1b. Implementation of findings, directives, goals and objectives.
§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.
§18B-1-1d. Increasing flexibility and capacity for change.
§18B-1-2. Definitions.
§18B-1-8a. Higher education accountability; institutional and statewide report cards.


(a) Findings and directives. — The Legislature finds that higher education is a vital force in the future of West Virginia. For the state to realize its considerable potential in the twenty-first century, West Virginia should invest in its people through a strong and dynamic higher education system.
The Legislature further finds that the people of West Virginia have demonstrated their support for this finding through their involvement and comments at meetings held throughout the state pursuant to Senate Concurrent Resolution No. 30 adopted at the regular session of the West Virginia Legislature, one thousand nine hundred ninety-two. The Legislature, also, endorses the report submitted by the higher education advocacy team pursuant to said resolution and directs the affected educational agencies to implement unified strategies for accomplishing the needed improvements.

(b) Goals and objectives. — In the pursuance of the above findings, the following goals and objectives are hereby adopted with respect to the investments which are necessary for higher education in West Virginia to contribute fully to the growth, development and quality of life of the state and its citizens:

(1) Students should be better prepared in high school to meet college standards jointly agreed upon by higher education and the public schools as required under subsection (c), section five of this article. Those standards should be conveyed to students prior to entering tenth grade;

(2) More students should obtain education that is both high quality and relevant, beyond the high school level for our individual and collective economic development:

(A) The awareness of post-secondary educational opportunities among the state's citizens should be expanded and their motivation to take advantage of available opportunities should be enhanced;

(B) Assistance in overcoming the financial barriers to post-secondary education should be provided;

(C) A student-friendly environment should be created within post-secondary education to encourage and expand participation for the increasingly diverse student population;
43 (D) All West Virginians, whether traditional or nontraditional students, displaced workers or those currently employed should have access to post-secondary educational opportunities through their community and technical colleges, colleges and universities which is relevant, affordable, allows them to gain transferrable credits and associate or higher level degrees, provides quality technical education and skill training, and is responsive to business, industry, labor and community needs;

44 (E) The development of entrepreneurial skills through such programs as the rural entrepreneurship through action learning (REAL) should be encouraged, including skills assessment, needs analysis and business plan development; and

45 (F) More opportunities should be available for advanced high school students to obtain college credit prior to high school graduation;

46 (3) Students should be prepared to practice good citizenship to compete in a global economy in which the good jobs will require an advanced education and level of skill which far surpasses former requirements:

47 (A) Academic preparation should be improved to ensure that students enrolling in programs of post-secondary education are adequately prepared to be successful in their selected fields of study and career plans;

48 (B) College graduates should meet or exceed national and international standards for skill levels in reading, oral and written communications, mathematics, critical thinking, science and technology, research and human relations;

49 (C) College graduates should meet or exceed national and international standards for performance in their fields through national accreditation of programs and through outcomes assessment of graduates;

50 (D) The faculties in higher education should include
elements of citizenship development across the curriculum in core areas, including practical applications such as community service, civic involvement and participation in charitable organizations or in the many opportunities for the responsible exercise of citizenship that higher education institutions provide;

(4) Resources should be focused on programs and courses which offer the greatest opportunities for students and the greatest opportunity for job creation and retention in the state:

(A) An entrepreneurial spirit and flexibility should be created within higher education to respond to the needs of the current work force and other nontraditional students for college-level skills upgrading and retraining;

(B) A focus should be created on programs supportive of West Virginia employment opportunities and the emerging high technology industries;

(C) Closer linkages should be established among higher education and business, labor, government, community and economic development organizations;

(5) Resources should be used to their maximum potential and faculty and technology should be combined in a way that makes West Virginia higher education more productive than similar institutions in other states:

(A) Institutional missions should be clarified and resources should be shifted to programs which meet the current and future work force needs of the state;

(B) Program duplication necessary for geographic access should be determined and unnecessary duplication should be eliminated;

(C) Systematic ongoing mechanisms should be established for each state institution of higher education to set goals, measure the extent to which those goals are met and use results of quantitative evaluation processes to improve institutional effectiveness;
(D) Institutional productivity and administrative efficiency standards should be established to ensure that state institutions of higher education are more productive and efficient than similar institutions in other states; and

(6) The compensation of faculty, staff and administrators should be established at competitive levels to attract and keep quality personnel at state institutions of higher education:

(A) Faculty and staff classification and compensation at state institutions of higher education should be competitive with relevant market levels;

(B) Available revenues should be distributed in an equitable fashion which enables each state institution of higher education to fulfill its mission and reward its employees appropriately; and

(C) It is the goal for post-secondary education to move faculty salaries to one hundred percent of peer averages. As part of this long-term strategy the state should make every effort to provide funds to assist the institutions in moving to that goal.

§18B-1-1b. Implementation of findings, directives, goals and objectives.

The governing boards shall develop a plan for implementation of the legislative findings, directives, goals and objectives set forth in section one-a of this article, including benchmarks to ensure accountability in achieving said findings, directives, goals and objectives, in consultation with the secretary of education and the arts, the president of the state board of education, the president of the West Virginia association of private colleges, the president of the joint commission for vocational-technical-occupational education and the president of the West Virginia economic development council. A written report of the plan required by this section, including the plans required of the state institutions of higher education pursuant to section one-c of this article and any resource allocation ex-
exceptions granted thereunder, shall be submitted to the governor and the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-five, and thereafter. Progress toward achieving said goals and objectives shall be reported in the higher education report card required pursuant to section eight-a of this article. The secretary shall conduct an ongoing review of the plans submitted by the governing boards and the strategic plans submitted by the institutions and shall annually report to the Legislature his or her opinion as to the progress of the governing boards and institutions in accomplishing the goals and objectives set forth in the plan. The secretary shall also report to the Legislature any plans which do not, in the opinion of the secretary, set appropriate goals and objectives and any institutions which are not in compliance with their plan.

§18B-1-1c. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

(a) To achieve the goals for post-secondary education as set forth in section one-a of this article, each of the following state institutions of higher education shall prepare a strategic plan of change to refocus its mission and leadership, and restructure its existing resources and programs: Bluefield state college; Concord college; Glenville state college; Fairmont state college; Marshall university; West Virginia northern community college; Potomac state college of West Virginia university; Shepherd college; southern West Virginia community college; West Liberty state college; the West Virginia graduate college; West Virginia institute of technology; West Virginia university at Parkersburg; West Virginia school of osteopathic medicine; West Virginia state college; West Virginia university; and all branch campuses of these institutions of higher education. Such plans shall specifically state how the institution will, over a five-year period, refocus its mission and leadership and restructure its existing resources and pro-
grams to achieve the goals for post-secondary education including, but not limited to, the following: (1) Increase average faculty salaries at the institution, not including health sciences, to a level at least equal to ninety-five percent of the average faculty salaries at peer institutions in the southern regional education board region: Provided, That West Virginia university, excluding West Virginia university at Parkersburg and Potomac state college of West Virginia university shall state specifically how it will increase average faculty salaries at that institution, not including health sciences, to a level at least equal to ninety percent of the average faculty salaries at peer institutions in the southern regional education board region; (2) achieve full funding of the uniform employee classification system and salary policy for classified employees adopted by the respective governing boards pursuant to section four, article nine of this chapter; (3) eliminate duplicative programs and services, acting alone or in conjunction with another institution, and eliminate under-utilized or unnecessary programs; (4) may combine administrative functions among other institutions; and (5) use admission and exit standards for students, incentives and staff development for assuring quality teaching and learning and the critical assessment of programs to meet the goals. The plan shall also state the manner in which any pay increases will be funded, the sources of any funds used for pay increases, and the savings and costs associated with achieving any other goals specified in the plan and how the funds are to be redirected. The faculty senate, classified staff council and the student government association shall be consulted prior to the submission of the plan and their recommendations included in the presidents report to the board. Beginning the first day of July, one thousand nine hundred ninety-six, the budgets of state institutions of higher education shall reflect movement to the salary targets for faculty and classified staff as set forth in this section and any other goals specified in their strategic plan for change.

(b) The president or administrative head of each state
institution of higher education shall submit the plan for
the institution to its respective governing board on or
before the first day of November, one thousand nine hun-
dred ninety-five: *Provided, That* community and techni-
cal college education shall not be required to be segregat-
ed in such plan until the first day of November, one thou-
sand nine hundred ninety-six. The governing boards shall
approve or disapprove such plans within sixty days of
receipt and notify the institution president or administra-
tive head of its decision: *Provided, however, That* if the
plan submitted by the institution includes retirement and
separation incentives pursuant to section one-d of this
article, such portion of the plan shall be submitted by the
governing board to the legislative joint standing commit-
tee on pensions and retirement, and the time required for
review by such committee shall not be included in the
sixty days. If disapproved, the governing board shall re-
turn the plan to the institution president or administrative
head stating its reasons for disapproval. The institution
president or administrative head may modify and resubmit
a plan which was disapproved at any time and the govern-
ing board shall approve or disapprove such resubmitted
plan within sixty days and notify the institution president
or administrative head as herein provided for the original
plan. If such plans have not been approved on or before
the first day of March following the November submission
date, the board is authorized to develop a plan for such
institutions. The president or administrative head of every
state institution of higher education with an approved plan
shall update such plan on an annual basis to reflect perfor-
manence during the preceding year and make any necessary
modifications. Such updated plans shall be submitted on
the first day of November in each of the subsequent years
that the plan is in effect and the governing board shall
follow the same procedures for approval or disapproval as
herein provided for the original plan. Upon the approval
of a plan or plan update which includes the elimination of
a program, the institution president or administrative head
shall immediately notify affected students, faculty and
staff.
(c) Any state institution of higher education with an approved plan may apply to its governing board for an exception under the resource allocation model and policies to retain funding for student enrollments that decline due to planned program reductions or elimination under the strategic plan. The number of student enrollments subject to the exception shall be based on the average full-time equivalent enrollments over the five preceding years in such program. The allocation exception shall become effective in the next ensuing allocation cycle following approval by the governing board and notification of affected faculty, students and staff of the program reduction or elimination, and shall remain effective for the number of years normally required for students to complete the full program from beginning enrollment to graduation, subject to annual review by the governing board of the actual decline in program enrollments. Notwithstanding any other provision of this section, any program suspended or discontinued by action of the governing board on or after the first day of September, one thousand nine hundred ninety-four, and prior to the effective date of this section, which program is being eliminated pursuant to said action, is eligible for an exception under the resource allocation model and policies pursuant to this section for the fiscal year one thousand nine hundred ninety-six.

(d) Any state institution of higher education with an approved plan may apply to its governing board for an exception under the resource allocation model and policies to retain funding for student enrollments that decline due to the planned reductions for the purpose of enhancing the quality of a particular program. The number of student enrollments subject to the exception shall be based on the average full-time equivalent enrollments over the preceding five years in such program. Money allocated to the institution as a result of this exception shall be used to enhance the quality of that particular program. The allocation exception shall become effective in the next ensuing allocation cycle following approval by the governing board and notification of affected faculty, students and
staff of the program reduction and shall remain in effect subject to biennial review by the governing board of the actual decline in program enrollments and enhancements in quality of the program.

(e) The application for an exception in subsections (c) and (d) of this section shall be submitted by the institution president or administrative head and state how the funds will be redirected to achieve the purposes of the institution's approved plan including, but not limited to, salary increases to attract and retain quality faculty and staff, expand and improve the quality of existing programs, make additional investments in technology and increased access, and, in the exemption provided in subsection (c) of this section, begin new programs. The governing board shall approve or disapprove the application within sixty days of receipt and if disapproved, shall return the application to the institution president or administrative head stating the reasons for disapproval. The institution president or administrative head may modify and resubmit an application which was disapproved at any time and the governing board shall approve or disapprove such resubmitted application within sixty days and notify the institution president or administrative head as herein provided for the original plan.

(f) An exception to the resource allocation model and policies granted under this section and any differential approved for an institution by its governing board to reflect the high costs of a program within the institution's mission shall be removed from the institution's base budget and, to the extent included therein, from the indicated level of state support for the purposes of subsection (d), section two, article five of this chapter, and any governing board rule to the contrary is hereby specifically modified.

(g) It is the expressed intent of the Legislature, subject to the availability of funds and appropriations therefor, to increase state appropriated funds for state institutions of higher education in each of the five fiscal years, one thousand nine hundred ninety-seven, through and including,
fiscal year two thousand one, at a rate of at least three and
twenty-five one-hundredths percent per year to assist the
institutions in achieving their strategic plan of change,
subject to demonstrated effort by the institutions as deter-
mined by the Legislature to refocus and restructure their
missions, leadership, resources and programs to meet said
plans in accordance with this section. In any fiscal year in
which the state appropriated funds are less than such ex-
pressed intent, the governing boards may adjust the targets
set forth in the strategic plans for change by a like propor-
tion. Beginning with legislative appropriations under this
subsection for the fiscal year one thousand nine hundred
ninety-seven—ninety-eight, the Legislature shall appropri-
such funds, if any, to a separate account known as the
"Higher Education Efficiency Fund" in the state budget.
Appropriations to the fund shall be allocated to the institu-
tions that are in compliance with their strategic plan for
change as certified by the secretary of education and the
arts pursuant to section one, article ten of this chapter.
Such allocations shall be made in accordance with the
resource allocation model and policies. Any portion of the
fund which is not so allocated shall be appropriated to the
higher education grant program, pursuant to article five,
chapter eighteen-c of this code, or if such program is fully
funded, for expenditure among all institutions for scholar-
ships and student grant programs.

§18B-1-ld. Increasing flexibility and capacity for change.

(a) Retirement and separation incentives. — Notwith-
standing any other provisions of this code to the contrary,
each state institution of higher education may include in
their strategic plans, pursuant to section one-c of this arti-
cle, policies that offer various incentives for voluntary,
early or phased retirement of employees, or voluntary
separation from employment, when necessary to imple-
ment programmatic changes effectively pursuant to the
findings, directives, goals and objectives of this article:
Provided, That such incentives for voluntary, early or
phased retirement of employees, or voluntary separation
12 from employment must be submitted by the governing
13 board to the legislative joint committee on pensions and
14 retirement and approved before such policies are adopted
15 as part of the institution’s strategic plan. The policies may
16 include the following provisions:

17 (1) Payment of a lump sum to an employee to resign
18 or retire;

19 (2) Continuation of full salary to an employee for a
20 predetermined period of time prior to the employee’s
21 resignation or retirement and a reduction in the employ-
22 see’s hours of employment during the predetermined peri-
23 od of time;

24 (3) Continuation of insurance coverage pursuant to
25 the provisions of article sixteen, chapter five of this code
26 for a predetermined period;

27 (4) Continuation of full employer contributions to an
28 employee’s retirement plan during a phased retirement
29 period; and

30 (5) That an employee retiring pursuant to an early or
31 phased retirement plan may begin collecting an annuity
32 from the employee’s retirement plan prior to the statutori-
33 ly designated retirement date without terminating their
34 service with the institution.

35 No incentive provided for in this section shall be
36 granted except in furtherance of programmatic changes
37 undertaken pursuant to the findings, directives, goals and
38 objectives set forth in this article.

39 No incentive proposed by an institution pursuant to
40 this section shall become a part of the institution’s ap-
41 proved strategic plan or be implemented without approval
42 of the legislative joint committee on pensions and retire-
43 ment.

44 Any costs associated with any incentive adopted or
45 implemented in accordance with this section shall be
46 borne entirely by the institutions and no incentive shall be
The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for reemployment by the institutions during or after the negotiated period of their incentive concludes including contract employment in excess of five thousand dollars per fiscal year.

(b) Pilot flexibility initiative. — The board of directors is directed to submit a plan for a pilot flexibility initiative to the legislative oversight commission on education accountability on or before the first day of October, one thousand nine hundred ninety-five. The plan shall include at least the following: (1) A system whereby the state institutions of higher education in the state college system may apply to the board of directors for a waiver of board policies and rules; (2) A detailed application for institutions seeking to participate in the pilot flexibility initiative which shall set forth at a minimum: (i) A statement of the specific goals and objectives that the institution proposes to accomplish if the application is approved; (ii) the specific board policies and rules which the institution seeks to have waived for all or a portion of the waiver period; and (iii) proposed rules and policies under which the institution would operate during the period of waiver; (3) The process by which the board of directors will review the application; (4) The person or body who shall have the final authority to approve the application of not more than two institutions; (5) The time period for which the waiver will be granted; (6) The specific board policies and rules which the institution may request to have waived; (7) The process by which the rules and policies of the
institutions participating in the pilot flexibility initiative may modify its rules and policies; and (8) The person or body to whom the institutions shall be reporting during the period of waiver.

(c) It is the intent of this Legislature to review the pilot flexibility plan and after such review to establish a pilot flexibility initiative in the legislative session of one thousand nine hundred ninety-six.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code shall have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing board" or "board" means the university of West Virginia board of trustees or the board of directors of the state college system, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) "Governing boards" or "boards" means both the board of trustees and the board of directors;

(c) "Freestanding community colleges" means southern West Virginia community and technical college and West Virginia northern community and technical college, which shall not be operated as branches or off-campus locations of any other state institution of higher education;

(d) "Community college" or "community colleges" means community and technical college or colleges as those terms are defined in this section;

(e) "Community and technical college", in the singular or plural, means the freestanding community and technical colleges, community and technical education programs at branch campuses of West Virginia university, and divisions of state institutions of higher education which have a defined community and technical college district and offer community and technical college education in ac-
(f) "Community and technical college education" means the programs, faculty, administration and funding associated with the mission of community and technical colleges as provided in section three-a, article three of this chapter, and also shall include post-secondary vocational education programs in the state as those terms are defined in this section. Community and technical college education shall be delivered through a system which includes eleven community and technical college districts assigned to state institutions of higher education under the jurisdiction of the board of directors and the board of trustees, respectively;

(g) "Directors" or "board of directors" means the board of directors of the state college system created pursuant to article three of this chapter or the members thereof;

(h) "Higher educational institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;

(i) "Post-secondary vocational education programs" means any college-level course or program beyond the high school level provided through an institution of higher education which results in or may result in the awarding of a two-year associate degree, under the jurisdiction of the board of directors;

(j) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(k) "Senior administrator" means the person hired by the governing boards in accordance with section one, article four of this chapter, with such powers and duties as may be provided for in section two of said article;

(l) "State college" means Bluefield state college, Concord college, Fairmont state college, Glenville state college,
Shepherd college, West Liberty state college, West Virginia institute of technology or West Virginia state college;

(m) "State college system" means the state colleges and community and technical colleges, and also shall include post-secondary vocational education programs in the state as those terms are defined in this section;

(n) "State college system community and technical colleges" means the freestanding community and technical colleges and community and technical colleges operated on the campuses of state colleges under the jurisdiction of the board of directors of the state college system and all of their associated branches, centers and off-campus locations;

(o) "State institution of higher education" means any university, college or community and technical college in the state university system or the state college system as those terms are defined in this section;

(p) "Trustees" and "board of trustees" means the university of West Virginia board of trustees created pursuant to article two of this chapter or the members thereof;

(q) "University", "university of West Virginia" and "state university system" means the multi-campus, integrated university of the state, consisting of West Virginia university, including West Virginia university at Parkersburg, Potomac state college of West Virginia university and the West Virginia university school of medicine; Marshall university, including the Marshall university school of medicine and the Marshall university community and technical college; the West Virginia graduate college; and the West Virginia school of osteopathic medicine;

(r) "University system community and technical colleges" means Marshall university community and technical college, community and technical education programs at West Virginia university at Parkersburg and community and technical education programs at Potomac state college of West Virginia university under the jurisdiction of the
university of West Virginia board of trustees and all their associated branches, centers and off-campus locations.


(a) Each governing board shall separately have the power and duty to:

(1) Determine, control, supervise and manage the financial, business and educational policies and affairs of the state institutions of higher education under its jurisdiction;

(2) Prepare a master plan for the state institutions of higher education under its jurisdiction, setting forth the goals, missions, degree offerings, resource requirements, physical plant needs, state personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the state for a quality system of higher education are addressed: Provided, That the master plan for post-secondary-vocational education is subject to approval by the joint commission for vocational-technical-occupational education. The plan shall also address the roles and missions of private post-secondary education providers in the state. Each board shall involve the executive and legislative branches of state government and the general public in the development of all segments of the plan for post-secondary education in the state. The plan shall be established for periods of not less than five nor more than ten years and shall be periodically revised as necessary, including the addition or deletion of degree programs as, in the discretion of the boards, may be necessary. Whenever a state institution of higher education desires to establish a new degree program, such program proposal shall not be implemented until the same is filed with both governing boards. Upon objection thereto within sixty days by either governing board, such program proposal shall be filed with the secretary of education and the arts, who shall approve or disapprove such proposal within one year of the filing of said program proposal;
(3) Prescribe and allocate among the state institutions of higher education under its jurisdiction, in accordance with its master plan, specific functions and responsibilities to meet the higher education needs of the state and to avoid unnecessary duplication;

(4) Consult with the executive branch and the Legislature in the establishment of funding parameters, priorities and goals;

(5) Establish guidelines for and direct the preparation of budget requests for each of the state institutions of higher education under its jurisdiction, such requests to relate directly to missions, goals and projections in its state master plan;

(6) Consider, revise and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state institutions of higher education under its jurisdiction or a single budget for the state institutions of higher education under its jurisdiction: Provided, That when a single budget is submitted, that budget shall be accompanied by a tentative schedule of proposed allocations of funds to the separate state institutions of higher education under its jurisdiction;

(7) Prepare and submit to the speaker of the House of Delegates and the president of the Senate, no later than the first day of each regular session of the Legislature and to any member of the Legislature upon request, an analysis of the budget request submitted under subdivision (6) of this subsection. The analysis shall summarize all amounts and sources of funds outside of the general revenue fund anticipated to be received by each state institution of higher education under its jurisdiction and the effect of such funds on the budget request;

(8) Prepare and submit to the legislative auditor, no later than the first day of July of each year, the approved operating budgets of each state institution of higher education under its jurisdiction for the fiscal year beginning
on that date and, no later than the first day of August, a
summary of federal and other external funds received at
each such institution during the previous fiscal year;

(9) Establish a system of information and data man-
agement that can be effectively utilized in the develop-
ment and management of higher education policy, mis-

(10) Review, at least every five years, all academic
programs offered at the state institutions of higher educa-
tion under its jurisdiction. The review shall address the
viability, adequacy and necessity of the programs in rela-
tion to its master plan and the educational and work force
needs of the state. As a part of such review, each govern-
ing board shall require each of its institutions to conduct
periodic studies of its graduates and their employers to
determine placement patterns and the effectiveness of the
educational experience. Where appropriate, these studies
should make use of the studies required of many academ-
ic disciplines by their accrediting bodies. The governing
boards shall also ensure that the sequence and availability
of academic programs and courses is such that students
have the maximum opportunity to complete programs in
the time frame normally associated with program comple-
tion, that the needs of nontraditional college age students
are appropriately addressed, and that core course work
completed at any state institution of higher education is
transferable to another state institution of higher education
for credit with the grade earned. Notwithstanding any
other provision of this code to the contrary, after the ef-
fective date of this section the appropriate governing
board shall have the exclusive authority to approve the
teacher education programs offered in the institutions
under their control. In order to permit graduates of teach-
er education programs to receive a degree from a nation-
ally accredited program and in order to prevent expensive
duplication of program accreditation, the boards may
select and utilize one nationally recognized teacher educa-
tion program accreditation standard as the appropriate
(11) Utilize faculty, students and classified staff in institutional level planning and decision making when those groups are affected;

(12) Administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators;

(13) Establish a uniform system for the hearing of employee grievances and appeals therefrom, so that aggrieved parties may be assured of timely and objective review;

(14) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education;

(15) Appoint a president or other administrative head for each institution of higher education from candidates submitted by the search and screening committees of the institutional boards of advisors pursuant to section one, article six of this chapter;

(16) Conduct written performance evaluations of each institution's president in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board;

(17) Submit to the joint committee on government and finance, no later than the first day of December of each year, an annual report of the performance of the system of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and budget appropriations for that fiscal year; and

(18) The governing boards shall have the power and
authority to enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of public institutions of higher education or at off-campus locations in such institutions' regional educational service areas. To accomplish this goal, the boards are permitted to share resources among the various groups in the community. The governing boards shall promulgate uniform legislative rules providing for entering into said contracts and consortium agreements and for determining and granting credit for work experience for courses offered by the consortium.

(b) The power, herein given to each governing board to prescribe and allocate among the state institutions of higher education under its jurisdiction specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication, shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state institutions of higher education, and such power shall supersede any such provision of law: Provided, That each governing board may delegate, with prescribed standards and limitations, such part of its power and control over the business affairs of a particular state institution of higher education to the president or other administrative head of such state institution of higher education in any case where it deems such delegation necessary and prudent in order to enable such institution to function in a proper and expeditious manner: Provided, however, That such delegation shall not be interpreted to include classification of employees, lawful appeals made by students in accordance with the appropriate governing board's policy, lawful appeals made by faculty or staff or final review of new or established academic or other programs. Any such delegation of power and control may be rescinded by the appropriate governing board at any time, in whole or in part.

(c) The governing boards shall promulgate uniform
legislative rules by the first day of September, one thou-
sand nine hundred ninety-three, setting forth standards for
acceptance of advanced placement credit for their respec-
tive institutions. Individual departments at institutions of
higher education may, upon approval of the institutional
faculty senate, require higher scores on the advanced
placement test than scores designated by the appropriate
governing board when the credit is to be used toward
meeting a requirement of the core curriculum for a major
in that department.

(d) Each governing board and/or an individual ap-
pointed by the president of each institution shall consult,
cooperate and work with the state treasurer and the state
auditor to develop an efficient and cost-effective system
for the financial management and expenditure of special
revenue and appropriated state funds for higher education
that ensures that properly submitted requests for payment
be paid on or before due date, but in any event, within
fifteen days of receipt in the state auditor's office. The
system shall be established and implemented as soon as
practical and the governing boards shall report to the
legislative oversight commission on education account-
ability prior to the first day of January, one thousand nine
hundred ninety-four, regarding the efficacy of the system.

(e) The governing boards in consultation with the
secretary of the department of administration shall devel-
lop a plan and report such plan to the legislative oversight
commission on education accountability by the first day
of December, one thousand nine hundred ninety-five.
Such plan shall establish a consistent method of conduct-
ing personnel transactions including, but not limited to,
hiring, dismissal, promotions and transfers at all institu-
tions under their jurisdiction. Each such personnel trans-
action shall be accompanied by the appropriate standard-
ized system or forms which will be submitted to the re-
spective governing boards, and the department of finance
and administration. Such plan shall be developed with a
contemplated target implementation date of the first day
(f) Notwithstanding any other provision of this code to the contrary, the governing boards and the secretary of education and the arts shall have the authority to transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated. The governing boards also shall have the authority to transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated.

(g) Notwithstanding any other provision of this code to the contrary, the governing boards or senior administrator may acquire such legal services as are deemed necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. Such counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards or senior administrator may, but are not required to, call upon the attorney general for legal assistance and representation as provided by law.

§18B-1-8a. Higher education accountability; institutional and statewide report cards.

(a) The governing boards are directed to make information available to parents, students, faculty, staff, state policymakers and the general public on the quality and performance of public higher education. This information shall be consistent and comparable between and among the state institutions of higher education and, if applicable, comparable with information from peer institutions in the region and nation.

(b) On or before the first day of November, one thousand nine hundred ninety-five, the governing boards are
directed to adopt a rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, providing for the collection, analysis and dissemination of data and information on the performance of the state institutions of higher education, including health sciences education, in relation to the findings, directives, goals and objectives set forth in sections one-a and one-b of this article and in comparison to their peers in the region and nation. In developing the rule, the governing boards shall consult with the governor, the legislative oversight commission on education accountability and the state department of education regarding the relevant areas of data and information deemed necessary for inclusion in a higher education report card. Upon approval of the rule by the legislative oversight commission on education accountability, and the effective date of the rule, the provisions of subsection (c) of this section shall be null and void: Provided, That the statewide report card due on the first day of December, one thousand nine hundred ninety-five, pursuant to said section, shall be compiled and disseminated pursuant to said subsection. Such legislative rules shall provide the legislative oversight commission on education accountability with full and accurate information while minimizing the institutional burden of recordkeeping and reporting. Such legislative rules shall include uniform definitions for the various indicators of student and institutional performance and guidelines for the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The report card forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material which an institution or governing board wishes to include shall be contained in a separate appendix available to the general public upon request.

(c) The president or chief executive officer of each public college, university or community college shall prepare and submit annually all requested data to the appropriate governing board at such time as the governing board may establish. The governing boards shall prepare
institutional report cards for institutions under their juris-
diction and systemwide report cards which shall include
the information required in the following subdivisions:

(1) For all undergraduate students and for all institu-
tions having undergraduate programs, the institution shall
report the following as available and applicable: Average
scores of incoming freshmen and transfer students on the
American college test (ACT) or scholastic aptitude test
(SAT); percentage of incoming freshmen enrolled in
developmental classes; student performance as measured
by grade point average and/or appropriate testing mea-
sures; the graduation or completion rate as may be de-
defined by federal law or regulation for the student body as
a whole and separately for students at the institution who
received athletically-related student aid categorized by sex
and athletic program; the rate at which individuals who
complete or graduate from the program of an institution
pass applicable licensure or certification examinations
required for employment in a particular vocation, trade or
professional field; student mobility (transfers in, transfers
out and withdrawals); number and percentage of student
body receiving tuition fee waivers; and number, percent-
age and dollar value of tuition fee waivers categorized by
whether such waiver is for athletic participation or is an
academic waiver and by whether the recipient is a resident
or nonresident of this state.

(2) For professional schools, defined for the purposes
of this section as academic programs leading to profes-
sions in which licensing is normally required and for
which an undergraduate degree is a general prerequisite,
the institution shall report the following as available and
applicable: Average scores of beginning students and
transfer students on standardized entrance examinations;
number and percentage of student body receiving tuition
fee waivers; number, percentage and dollar value of tuition
fee waivers categorized by whether the recipient is a resi-
dent or nonresident of this state; the number of degrees
granted; the graduation or completion rate as may be
defined by federal law or regulation for the student body as a whole; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment in the particular professional field; the total number of students in each program, including the percentage of those students who are state residents, the percentage of students who are nonresidents of the state, the percentage of students who are women and the percentage of students who are minorities as the term is defined by federal law; and the ratio of expenditures per pupil directly attributable to students enrolled in the professional school as compared to expenditures per pupil calculated as to students enrolled in the institution as a whole.

(3) For graduate schools, defined for the purposes of this section as academic programs leading to advanced degrees (masters or doctorates of philosophy in fields for which bachelor's degree programs are available) and for which an undergraduate degree is a general prerequisite, the institution shall report the following as available and applicable: Average scores of beginning students and transfer students on standardized entrance examinations; number and percentage of student body receiving tuition fee waivers; number, percentage and dollar value of tuition fee waivers categorized by whether the recipient is a resident or nonresident of this state; the number of degrees granted; the graduation or completion rate as may be defined by federal law or regulation for the student body as a whole; the rate at which individuals who complete or graduate from the program of an institution pass applicable licensure or certification examinations required for employment; and the total number of students in each program, including the percentage of those students who are state residents, the percentage of students who are nonresidents of the state, the percentage of students who are women and the percentage of students who are minorities as the term is defined by federal law.

(4) In addition to any and all information required by
subdivision (2) of this subsection, each health sciences school shall assist the vice chancellor for health sciences in providing information for the institutional and statewide report cards, which shall include reports on the following:

(A) Information on graduates, including, but not limited to, placement of interns and residents, retention rates in the state, retention rates in underserved areas as determined by the division of health, the percentage practicing in primary care in this state to be defined as family medicine, internal medicine, pediatrics and obstetrics/gynecology, and other information pertinent to health sciences education as it relates to health care delivery in this state such as recruitment programs to attract health care providers to West Virginia; reasons obtained from graduate surveys as to why health care graduates are leaving West Virginia; programs developed to direct graduates into primary care practices and specialty shortage areas in this state; and ways in which the health sciences schools intend to assist in meeting the projected health care needs of this state, including specialty and subspecialty health care professional needs and where such needs are expected to arise, as those needs are defined by the division of health or such other state agency as the division of health may deem appropriate;

(B) Contractual and financial arrangements between the health sciences schools and such nonprofit and for-profit entities receiving moneys from the health sciences schools that the board of trustees determines have a significant impact on the provision of health sciences education in this state, such report to state the entity, the amount of funds paid to such entity and what the payment is for;

(C) The roles and missions of the health sciences schools and evaluation of each school's performance in accordance with outcome measures developed to evaluate the attainment of the roles, missions and programs developed for each school;
(D) The annual audit of the expenditures of each health sciences school and any audit received by the board from such nonprofit and for-profit entities determined by the board of trustees to have a significant affiliation to any health sciences school;

(E) Findings regarding management and operation of the health sciences schools, such findings to be based on the annual audits and to include proposals for and barriers to improving efficiency and generating cost savings in health sciences education;

(F) The quality of health sciences education, including, but not limited to, a review of any accrediting agency’s report on health sciences education at any state-funded health sciences school;

(G) The clinical health care services and programs offered or delivered by the health sciences schools, including, but not limited to, programs which use existing state facilities for the purposes of clinical rotations;

(H) Matters relating to the funding and budgeting of health sciences education in this state, including, but not limited to, ways in which such budget effectuates the roles and missions of the health sciences schools;

(I) The financing of health sciences education subsequent to an annual, comprehensive review thereof, which report shall include anticipated capital costs, projected operating expenses and future growth and recommendations on the allocation of any state or other tax dedicated to the funding of health sciences education; and

(J) Such other administrative, budgetary, financial, educational and other concerns as the board of trustees may deem necessary or helpful in providing information about the health sciences schools pursuant to this subsection.

(5) For all public institutions of higher education in the state, the following indicators of institutional performance in comparison with the aggregate of all other insti-
tutions in the state, region and nation as applicable and to the extent comparison data are available: Student-faculty ratio by school; student-administrator ratio; faculty turnover by school; educational and general expenditure per full-time equivalent (FTE) student; expenditure by fund in graphic display; the academic rank and years of experience of the faculty and administrators at the institution; percentage minorities comprise of faculty and major administrative staff; percentage women comprise of faculty and major administrative staff; percentage of classes taught by adjunct or part-time faculty; statistics concerning the occurrence on campus during the most recent school year and during the preceding school years for which data are available of criminal offenses reported to campus security authorities or local police; and statistics concerning the number of arrests for crimes occurring on campus during the most recent school year and during the preceding school years for which data are available.

The statewide report card shall include the data for each institution for each separately listed applicable indicator and the aggregate of the data for all institutions under the jurisdiction of the board of trustees of the university of West Virginia and for all institutions under the jurisdiction of the board of directors of the state college system for each indicator.

The statewide report cards shall be prepared using actual institutional, state, regional and national data as applicable and available indicating the present performance of the individual institutions and the state systems of higher education and shall also include goals and trends for the institutions and the higher education systems. Each governing board as part of its assessment of the individual institutions under its jurisdiction shall include the number and gross dollar amount of grants received for academic research for each institution and a succinct review of research projects including a brief description of each project and the numbers of faculty, graduate and undergraduate students involved in each project.
In assessing progress toward meeting goals and in developing trend information, the governing boards shall review report card data in relation to previously adopted board goals, five-year plans, regional and national higher education trends and the resource allocation model.

(d) The higher education central office staff under the direction of the senior administrator shall provide technical assistance to each institution and governing board in data collection and reporting and shall be responsible for assembling the statewide report card from information submitted by each governing board.

Each governing board shall prepare report card information in accordance with the guidelines set forth in this section and rules promulgated hereunder. The statewide report card shall be presented at a regular board meeting of the appropriate governing board subject to applicable notice requirements.

The statewide report cards shall be completed and disseminated with copies to the legislative oversight commission on education accountability prior to the first day of December, one thousand nine hundred ninety-two, and each year thereafter. Statewide report cards shall be based upon information for the current school year or for the most recent school year for which such information is available, in which case such year shall be clearly footnoted.

The governing boards shall make copies of both the institutional and statewide report cards available to any individual requesting them.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-3. Additional duties of board of directors.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level adminis-
§18B-3-4. Community and technical colleges; tuition and fees; memoranda of agreements; and joint administrative boards.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of directors of the state college system shall consist of twenty persons, of whom one shall be the chancellor of the university of West Virginia board of trustees, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chair of the joint commission for vocational-technical-occupational education, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other fourteen directors shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the directors appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field. The relative enrollments of baccalaureate and community and technical students in the state college system shall be considered by the governor when making such appointments and the governor shall use his or her best efforts to achieve a balance among the members who reflect the various interests, goals and concerns reflected by the relative enrollments.

Except for the ex officio directors, no person shall be eligible for appointment to membership on the board of directors who is an officer, employee or member of an
advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or board of directors: Provided, That if there are no ethical restrictions under state or federal law, a federal employee may serve as a member of the board of directors. Of the fourteen directors appointed by the governor from the public at large, not more than seven thereof shall belong to the same political party and at least two directors of the board shall be appointed from each congressional district: Provided, however, That after the effective date of this section, the governor shall make appointments so that, as soon as practicable, at least four directors of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve directors as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable, and the original terms of all directors shall commence on that date. The terms of the directors appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years and four shall be appointed to terms of six years: Provided, That the governor shall appoint two additional directors on or before the first day of July, one thousand nine hundred ninety-five, and their original terms shall commence on the first day of July, one thousand nine hundred ninety-five, and be for five years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.

The governor shall appoint a director to fill any vacancy among the twelve directors appointed by the governor, by and with the advice and consent of the Senate,
which director appointed to fill such vacancy shall serve for the unexpired term of the vacating director. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All directors appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a director or trustee during all or any part of two consecutive terms shall be ineligible to serve as a director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a director, each director shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the constitution of West Virginia, and the certificate thereof shall be filed with the secretary of state.

(d) No director appointed by the governor shall be removed from office by the governor except for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of the state elective officers.

§18B-3-3. Additional duties of board of directors.

(a) The board of directors of the state college system shall govern the state college system.

(b) The board of directors shall determine programs to be offered by state institutions of higher education under its jurisdiction, shall clarify the missions of the institutions under its jurisdiction and, in so doing, ensure that Fairmont state and West Virginia institute of technology
are given primary responsibility for technical preparation
teacher training programs.

(c) The board of directors shall govern state college
system community and technical colleges in accordance
with the provisions of section three-a of this article.

(d) The board of directors shall adopt a faculty salary
program with an overall goal of attaining salaries equal to
the average faculty salaries within similar groups of disci-
plines and program levels at comparable peer institutions
within member states of the southern regional education
board.

§18B-3-3a. Community and technical college education; estab-
ishment; state level governance; formation of
districts; college level administration and gover-
nance; programs; district consortia; implemen-
tation process; and implementation team.

(a) General. — The purpose of this section is to estab-
lish community and technical college education that is
well articulated with the public schools and four year col-
leges; that makes maximum use of shared facilities, facul-
ty, staff, equipment and other resources; that encourages
traditional and nontraditional students and adult learners
to pursue a life-time of learning; that serves as an instru-
ment of economic development; and that has the indepen-
dence and flexibility to respond quickly to changing
needs. The respective governing boards shall provide for
community and technical college education at state institu-
tions of higher education under their jurisdiction to have
the administrative, programmatic and budgetary control
necessary to allow maximum flexibility and responsive-
ness to district and community needs consistent with the
goal of sharing facilities, faculty, staff, equipment and
other resources within and among the districts, the other
systems of public and higher education and other educa-
tion and training programs.

(b) State level governance. — The board of directors
and the board of trustees shall jointly employ a vice chan-
The vice chancellor for community and technical college education shall report directly to and provide assistance to the board of directors and the board of trustees on matters related to community and technical college education and shall serve at their will and pleasure. The vice chancellor for community and technical college education shall advise, assist and consult regularly with the administrative heads, institutional boards of advisors, and district consortia committees of each state institution of higher education involved in community and technical college education.

In appointing members to the institutional boards of advisors within the state college system pursuant to section one, article six of this chapter, the board of directors shall consider the relative distribution of baccalaureate and community and technical college enrollments of the respective institutions and shall make up to three of such appointments from the membership of district consortia committee on the basis of such proportional enrollments. All appointments shall be reflective of the economic, industrial, educational, community and employment characteristics of the institution's region and be geographically dispersed to the extent practical.

(c) Formation of community and technical college districts. — The eleven community and technical college districts shall be comprised of contiguous areas of the state which have similar economic, industrial, educational, community and employment characteristics to facilitate specialization in mission and programming. For the purposes of initial implementation and organization, the districts shall be comprised as follows:

(1) Ohio, Brooke, Hancock, Marshall, Tyler and Wetzel counties;

(2) Wood, Jackson, Pleasants, Ritchie, Roane, Tyler and Wirt counties;

(3) Kanawha, Putnam and Clay counties;
(4) Cabell, Mason, Putnam and Wayne counties;
(5) Fayette, Clay, Kanawha, Raleigh and Nicholas counties;
(6) Logan, Boone, Lincoln, McDowell, Mingo, Raleigh and Wyoming counties;
(7) Mercer, Greenbrier, McDowell, Monroe, Pocahontas, Raleigh and Summers counties;
(8) Gilmer, Barbour, Braxton, Calhoun, Clay, Lewis, Nicholas, Upshur and Webster counties;
(9) Marion, Doddridge, Harrison, Monongalia, Preston, Randolph, Taylor, Barbour and Tucker counties;
(10) Jefferson, Berkeley, Grant, Hardy and Morgan counties;
(11) Mineral, Grant, Hampshire, Hardy and Pendleton counties.

It is the intent of the Legislature that counties which are listed in more than one district shall be served by the associated community and technical colleges as a cooperative service area, or shall be divided as the board of directors determines. The boundaries of the eleven districts may be modified from time to time by the board of directors upon request of the affected community and technical colleges to better serve the needs within the districts. Such modifications are not required to follow county boundaries.

Subject to any restrictions imposed by the board of directors, the district boundaries shall not be employed to restrict other state institutions of higher education from offering programs of strength to meet underserved needs, consistent with the objective of not duplicating efforts as determined by the governing boards: Provided, That nothing herein shall be construed to prevent state institutions of higher education from offering courses at off-campus centers or locations now operating or estab-
lished in the future which are not duplicative. Distance learning technology, resource networking and other cooperative and collaborative efforts shall be used to the maximum extent prudent and practical to avoid unnecessary duplication of program development and delivery.

The main campus of the community and technical college shall be identified under the name of the community and technical college for the district and the district shall be known as the "community and technical college district". In addition, the name of all branches, centers and programs shall reflect the name of the district.

(d) Allocation of resources and budgets. — All funds for community and technical college education shall be appropriated by the Legislature in an institutional control account under the jurisdiction of the board of directors. The board of directors shall establish by rule a formula for the allocation of such funds to the individual university system and state college system community and technical colleges, which rule shall include uniform guidelines for the allocation and reporting of student enrollments, costs, reimbursements and revenues for community and technical colleges located on the campus of another state institution of higher education.

(e) College level administration and governance. — The administrative head of a state college system community and technical college shall be the president, in the case of the freestanding community and technical colleges, and the provost of the community and technical college in the case of all other state college system community and technical colleges. Such provost shall be employed by the president of the state institution of higher education upon which the main campus of the community and technical college is located and the provost shall serve at the will and pleasure of the president. The administrative head shall be responsible for coordination and other administrative arrangements with the host institution and other duties assigned pursuant to this section. Nothing in this section shall prohibit a current employee in communi-
ty and technical education from being employed as a provost. The administrative and business offices and functions of community and technical colleges, except freestanding, shall be consolidated with those of the host institution to the extent practical. To enhance program flexibility and mobility, to enhance program coordination and delivery in the public schools and to take advantage of the expertise and experience of persons in business and industry, community and technical colleges shall make extensive use of combined courses with four-year colleges and universities, employ by contract or other arrangements college and university faculty to teach community and technical college courses, employ qualified public school teachers as adjunct professors and employ qualified business, industry and labor persons as adjunct professors in technical areas.

(f) **Community and technical college programs.** — The mission of each community and technical college shall include the following programs which may be offered on or off campus, at the work site, in the public schools and at other locations at times that are convenient for the intended population:

1. Career and technical education certificate, associate of applied science and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills; occupational development, skill enhancement and career mobility;

2. Transfer education associate of arts and associate of science degree programs for students whose educational goal is to transfer into a baccalaureate degree program;

3. Developmental/remedial education courses, tutorials, skills development labs and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

4. Work force training and retraining contract education with business and industry to train or retrain employees;
Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure and literacy training; and

Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community.

All administrative, programmatic and budgetary control over community and technical education within the district shall be vested in the administrative head and the institutional board of advisors of state college system community and technical colleges, subject to rules adopted by the board of directors. The administrative head and institutional board of advisors shall be responsible for the regular review, revision, elimination and establishment of programs within the district to assure that the needs of the district for community and technical college programs are met. It is the intent of the Legislature that the program review and approval process for community and technical education be separate and distinct from baccalaureate education. The administrative head and institutional board of advisors shall seek assistance from and utilize a district consortia committee in fulfilling this responsibility.

(g) District consortia committee. — The administrative head of each university system and state college system community and technical college shall form a district consortia committee which shall include representatives distributed geographically to the extent practical of the major community college branches, vocational technical centers, comprehensive high schools, four-year colleges and universities, community service or cultural organizations, economic development organizations, business, industry, labor, elected public officials and employment and training programs and offices within the district. The consortia committee shall be chaired by the administrative head or his or her designee and shall advise and assist the administrative head with the following:

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(1) Completing a comprehensive assessment of the district to determine what education and training programs are necessary to meet the short and long term work force development needs of the district;

(2) Coordinating efforts with regional labor market information systems that identify the ongoing needs of business and industry, both current and projected, and provide information to assist in an informed program of planning and decision making;

(3) Planning and development of a unified effort to meet the documented work force development needs of the district through individual and cooperative programs, shared facilities, faculty, staff, equipment and other resources and the development and use of distance learning and other educational technologies;

(4) Increasing the integration of secondary and post-secondary curriculum and programs that are targeted to meet regional labor market needs, including the planning and implementation of a comprehensive school-to-work transition system that helps students focus on career objectives, builds upon current programs such as high schools that work, tech prep associate degree programs, registered apprenticeships and rural entrepreneurship through action learning and addresses the needs of at-risk students and school dropouts;

(5) Planning and implementation of integrated professional development activities for secondary and post-secondary faculty, staff and administrators and other consortia partners throughout the district;

(6) Ensuring that program graduates have attained the competencies required for successful employment through the involvement of business, industry and labor in establishing student credentialling;

(7) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and ad-
vance more rapidly without repeating coursework in which
they already possess competency;

(8) Establishing one-stop-shop career centers with
integrated employment and training and labor market
information systems that enable job seekers to assess their
skills, identify and secure needed education training and
secure employment and employers to locate available
workers;

(9) Increasing the integration of adult literacy, adult
basic education, federal job opportunities and basic skills,
and community and technical college programs and ser­
vices to expedite the transition of adults from welfare to
gainful employment; and

(10) Establish a single point of contact for employers
and potential employers to access education and training
programs throughout the district.

(h) Implementation process. — The implementation of
community and technical college education as set forth in
this article shall be accomplished over a three-year period.
Major program elements shall be accomplished within the
following time frames:

(1) One thousand nine hundred ninety-five—
ninety-six.

(i) Form necessary governance structures and make
necessary appointments;

(ii) Form consortia committees and complete a survey
of the educational and training needs of the community
college district;

(iii) Establish the information necessary to separately
budget the community and technical college education for
fiscal year one thousand nine hundred ninety-six—
ninety-seven, including the rules required pursuant to
subsection (d) of this section;

(iv) Establish an ongoing method of providing fund-
ing for appropriate staff from the public schools and the
community and technical colleges for personnel and other
costs related to shared facility projects, including recom-
mendations for any necessary legislative enactments;

(v) Make recommendations to the governor and Legis-

lature as may be necessary.

(2) One thousand nine hundred ninety-six—ninety-
seven.

(i) Begin separate budgeting;

(ii) Begin full operations of the community and tech-
nical colleges as provided in this article.

(3) One thousand nine hundred ninety-seven—
ninety-eight.

(i) Review and evaluation.

(i) Implementation team. — There is hereby estab-
lished an implementation team to monitor and oversee
implementation of the community and technical college
education in accordance with the provisions of this article.
The implementation team shall report to the governor and
the legislative oversight commission on education ac-
countability no later than the first day of December, in the
years one thousand nine hundred ninety-five, one thou-
sand nine hundred ninety-six and one thousand nine hun-
dred ninety-seven on the status of such implementation
and any further needs for legislative enactment. The im-
plementation oversight team shall be composed of the
secretary of education and the arts, one representative of
public education, one representative of community and
technical colleges, one representative of four-year colleg-
es, one representative of the private sector, one representa-
tive of employment and training programs, one representa-
tive of vocational-technical-occupational education, four
members of the Senate and four members of the House of
Delegates, all appointed by the governor. The secretary of
education and the arts shall be responsible for staffing the
implementation oversight team utilizing existing person-
§18B-3-4. Community and technical colleges; tuition and fees; memoranda of agreements; and joint administrative boards.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, the following institutions are hereby established or continued as freestanding community and technical colleges: Southern West Virginia community and technical college and West Virginia northern community and technical college. Such freestanding community and technical colleges shall not be operated as branches or off-campus locations of any other state institution of higher education.

(b) The directors, in accordance with article two-b, chapter eighteen of this code, shall cooperate with the state board of education, the state council of vocational-technical education and the joint commission for vocational-technical-occupational education to develop a comprehensive system of academic, vocational, technical and career development programs to serve the educational needs of adults for college preparatory, two-year associate degree, continuing education, work force training and retraining and other such programs within the state. The board of directors shall delegate such authority as they deem prudent to the community and technical college presidents, provosts or other administrative heads, to work with district consortia committees to assess the work force needs of business and industry within their service areas, regularly review and revise curricula to ensure that the work force needs are met, develop new programs and phase out or modify existing programs as appropriate to meet such needs, provide professional development opportunities for faculty and staff, establish cooperative programs and student internships with business and industry, streamline procedures for designing and implementing customized training programs and to accomplish such other comple-
cational agencies shall establish cooperative relationships to utilize existing community and technical colleges and programs, public school vocational centers and other existing facilities to serve the identified needs within the community and technical college district.

(c) A separate division of community and technical colleges shall be established under the board of directors. Unless approved by the board, programs at community and technical colleges shall be two years or less in duration.

(d) The board of directors may fix tuition and establish and set such other fees to be charged students at state college system community and technical colleges as it deems appropriate, and shall pay such tuition and fees collected into a revolving fund for the partial or full support, including the making of capital improvements, of any state college system community and technical college. Funds collected at any such community and technical college may be used only for the benefit of that community and technical college. The board of directors may also establish special fees for such purposes as, including, but not limited to, health services, student activities, student recreation, athletics or any other extracurricular purposes. Such special fees shall be paid into special funds in the state treasury and used only for the purposes for which collected.

(e) The board of directors may allocate funds from the appropriations for the state college system for the operation of individual university system and state college system community and technical colleges in accordance with rules adopted by the board pursuant to the provisions of subsection (d), section three-a of this article, and for the capital improvement of any state college system community and technical college. The board of directors may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The directors may enter into memoranda of agreements with such governmental bodies, corporations
or persons for the use or acceptance of local facilities and/or the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the board of directors for the use by the community and technical college and the board of directors may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental bodies, the federal government or any corporation or person.

(f) To facilitate the administration, operation and financing of programs in shared facilities of the state college system or the university of West Virginia system and a county board or boards of education, the affected governing board and county board or boards of education may appoint a joint administrative board consisting of such membership and possessing such delegated authorities as the respective boards deem necessary and prudent for the operation of such shared facilities. Such joint administrative board may consist of five members to be appointed as follows: The county board of education shall appoint two members in consultation with the county superintendent of schools; the appropriate governing board shall appoint two members in consultation with the president of the affected state institution of higher education; and one at-large member, who shall chair the joint administrative board, shall be appointed by mutual agreement of the respective boards in consultation with their superintendent and president. When two or more county boards of education are participating in such shared program, such county board appointments shall be made by mutual agreement of each of the participating county boards in consultation with their respective superintendents. Members shall serve for staggered terms of three years. With respect to initial appointments, one member appointed by the county board or boards of education and one member appointed by the governing board shall serve for one year, one member appointed by the county
board or boards of education and one member appointed
by the governing board shall serve for two years and the
at-large member shall serve for three years. Subsequent
appointments shall be for three years. A member may not
serve more than two consecutive terms. Members shall be
reimbursed for reasonable and necessary expenses actual-
ly incurred in the performance of their duties as board
members from funds allocated to the shared facility, ex-
cept that members who are employed by a board of edu-
cation, governing board or state institution of higher edu-
cation shall be reimbursed by their employer.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancel-
cellsors and senior administrator; offices.

(a) At its annual meeting in June of each year, each
governing board shall elect from its members appointed
by the governor a president and such other officers as it
may deem necessary or desirable: Provided, That the
initial annual meeting shall be held during July, one thou-
sand nine hundred eighty-nine. The president and such
other officers shall be elected for a one-year term com-
encing on the first day of July following the annual
meeting and ending on the thirtieth day of June of the
following year. The president of the board shall serve no
more than two consecutive terms.

(b) Each governing board shall employ a chancellor
who shall serve at the will and pleasure of the employing
board and shall assist the governing board in the perfor-
mane of its duties and responsibilities. No chancellor
may hold or retain any other administrative position within
the system of higher education while employed as
chancellor. Each chancellor is responsible for carrying
out the directives of the governing board by which em-
ployed and shall work with such board in developing
policy options. For the purpose of developing or evaluat-
ing policy options, the chancellors may request the assis-
tance of the presidents and other administrative heads of
the institutions under their jurisdiction and their staffs. The respective chancellors shall jointly agree to and shall hire one senior administrator who shall serve at their will and pleasure in accordance with section two of this article.

(c) The director of health shall serve as the vice chancellor for health affairs, who shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine. The vice chancellor for health affairs shall conduct a special study of the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine to determine the role and mission of said institutions in the reorganized system of higher education in the state. The special study shall include, but is not limited to, coordinating medical education, training and delivery of health services in the state; preparing nurse-midwives, nurse practitioners, medical technologists and other members of the allied health professions; and providing for rural health care. The vice chancellor shall submit a report on said study to the governor and to the Legislature by the first day of December, one thousand nine hundred eighty-nine.

(d) Suitable offices for the senior administrator and other staff shall be provided in Charleston.

(e) The governing boards shall jointly employ a vice chancellor for instructional technology to establish a plan and funding recommendations for development and implementation of a multifaceted instructional technology strategy that includes, but is not limited to, a goal that every full-time freshman student beginning in the fall semester, one thousand nine hundred ninety-six, and thereafter, and as many other students and faculty as possible will own or lease a computer, and alternatively that computers be available for part-time students through on-site labs; integrating computer usage into all course work; involving faculty in the development and use of technology-based instruction and instructional courseware
for community and technical colleges, colleges and universities; and expanding distance learning and technology networks throughout the higher education systems to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort, increase the delivery of instruction to nontraditional students, provide services to business and industry, and increase the management capabilities of the higher education system. The plan shall be submitted to the Legislature on or before the first day of January, one thousand nine hundred ninety-six.

The vice chancellor for instructional technology shall supervise the administration, oversight, coordination and implementation of such plan, or portions thereof, subject to the availability of funds and the direction of the governing boards. In addition, the vice chancellor shall review all technology related matters within the department of education and the arts and suggest appropriate integration and compatibility of the technology systems within the department and the institutions governed by the board.

(f) The governing boards shall jointly employ a vice chancellor for community and technical education pursuant to the terms of section three-a, article three of this chapter.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-2b. Resource allocation policy relief.
§18B-5-2c. Review of resource allocation model and policies.
§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.
§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.
§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.
§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.
§18B-5-8. Report card on West Virginia business.
§18B-5-2b. Resource allocation policy relief.

For fiscal year one thousand nine hundred ninety-six only, the board of directors of the state college system may use all special priority funds, as identified and distributed by legislative rule title 131, series 5, effective the twenty-eighth day of March, one thousand nine hundred ninety-four, to help relieve state institutions of higher education of the financial obligation created by the requirement that each institution increase faculty salaries pursuant to section three-a, article eight of this chapter, and increase classified employee salaries pursuant to section eleven, article nine of this chapter.

§18B-5-2c. Review of resource allocation model and policies.

The Legislature hereby finds that the establishment and development of community and technical education, the restructuring and refocusing of institutional missions and programs to respond to change and the necessity of achieving the goals established for post-secondary education by the citizens of West Virginia will require a review of the methods for distributing higher education funding.

It is the intent of the Legislature that increased state appropriated funds shall be allocated using the resource allocation model and resource allocation policies in effect at the time of each appropriation. Given the changes of institutional missions, leadership, resources and programs, as well as the establishment of targets and goals for faculty and staff salaries, the Legislature recognizes the need for a comprehensive review of the resource allocation model and resource allocation policies. The governing boards shall review and recommend changes to the resource allocation model and resource allocation policies contained in article five of this chapter. The governing boards shall submit a written report describing this review and the recommended changes to the legislative oversight commission on education accountability by the first day of December, one thousand nine hundred ninety-five.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment and printing.
(a) Each governing board, through the senior administrator, shall purchase or acquire all materials, supplies, equipment and printing required for that board, and the state institutions of higher education under its jurisdiction. The governing boards shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. Such rules shall assure that the governing board: (1) Shall not preclude any person from participating and making sales thereof to the board except as otherwise provided in section five of this article: Provided, That the providing of consultant services such as strategic planning services will not preclude or inhibit the governing boards from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services; (2) shall establish and prescribe specifications, in all proper cases, for materials, supplies, equipment and printing to be purchased; (3) shall adopt and prescribe such purchase order, requisition or other forms as may be required; (4) shall negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law; (5) shall advertise for bids on all purchases exceeding fifteen thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices: Provided, however, That for printing services, bids shall be advertised by written notification of such bids to any print shop, affiliated with an institution of higher education and operated by classified employees, on all purchases exceeding five thousand dollars; (6) shall post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making such purchases and ensure that the notice is available to the public during business hours; (7) shall provide for purchasing in the open market; (8) shall make provision for vendor notification of bid solicitation and emergency purchasing;
and (9) provide that competitive bids shall not be required for purchases of one thousand dollars or less.

(b) Each governing board, through the senior administrator, may issue a check in advance to a company supplying postage meters for postage used by that board and by the state institutions of higher education under its jurisdiction.

(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards and delivery terms: Provided, That the preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code shall apply to the competitive bids made pursuant to this section.

(d) The governing boards shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards shall indicate upon the successful bid that it was the successful bid, and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. No records in the purchase file shall be destroyed without the written consent of the legislative auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the legislative auditor. All files, no matter the storage method, shall be open for inspection by the legislative auditor upon request.

(e) The governing boards shall also adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that no person shall be employed as a
buyer unless that person, at the time of employment, either is: (1) A graduate of an accredited college or university; or (2) has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise. Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through eight of this article and the rules of the governing boards. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the applicable governing board.

(f) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds.

(g) The governing boards may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the board, and the auditor shall draw a warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be account-ed for by the applicable governing board once every thirty days or more often if required by the state auditor. Such authority shall not be delegated to any state institution under the control and supervision of the board.

(h) Contracts entered into pursuant to this section shall be signed by the applicable governing board in the name of the state and shall be approved as to form by the attorney general: Provided, That a contract or a change order for that contract which in total does not exceed fifteen
thousand dollars and which uses terms and conditions or
standardized forms previously approved by the attorney
general and does not make substantive changes in the
terms and conditions of the contract does not require
approval by the attorney general: Provided, however,
That the attorney general shall make a list of those chang-
es which he or she deems to be substantive and the list, and
any changes thereto, shall be published in the state regis-
ter. A contract that exceeds fifteen thousand dollars shall
be filed with the state auditor: Provided further, That
upon request, the governing boards shall make all con-
tracts available for inspection by the state auditor. The
governing board shall prescribe the amount of deposit or
bond to be submitted with a bid or contract, if any, and the
amount of deposit or bond to be given for the faithful
performance of a contract. If the governing board pur-
chases or contracts for materials, supplies, equipment and
printing contrary to the provisions of sections four
through seven of this article or the rules pursuant thereto,
such purchase or contract shall be void and of no effect.

(i) Either governing board may request the director of
purchases to make available, from time to time, the facili-
ties and services of that department to the board in the
purchase and acquisition of materials, supplies, equipment
and printing, and the director of purchases shall cooperate
with that governing board in all such purchases and acqui-
sitions upon such request.

(j) Each governing board shall permit private institu-
tions of higher education to join as purchasers on pur-
chase contracts for materials, supplies and equipment
entered into by that governing board. Any private school
desiring to join as purchasers on such purchase contracts
shall file with that governing board an affidavit signed by
the president of the institution of higher education or a
designee requesting that it be authorized to join as pur-
chaser on purchase contracts of that governing board and
agreeing that it will be bound by such terms and condi-
tions as that governing board may prescribe, and that it
will be responsible for payment directly to the vendor under each purchase contract.

(k) Notwithstanding any other provision of this code to the contrary, the governing boards may make purchases from the federal government or from federal government contracts if the materials, supplies, equipment or printing to be purchased is available from the federal government or from a federal contract and purchasing from the federal government or from a federal government contract would be the most financially advantageous manner of making the purchase.

(l) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards shall be responsible for paying the cost of the audit from funds appropriated to the governing boards.

(m) The governing boards shall require each institution under their respective jurisdiction to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the "Prompt Pay Act of 1990".

(n) Consultant services, such as strategic planning services, shall not preclude or inhibit the governing boards from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the governing boards, upon competitive bids or otherwise, any materials, equipment or supplies in excess of fifteen thousand dollars shall comply with all of the provisions of section twelve, article three, chapter five-a
of this code and shall file with the director of the purchasing division of the state of West Virginia the affidavit required herein: *Provided*, That every such person, firm or corporation who is presently in compliance with said section shall not be required to requalify thereunder to be able to transact business with the governing boards.

(b) Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell commodities or printing to the governing boards as hereinafter set forth: *Provided*, That any person suspended under the provisions of section thirty-nine, article three, chapter five-a of this code shall not be eligible to sell or offer to sell commodities or printing to the governing boards: *Provided, however*, That the governing boards shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards pursuant thereto. Every person whose right to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for such suspension and shall have the right to have the appropriate governing board's action reviewed in accordance with section forty, article three, chapter five-a of this code.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code shall not control or govern the purchase, acquisition or other disposition of any equipment, materials, supplies or printing by the governing boards, except as provided in sections four through seven of this article: *Provided*, That sections twenty-nine, thirty and thirty-one, article three,
chapter five-a of this code shall apply to all purchasing activities of the governing boards.

Neither the governing boards, nor any employee of the governing boards, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials, supplies or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the governing boards nor any employee of said boards shall accept or receive directly or indirectly from any person, firm or corporation, known by the governing boards or such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any money or other thing of value whatsoever or any promise, obligation or contract for future reward or compensation.

A person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both imprisoned and fined, in the discretion of the court: Provided, That any person who violates any of such provisions by receiving money or other thing of value under circumstances constituting the crime of bribery under the provisions of section three, article five-a, chapter sixty-one of this code, shall, upon conviction of bribery, be punished as provided in section nine of said article.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

The governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The governing boards shall adopt rules governing and controlling the disposition of all such equipment, supplies and materials. At least ten days prior
to the disposition, the governing boards shall advertise, by
newspaper publication as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, in the county in which the equip-
ment, supplies and materials are located the availability or
sales of such disposable equipment, supplies and materials
and may sell the disposable equipment, supplies and mate-
rials, in whole or in part, at public auction or by sealed bid,
or may transfer, exchange or trade same to other govern-
mental agencies or institutions (if by exchange or trade,
then without advertising), in whole or in part, as sound
business practices may warrant under existing circum-
stances and conditions.

§18B-5-8. Report card on West Virginia business.

The governing boards shall make an annual report to
the finance committees of the House of Delegates and the
Senate regarding the entities with which the governing
boards contracted in the previous year. This report shall
be submitted on or before the fifteenth day of January of
each year and shall be cumulative in nature. The report
shall include, but not be limited to, information regarding
the number of out-of-state entities with which the govern-
ing board contracted, the number of in-state firms with
which the governing board contracted, the dollar amount
of each contract; the equipment, commodity or service for
which the contract was let; the governing board's recom-
mendations, if any, on the manner in which the purchasing
procedures could be improved.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

(a) There shall be established at each state institution
of higher education, hereinafter referred to as the "institu-
tion", excluding centers and branches thereof, an institu-
tional board of advisors. The board of advisors shall con-
sist of eleven members, including an administrative officer
of the institution appointed by the president of the institu-
tion; a full-time member of the faculty with the rank of
instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and, appointed by the appropriate governing board, seven lay citizens of the state who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of its population and fields of study, including at least two alumni of the institution. Of the seven lay citizen members, no more than four may be of the same political party.

The administrative officer and student member shall serve for a term of one year; the faculty member and the classified staff member shall serve for a term of two years and the seven lay citizen members shall serve terms of four years each. All members, except the administrative officer, shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled within sixty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

Each board of advisors shall hold a regular meeting at least quarterly, commencing in July of each year. Additional meetings may be held upon the call of the chairman, president of the institution or upon the written request of at least four members. A majority of the members shall constitute a quorum for conducting the business of the board of advisors.

(b) One of the seven lay citizen members shall be elected as chairman by the board of advisors in July of each year: Provided, That no member shall serve as chairman for more than two consecutive years at a time.

The president of the institution shall make available
resources of the institution for conducting the business of
the board of advisors. The members of the board of advisors
shall be reimbursed for all reasonable and necessary
expenses actually incurred in the performance of their
official duties under this section upon presentation of an
itemized sworn statement thereof. All expenses incurred
by the board of advisors and the institution under this
section shall be paid from funds allocated to the institution
for such purpose.

(c) The board of advisors shall review, prior to the
submission by the president to its governing board, all
proposals of the institution in the areas of mission, academic
programs, budget, capital facilities and such other
matters as requested by the president of the institution or
its governing board or otherwise assigned to it by law.
The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it deems proper. Such written comments and recommendations shall accompany the proposal to the governing board and the governing board shall include such comments and recommendations in its consideration of and action on the
proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(d) The board of advisors shall review, prior to their
implementation by the president, all proposals regarding
institution-wide personnel policies. The board of advisors may comment on such proposals in writing.

(e) The board of advisors shall provide advice and
assistance to the president in establishing closer connections between higher education and business, labor, government, community and economic development organizations to give students greater opportunities to experience the world of work, such as business and community service internships, apprenticeships and cooperative programs; to communicate better and serve the current work
force and work force development needs of their service
area, including the needs of nontraditional students for
college-level skills upgrading and retraining and the needs
of employers for specific programs of limited duration;
and to assess the performance of the institution's graduates
and assist in job placement. The administrative officer of
the institution serving on the advisory council may be
assigned the responsibility for coordinating the institu-
tion's activities related to economic development.

(f) Upon the occurrence of a vacancy in the office of
president of the institution, the board of advisors shall
serve as a search and screening committee for candidates
to fill the vacancy under guidelines established by its gov-
erning board. When serving as a search and screening
committee, the board of advisors and its governing board
are each authorized to appoint up to three additional per-
sons to serve on the committee as long as the search and
screening process is in effect. The three additional ap-
pointees of the board of advisors shall be faculty members
of the institution. Only for the purposes of the search and
screening process, such additional members shall possess
the same powers and rights as the regular members of the
board of advisors, including reimbursement for all reason-
able and necessary expenses actually incurred. Following
the search and screening process, the committee shall
submit the names of at least three candidates to the gov-
erning board for consideration and appointment. If the
governing board rejects all candidates so submitted, the
committee shall submit the names of at least three addi-
tional candidates, and this process shall be repeated until
the governing board appoints one of the candidates so
submitted. The governing board shall provide all neces-
sary staff assistance to the board of advisors in its role as a
search and screening committee.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be.observed in reducing work force; preferred recall list; renewal
of listing; notice of vacancies.
§18B-7-11. Compensatory time off in lieu of overtime; written agreement; other conditions.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section shall be in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year: Provided, That this section shall also apply for one year to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall hereinafter provided. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the
(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classification(s) in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require such employee to refuse an offer of reemployment by the institution.

The institution shall be required to notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee. It shall be the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job be a lateral transfer or a promotion, and applies for same shall...
be transferred or promoted before a new person is hired unless such hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans with Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where such classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.

§18B-7-11. Compensatory time off in lieu of overtime; written agreement; other conditions.

(a) Notwithstanding any other provision of this code to the contrary, employees of the governing boards may receive in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment. Said employees may receive compensatory time only pursuant to written agreements arrived at between the employer and the employee before the performance of the work, and recorded in the employer's record of hours worked, and if the employee has not accrued compensatory time in excess of the limits prescribed herein. Any written agreement may be modified at the request of either the employer or employee, but under no circumstances shall changes in the agreement deny an employee compensatory time heretofore acquired.

(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee's work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work for the governing board may accrue up to two hundred forty hours of compensatory time. Any such employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may
be, shall, for additional overtime hours of work, be paid overtime compensation. If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee received such payment.

(c) An employee who has accrued compensatory time off pursuant to this section, shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than:

(1) The average regular rate received by such employee during the first three years of the employee's employment; or

(2) The final regular rate received by such employee, whichever is higher.

(d) An employee of the governing boards who has accrued compensatory time off authorized to be provided under this section, and who has requested the use of compensatory time, shall be permitted by the employee's employer to use such time within a reasonable time after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be used within one year from the time it is accrued.

(e) For purposes of this section, the terms "compensatory time" and "compensatory time off" mean hours during which the employee is not working, which are not counted as hours worked toward during the applicable work week or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-12. Probationary employees.

As used in this article:

(a) "Classified employee or employee" means any regular full-time or regular part-time employee of a governing board, including all employees of the West Virginia network for educational telecomputing and beginning the first day of July, one thousand nine hundred ninety, includes employees at the central office of the governing boards, who hold a position that is assigned a particular job title and pay grade in accordance with the personnel classification system established by the appropriate governing board and shall include all employees of the West Virginia network for educational telecomputing;

(b) "Nonclassified employee" means an individual who is responsible for policy formation at the department or institutional level or reports directly to the president: Provided, That the percentage of personnel placed in the category of "nonclassified" at any given institution shall not exceed ten percent of the total number of employees of that institution who are eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state. Final approval of such placement shall be with the appropriate governing board;

(c) "Job description" means the specific listing of duties and responsibilities as determined by the appropriate governing board and associated with a particular job title;

(d) "Job title" means the name of the position or job as defined by the appropriate governing board;

(e) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the appropriate governing board;

(f) "Pay grade" means the number assigned by the appropriate governing board to a particular job title and
refers to the vertical column heading of the salary schedule established in section three of this article;

(g) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(h) "Salary" means the amount of compensation paid through the state treasury per annum to a classified employee;

(i) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(j) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the amount of annual salary increase pursuant to subsection (b), section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with rules established by the appropriate governing board, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.


The secretary of education and the arts shall, on or before the first day of July, one thousand nine hundred
ninety-six, conduct a review of the progress made on im-
plementation of the equitable system of job classifications
established by board rule pursuant to the provisions of
section four of this article. A similar review shall be con-
ducted biennially thereafter until the secretary determines
that the goals of the rule establishing the system have been
achieved.

§18B-9-12. Probationary employees.

Each full-time classified employee hired by the gov-
erning boards shall serve an initial six-month probationary
period. At the end of said probationary period the em-
ployee shall receive a written evaluation of his or her per-
formance. The employee's supervisor shall meet with the
employee and explain the contents of said evaluation and
whether the employee is being offered regular employ-
ment.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT
STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at educational
institutions; refund of fees.

(a) Each governing board shall fix tuition and other
fees for each school term for the different classes or cate-
gories of students enrolling at each state institution of
higher education under its jurisdiction and may include
among such fees any one or more of the following: (1)
Health service fees; (2) infirmary fees; (3) student activi-
ties, recreational, athletic and extracurricular fees, which
said fees may be used to finance a student's attorney to
perform legal services for students in civil matters at such
institutions: Provided, That such legal services shall be
limited to only those types of cases, programs or services
approved by the administrative head of such institution
where such legal services are to be performed; and (4)
graduate center fees and branch college fees, or either, if
the establishment and operations of graduate centers or
branch colleges are otherwise authorized by law. All fees
collected at any graduate center or at any branch college
shall be paid into special funds and shall be used solely
for the maintenance and operation of the graduate center
or branch college at which they were collected: Provided,
however, That the governing boards shall use the median
of the average tuition and required fees at similarly classi-
fied institutions in member states of the southern regional
education board as a goal in establishing tuition and re-
quired fee levels for residents at state institutions of higher
education under their jurisdiction: Provided further, That
the governing boards shall use the actual instructional cost
as the same shall be determined in accordance with board
rule, in establishing nonresident undergraduate fees, with
the goal of having tuition and fees cover the actual cost by
fiscal year one thousand nine hundred ninety-six: And
provided further, That students enrolled in undergraduate
courses offered at off-campus locations shall pay an
off-campus instruction fee and shall not pay the athletic
fee and the student activity fee. The off-campus instruc-
tion fee shall be used solely for the support of off-campus
courses offered by the institution. Off-campus locations
for each institution shall be defined by the appropriate
governing board. The schedule of all fees, and any
changes therein, shall be entered in the minutes of the
meeting of the appropriate governing board, and the
board shall file with the legislative auditor a certified copy
of such schedule and changes.

(b) In addition to the fees mentioned in the preceding
paragraph, each governing board may impose and collect
a student union building fee. All such building fees col-
lected at an institution shall be paid into a special student
union building fund for such institution, which is hereby
created in the state treasury, and shall be used only for the
construction, operation and maintenance of a student
union building or a combination student union and dining
hall building or for the payment of the principal of and
interest on any bond issued to finance part or all of the
construction of a student union building or a combination
student union and dining hall building or the renovation
of an existing structure for use as a student union building or a combination student union and dining hall building, all as more fully provided in section ten of this article. Any moneys in such funds not immediately needed for such purposes may be invested in any such bonds or other securities as are now or hereafter authorized as proper investments for state funds.

(c) The boards shall establish the rates to be charged full-time students enrolled during a regular academic term. For fee purposes a full-time undergraduate student shall be one enrolled for twelve or more credit hours in a regular term, and a full-time graduate student shall be one enrolled for nine or more credit hours in a regular term. Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour, and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with the above provisions.

(d) All fees are due and payable by the student upon enrollment and registration for classes except as provided for in this subsection:

(1) The governing boards shall permit fee payments to be made in up to three installments over the course of the academic term. The payments shall include interest at a rate set by the governing board: Provided, That all fees must be paid prior to the awarding of course credit at the end of the academic term.

(2) The governing boards shall also authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees: Provided, That the governing boards may
charge the students for the reasonable and customary
costs incurred in accepting credit cards and other meth-
ods of payment.

(3) If a governing board determines that any student
was adversely, financially affected by a legal work stop-
page that commenced on or after the first day of January,
one thousand nine hundred ninety-three, it may allow the
student an additional six months to pay the fees for any
academic term: Provided, That the governing board shall
determine if a student was adversely, financially affected
on a case-by-case basis.

(e) The governing boards shall establish legislative
rules regarding the refund of any fees upon the voluntary
or involuntary withdrawal from classes of any student
which rules shall comply with all applicable state and fed-
eral laws and shall be uniformly applied throughout the
systems.

(f) The governing boards shall establish legislative
rules using the fee structure or other penalties to provide a
disincentive for students to register for classes in excess of
the typical full-time course load, that being from twelve to
eighteen credit hours for an undergraduate student and
from nine to fifteen credit hours for a graduate student,
and then to withdraw from such excess classes after the
semester has begun.

(g) In addition to the fees mentioned in the preceding
subsections, each governing board may impose, collect
and distribute a fee to be used to finance a nonprofit,
student-controlled public interest research group: Provided,
That the students at such institution demonstrate sup-
port for the increased fee in a manner and method estab-
lished by that institution's elected student government:
Provided, however, That such fees shall not be used to
finance litigation against the institution.

(h) Any proposed fee increase which would become
effective on or after the first day of July, one thousand
nine hundred ninety-seven, which has been approved by
the governing boards, shall then be submitted by the gov-
erning boards to the secretary of education and the arts
for approval. Such approval shall only be granted upon
the certification that such institution requesting a fee in-
crease is in compliance with the strategic plans required to
be submitted, pursuant to section one-b, article one of this
chapter. Notice, in the form of a report, shall be provided
by the secretary to the legislative oversight commission on
education accountability describing such fee increases and
showing of how such increases compare with the average
tuition and fees charged at comparable peer institutions in
member states of the southern regional education board.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-S. Institute for instructional technology.

The governing boards are hereby authorized to create
an institute for instructional technology which shall be
located within the higher education central office. The
governing boards are hereby authorized to enter into
research agreements pursuant to article twelve of this
chapter with respect to the institute for instructional tech-
nology. The vice chancellor for instructional technology
shall perform such functions, tasks and duties as may be
prescribed by law and shall share resources with the higher
education central office, the state institutions of higher
education and other agencies to the extent practical to
avoid unnecessary duplication of staff and other adminis-
trative efforts.

ARTICLE 14. MISCELLANEOUS.

§18B-14-S. Authorization to sell property generally.

Notwithstanding any other provisions of this code to
the contrary, the governing boards are hereby authorized
and empowered to sell any surplus real property and de-
posit the net proceeds into a special revenue account in the
state treasury to be appropriated by the Legislature for the
purchase of additional real property or technology, or for
capital improvements at the institution that sold the surplus
real property: Provided, That prior to such action the appropriate governing board shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals: Provided, however, That before such action, the governing boards shall provide notice to the public by a Class II legal advertisement as defined in section two, article three, chapter fifty-nine of this code and shall hold a public hearing on the issue.

CHAPTER 100

(H. B. 2548—By Delegates Proudfoot, Ball, Ennis, Kallal, Yeager and Anderson)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section five, article six, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to boot camp; internal policy development; and authorizing the state board of education and the state superintendent of schools to establish educational programs therein.

Be it enacted by the Legislature of West Virginia:

That section five, article six, 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 6. BOOT CAMP.

§25-6-5. Internal policy development.

1 (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 state board of education and state superintendent of schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, 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
(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.
AN ACT to amend and reenact sections five and six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article one-b; to amend and reenact sections five and ten, article two of said chapter; to amend and reenact section eleven-a, article four-a of said chapter; to amend and reenact sections five, five-a, five-b, five-d, six, seven, nine, eleven and twelve, article eight of said chapter; and to further amend said article by adding thereto three new sections, designated sections two-a, four-a and ten, all relating to elections and campaign practices; authorizing the state election commission to promulgate legislative rules for the regulation and control of elections; redefining the authority of the secretary of state to promulgate legislative rules for the administration of elections; requiring the submission and resubmission of rules to the legislative rule-making review committee; providing for the expiration of the force and effect of rules not submitted; codifying the code of fair campaign practices; legislative findings; defining certain terms; state election commission to issue advisory opinions, distribute information and investigate noncompliance with the code; hearings before the commission; prescribing the contents of the code; filing officers to retain signed forms; when candidate may be released from spending limitations; authority of commission to increase spending limitations by legislative rule; information required on voter registration form; the payment of postage when mailing voter registration form; the color of election ballots; reporting requirements for inaugural committees; providing for the termination of political committees; when reporting requirements applicable to organizations which publish, distribute or disseminate certain information within sixty days of an election; submission of information to commis-
sion to determine when reporting required; expanding the methods by which payment for campaign contributions of more than fifty dollars may be made; the filing of financial statements of candidates for legislative offices with the secretary of state; permitting the filing of financial statements by facsimile or other means of electronic transmission; establishing filing date for financial statements based upon postmark or the date of hand delivery or delivery by electronic transmission; prescription and promulgation of form for financial statements by commission; duty to furnish form on computer disc or other magnetic media; providing for the assessment of civil penalties for the late filing or the filing of a grossly incomplete or grossly inaccurate financial statement; duties of secretary of state and county clerks; clarifying purposes for which election expenditures may be made; permitting certain expenditures of excess contributions and requiring the state election commission to promulgate legislative rules with respect thereto; removing the prohibition against solicitation of candidates; authorizing contributions of up to one thousand dollars per calendar year to state executive committees of political parties; adopting technical revisions; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

1A. State Election Commission and Secretary of State.
1B. Fair Campaign Practices.
2. Registration of Voters.
4A. Electronic Voting Systems.
8. Regulation and Control of Elections.
ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-5. Powers and duties of commission; legislative rules.

§3-1A-6. Powers and duties of secretary of state; exercise of powers by appointees.

§3-1A-5. Powers and duties of commission; legislative rules.

(a) The commission shall have the power and duty to approve or disapprove applications for approval of any voting machine as provided in section seven, article four of this chapter.

(b) The commission also shall serve as a body advisory to the secretary of state, and, as such, shall have the following powers and duties:

(1) To recommend policies and practices pertaining to the registration of voters and the conduct of elections generally;

(2) To review the work of the office of secretary of state pertaining to the duties of that office with respect to elections, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(3) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedures;

(4) To advise or make recommendations to the governor relative to election practices and policy in the state; and

(5) To keep minutes of the transactions of each meeting of the commission, which shall be public records and filed with the secretary of state.

(c) It shall be the commission’s further duty to prepare and distribute in its name, within available appropriations and upon the recommendation of the secretary of state, nonpartisan educational material to inform voters of the importance of voting, to encourage voters to vote, to inform voters of election laws and procedures, and to
inform voters of the effect of any public question, consti-
tutional amendment or bond issue that is to be voted upon
by all the voters of the state and that has been authorized
to be placed upon the ballot by the Legislature, and manu-
als to assist county commissions, ballot commissioners,
circuit and county clerks and other election officials in the
proper performance of their duties in the conduct of elec-
tions.

(d) The commission shall promulgate such legislative
rules, in accordance with the provisions of chapter
twenty-nine-a of this code, as may be necessary to stan-
dardize and make effective the administration of the pro-
visions of article eight of this chapter, and may promul-
gate such other rules, in accordance with the provisions of
chapter twenty-nine-a of this code, relating to the conduct
and administration of elections as the commission may
determine to be advisable. All rules required or permitted
to be promulgated by the commission by the provisions of
this section shall be submitted on or before the first day of
August, one thousand nine hundred ninety-five, to the
Legislature for review by the legislative rule-making re-
view committee and approval by the Legislature.

§3-1A-6. Powers and duties of secretary of state; exercise of
powers by appointees.

The secretary of state shall be the chief election offi-
cial of the state. Except for those rules required by the
provisions of section five of this article to be promulgated
by the commission, the secretary of state shall have the
authority, after consultation with the state election com-
mersion, of which he is a member, to make, amend and
rescind such orders and to promulgate such legislative
rules, in accordance with the provisions of chapter
twenty-nine-a of this code, as may be necessary to stan-
dardize and make effective the provisions of this chapter.
Any rule proposed for promulgation by the secretary of
state pursuant to the provisions of this section, and all rules
heretofore adopted or in any way represented to govern
the administration or enforcement of the provisions of this
chapter by the secretary of state, shall be submitted on or
before the first day of August, one thousand nine hundred
ninety-five, to the Legislature for review by the legislative rule-making review committee and approval by the Legislature. All rules which have not been submitted and approved as aforesaid shall be of no further force and effect as of the first day of April, one thousand nine hundred ninety-six. It shall be the duty of all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks to abide by such orders as may be issued and such legislative rules as may be promulgated by the secretary of state and the commission.

The secretary of state also shall have authority to require collection and report of statistical information and to require other reports by county commissions, clerks of county commissions and clerks of circuit courts.

It shall be his further duty to advise with election officials; to furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules issued or promulgated thereunder; to investigate the administration of election laws, frauds and irregularities in any registration or election; to report violations of election laws to the appropriate prosecuting officials; and to prepare an annual report.

The secretary of state shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence, and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules promulgated by the state election commission or by the secretary of state as the chief election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.

All powers and duties vested in the secretary of state pursuant to the provisions of this article may be exercised
by appointees of the secretary of state at his discretion, but the secretary of state shall be responsible for their acts.

ARTICLE 1B. FAIR CAMPAIGN PRACTICES.

§3-1B-1. Legislative findings, purpose, declaration and intent.

The Legislature hereby finds and declares that every candidate for public office in this state should follow the basic principles of decency, honesty and fairness in the course of their campaign practices.

The Legislature hereby further declares that the code of fair campaign practices, as contained in this article, is a standard to which all candidates for public office should aspire and is a guideline for voters to determine fair play in the conduct of campaigns for public office.

It is the further goal of the Legislature that every candidate for public office in this state will voluntarily subscribe and adhere to the code of campaign practices.

§3-1B-2. Definitions.

For purposes of this article:

(a) "Campaign advertising or communication" means a communication authorized by a candidate or a candidate's committee for the purpose of advocating the nomination, election or defeat of a candidate;

(b) "Candidate for public office" means an individual who has filed a pre-candidacy statement pursuant to the provisions of section five-e, article eight of this chapter, has qualified to have his or her name listed on the ballot of any election, or who has declared his or her intention to
seek nomination or election through a petition or write-in
procedure for any state, regional, county, municipal or
district office which is to be filled at an election;
(c) "Code" means the code of fair campaign practices
as set forth in this article;
(d) "Commission" means the state election commission
created pursuant to the provisions of article one-a of this
chapter; and
(e) "Political committee" means all of those persons
and entities required to keep accounts and file financial
statements pursuant to the provisions of section five, article
eight of this chapter.

§3-1B-3. Powers and duties of the commission.
In addition to the powers and duties of the commis-
sion as prescribed in section five, article one-a of this
chapter, the commission has:
(a) The power to issue advisory opinions on whether
an action or proposed action of a subscribing candidate
violates the code of fair campaign practices;
(b) The duty to prepare and distribute copies of the
code of fair campaign practices to voters, circuit clerks,
county clerks and other election officials;
(c) The duty to receive, investigate and act on com-
plaints or other information concerning noncompliance
with the code by candidates for public office who sub-
scribe to the code; and
(d) The duty to make public the name and identity of
candidates subscribing to the code and the findings of
compliance or noncompliance with the code upon the
conclusion of a hearing conducted pursuant to section
four of this article.

§3-1B-4. Hearing; disposition; sanctions.
If a majority of the commission determines that there
is a reasonable likelihood that a candidate for public of-

If a candidate requests a hearing, then one shall be scheduled within ten days after such request. Said hearing may be continued only for good cause shown. If a majority of the commission determines, based upon clear and convincing evidence, after a hearing or after a candidate has declined to request a hearing, that such candidate has violated a provision of the code, the commission may issue a public opinion stating the candidate has committed a violation of the code. If the commission does not find by clear and convincing evidence that a subscribing candidate has violated a provision of the code, then the commission shall issue a public statement that the candidate has not violated the code. Said statement shall be issued on the same day of the hearing.

§3-1B-5. Code of fair campaign practices.

At the time an individual files his or her pre-candidacy statement, certificate of announcement, nominating petition, and other paper evidencing an intention to be a candidate for public office, or when an individual files the statement of organization of a political committee, the circuit clerk, county clerk or secretary of state receiving such filing shall furnish the individual with a form containing the text of the code of fair campaign practices which shall read as follows:

CODE OF FAIR CAMPAIGN PRACTICES

I SHALL CONDUCT this campaign openly and publicly, discussing the issues as I see them, presenting positions and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of candidates or political parties which merit such criticism.

I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander or scurrilous attacks on any candidate or his or her personal family life.
I SHALL CONDEMN the use of campaign advertising or communication of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate or issue raised in my campaign.

I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical disability or age.

I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder, prevent, or discourage any eligible person from registering to vote, or from voting, or which is intended to affect voting through the buying of influence or votes.

I SHALL NOT COERCe election help or campaign contributions for myself or my committee or for any other candidate or any ballot issue from my employees or from any person under my authority, influence or control.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support on behalf of or in opposition to any candidacy deriving from any individual or group which resorts to the methods and tactics which I condemn. I shall accept responsibility to take firm action against any subordinate or associate who violates any provisions of this code or the laws governing elections.

I PERSONALLY SUPPORT a limit on campaign expenditures that when reasonable, sufficient and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to purchase the excessive repetition of images and slogans.

ACCORDINGLY, IF I AM A CANDIDATE for one of the offices listed below, I will, in conjunction with the committee or committees organized on my behalf, adhere to the following limitations on campaign spending specified for the office I seek:
Expenditures which do not exceed the limits designated for the primary election may not be added to the limits for the general election.

I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

I, the undersigned, a candidate for election to public office in the State of West Virginia, or the chairperson of a political committee supporting one or more candidates for election, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct this campaign in accordance with the above principles and practices. I understand that subscription and adherence to the code is voluntary.

Date

Signature

§3-1B-6. Forms.

The secretary of state in consultation with the election commission, shall prescribe the forms containing the text of the code and shall furnish the forms to the circuit clerks, county clerks and municipal clerks or recorders in quantities and at times requested by the clerks.
§3-1B-7. Retention of forms; public inspection.

The officer receiving the filing shall accept, at all times prior to the election, all completed forms evidencing subscription to the code.

Forms filed with the circuit clerk shall be immediately forwarded to the county clerk. The county clerk, secretary of state, and municipal recorder or clerk shall retain such forms filed with them for public inspection until one hundred eighty days after the general election.

§3-1B-8. Voluntary subscription to the code.

Subscription to and adherence to the provisions of the code set forth in this article is voluntary and in no event may any person be required to subscribe to, adhere to or endorse the code.

§3-1B-9. Release from subscription to the code.

In the event that an opponent to a subscribing candidate exceeds the voluntary campaign spending limitations set forth in section five of this article, the subscribing candidate who has not exceeded the spending limitations shall be automatically released from that portion of the code establishing the campaign spending limitations, and the commission shall make public the fact of such release.

§3-1B-10. Adjustment of spending limitations.

The commission may from time to time increase the voluntary campaign spending limitations established in this article pursuant to legislative rule promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

§3-2-10. Application for registration by mail.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a) (1) All state forms for application for voter regis-
tration shall be prescribed by the secretary of state and shall conform with the requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg) and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission, registration by mail, registration in conjunction with an application for motor vehicle driver's license and registration at designated agencies. These forms may consist of one or more parts, may be combined with other forms for use in registration by designated agencies or in conjunction with driver licensing, and may be revised and reissued as required by the secretary of state to provide for the efficient administration of voter registration. After the first day of January, one thousand nine hundred ninety-five, all state forms issued for the purpose of voter registration shall be those prescribed pursuant to the provisions of this article, and no form used or issued for voter registration pursuant to laws in effect before that date shall be provided to any person for the purpose of registration.

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to the "Uniformed and Overseas Citizens Absentee Voting Act of 1986" (42 U.S.C. 1973 et seq.), and the mail voter registration application form prescribed by the Federal Election Commission pursuant to the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg) shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

(1) A statement specifying the eligibility requirements for registration and an attestation that the applicant meets each eligibility requirement;

(2) Any specific notice or notices required for a specific type or use of application by the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg);

(3) A notice that a voter may be permitted to vote the
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partisan primary election ballot of a political party only if
the voter has designated that political party on the applica-
tion for registration, unless the political party has deter-
mined otherwise; and

(4) Any other instructions or information essential to
complete the application process.

(c) Each application form shall require that the follow-
ing be provided by the applicant, under oath, and any
application which does not contain each of the following
shall be considered incomplete:

(1) The applicant's legal name, including the first
name, middle or maiden name, if any, and last name;

(2) The month, day and year of the applicant's birth;

(3) The applicant's residence address, including the
number and street or route and city and county of resi-
dence except:

(A) In the case of a person eligible to register under
the provisions of the "Uniformed and Overseas Citizens
Absentee Voting Act", (42 U.S.C. 1973ff), the address at
which he or she last resided before leaving the United
States or entering the uniformed services, or if a depen-
dent child of such a person, the address at which his or her
parent last resided; and

(B) In the case of a homeless person having no fixed
residence address who nevertheless resides and remains
regularly within the county, the address of a shelter, assis-
tance center or family member with whom he or she has
regular contact, or other specific location approved by the
clerk of the county commission for the purposes of estab-
lishing a voting residence; and

(4) The applicant's signature, under penalty of perjury,
as provided in section thirty-six of this article, to the attes-
tation of eligibility to register to vote and to the truth of
the information given.

(d) The applicant shall be requested to provide the
following information, but no application shall be rejected
for lack of this information:
(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation: Provided, That any applicant who does not enter any choice of political party affiliation shall be listed as having no party affiliation on the voting record;

(3) The applicant's home mailing address, if different than the residence address;

(4) The last four digits of the applicant's social security number;

(5) The applicant's telephone number;

(6) The address at which the applicant was last registered to vote, if any, for the purpose of canceling or transferring the previous registration;

(7) The applicant's gender; and

(8) The date the application is signed.

(e) The secretary of state shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form.

(f) Application forms prescribed in this section may refer to various public officials by title or official position, but in no case may the actual name of any officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than the first day of July of each odd-numbered year, the secretary of state shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.
§3-2-10. Application for registration by mail.

(a) Any qualified person may apply to register, change, transfer or correct his or her voter registration by mail. Application shall be made on a prescribed form as provided by section five of this article.

(b) To the extent possible with funds allocated annually for such purpose, the secretary of state shall make state mail registration forms available for distribution through governmental and private entities and organized voter registration programs. The secretary of state shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The secretary of state may limit the distribution to a reasonable amount per group.

(c) The clerk of the county commission shall provide up to four mail registration forms to any resident of the county upon request. To the extent possible with funds allocated annually for the purpose, the clerk of the county commission shall make state mail registration forms available for distribution through organized voter registration programs within the county. The clerk of the county commission shall make a record of all requests by entities or organizations for ten or more forms with a description of the dates and locations in which the proposed registration drive is to be conducted. The clerk may limit the distribution to a reasonable amount per group.

(d) The applicant shall provide all required information and only after completing the information, sign the prescribed applicant’s oath under penalty of perjury, as provided in section thirty-six of this article. No person may alter or add any entry or make any mark which would alter any material information on the voter registration application after the applicant has signed the oath: Provided, That the clerk of the county commission may correct any entry upon the request of the applicant provided the request is properly documented and the correction is dated and initialed by the clerk.

(e) Completed applications shall be mailed or deliv-
erred to the clerk of the county commission of the county in which the voter resides. If a clerk receives a completed mail application form from a voter whose residence address is located in another county, the clerk shall forward that application within three days to the clerk of the county commission of the county of the applicant's residence.

(f) Upon receipt of the application for registration by the appropriate clerk of the county commission, the clerk shall:

(1) Attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for municipal voter registration purposes; and

(2) Immediately begin the verification process required by the provisions of section sixteen of this article.

(g) Any person who registers by mail pursuant to this section shall be required to make his or her first vote in person at the polls or in person at the office of the clerk of the circuit court to vote an absentee ballot in order to make the registration valid: Provided, That any person who has applied for an absentee ballot pursuant to the provisions of subdivision (1), subsection (d), section one, article three of this chapter or paragraph (B), subdivision (2) of said subsection or subdivision (3) of said subsection or of subsection (e) of said section shall not have his or her ballot in that election challenged for failure to appear in person or for failure to present identification.

(h) Any person required by this section to make his or her first vote in person shall present valid identification and proof of age to the clerks at the poll or at the office of the clerk of the circuit court or the clerk of the county commission of the county in which he or she is registered before casting the first ballot.

(i) Any person who submits a state mail voter registration application to the clerk of the county commission in the county in which he or she is currently registered for the purpose of entering a change of address within the
county, making a change of party affiliation or recording a change of legal name shall not be required to make his or her first vote in person or to present identification or proof of age.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed for use in elections.

(b) (1) The heading of the ballot, the arrangement of offices in columns, the spaces for marking votes, the printing of offices, instructions and candidates names shall conform as nearly as possible to that prescribed in this chapter for paper ballots, except that the secretary of state may prescribe necessary modifications to accommodate the tabulating system. Nonpartisan elections for board of education and any question to be voted upon shall be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election, and such separate section shall constitute a separate ballot wherever a separate ballot is required under the provisions of this chapter.

(2) Both the face and the reverse side of the ballot may contain the names of candidates, only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(3) The arrangement of candidates within each office shall be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes shall be provided below the names of
candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words "WRITE-IN, IF ANY" shall be printed directly under each line for write-ins. Such lines shall be opposite a position to mark the vote.

(c) The primary election ballots shall be printed in the color of ink specified by the secretary of state for the various political parties, and the general election ballot shall be printed in black ink. All ballots shall be printed on white paper suitable for automatic tabulation and shall contain a perforated stub at the top or bottom of the ballot which shall be numbered sequentially in the same manner as provided in this article for ballots upon which votes are recorded by means of perforating. The number of ballots printed and the packaging of ballots for the precincts shall conform to the requirements for paper ballots as provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events.

§3-8-4a. Termination of political committees.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

§3-8-5d. Offenses and penalties.

§3-8-6. Financial statement forms; filing; disposition.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

§3-8-10. Use of certain contributions.

§3-8-11. Specific acts forbidden; penalties.

§3-8-12. Additional acts forbidden; circulation of written matters; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.
§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events.

(a) Any inaugural committee soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to any state public office that receives an individual contribution in excess of two hundred fifty dollars for any such event shall file and retain detailed records of any such contribution.

(b) For purposes of this section:

(1) "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for an elected state official; and

(2) "Inaugural event" means any event or events held between the date of the general election for a state public office and a date ninety days after the date of the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the elected official and for which the elected official is a prominent participant or for which solicitations of contributions include the name of the elected official in prominent display.

(c) Any inaugural committee, financial agent or any person or officer acting on behalf of such committee which is subject to the provisions of this section, shall file a verified financial statement with the secretary of state on a form prescribed by the state election commission within forty-five days following the event. The financial statement shall contain information as may be required by the provisions of subsection (a) of this section relating to any contribution in excess of two hundred fifty dollars. The secretary of state shall file and retain such statements as public records.

§3-8-4a. Termination of political committees.

(a) A political committee may terminate by filing a written request, in accordance with the provisions of section four of this article, and by stating in the request that it will no longer receive any contributions or make any
disbursements and that it has no outstanding debts or obligations. At such time, any excess funds of the committee may be transferred to a political committee established by the same candidate pursuant to the provisions of section four or five-e of this article.

(b) The provisions of this section may not be construed to eliminate or limit the authority of the secretary of state, in consultation with the state election commission, to establish procedures for: (1) The determination of insolvency with respect to any political committee; (2) the orderly liquidation of an insolvent political committee and the orderly application of its assets for the reduction of outstanding debts; and (3) the termination of an insolvent political committee after such liquidation and application of assets.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by said section and also including the treasurer or equivalent officer of such association or organization, advocating or opposing the nomination, election or defeat of any candidate or the passage or defeat of any issue, thing or item to be voted upon, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him, including all loans of money or things of value, and of all expenditures and disbursements made, liabilities incurred, by such candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized statement, subscribed and sworn to before an officer autho-
24 rized to administer oaths, according to the following pro-
25 visions and times:

26 (1) On the last Saturday in March or within fifteen
days thereafter next preceding the primary election day
whenever the total of all financial transactions relating to
an election exceed five hundred dollars a statement which
shall include all financial transactions which have taken
place by the date of that statement, subsequent to any
previous statement filed within the previous five years
under this section, or if no previous statement was filed, all
financial transactions made within the preceding five
years; and

26 (2) Not less than seven nor more than ten days preced-
ing each primary or other election, a statement which shall
include all financial transactions which have taken place
by the date of such statement, subsequent to the previous
statement, if any; and

26 (3) Not less than twenty-five nor more than thirty days
after each primary or other election, a statement which
shall include all financial transactions which have taken
place by the date of such statement, subsequent to the
previous statement; and

26 (4) On the first day of July, one thousand nine hun-
dred eighty-five, and thereafter on the last Saturday in
March or within fifteen days thereafter annually, whenever
contributions or expenditures relating to an election ex-
ceed five hundred dollars or whenever any loans are out-
standing, a statement which shall include all financial
transactions which have taken place by the date of such
report, subsequent to any previous report.

26 (c) Every person who shall announce as a write-in
candidate for any elective office and his financial agent or
election organization of any kind shall comply with all of
the requirements of this section after public announce-
ment of such person's candidacy has been made.

26 (d) For purposes of this section, the term "financial
transactions" includes all contributions or loans received
and all repayments of loans or expenditures made to pro-
mote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate or to promote the passage or defeat of any issue, thing or item to be voted on.

(e)(1) Except as provided in subdivision (2) of this subsection, any person, association, organization, corporation or other legal entity who publishes, distributes or disseminates any scorecard, voter guide or other written analysis of a candidate's position or votes on specific issues within sixty days of an election is presumed to be engaging in such activity for the purpose of advocating or opposing the nomination, election or defeat of any candidate.

(2) The provisions of subdivision (1) of this subsection shall not apply to:

(A) The publication, distribution or dissemination of such materials in the form of a news release to broadcast or print media;

(B) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television, and persons who publish, distribute or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station;

(C) The members of a nonprofit corporation or other organization who have such membership in accordance with the provisions of the articles of incorporation, bylaws or other instruments creating its form of organization and who have bona fide rights and privileges in the organization such as the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of such organizations who publish, distribute or disseminate materials described in subdivision (1) of this subsection to other such members; or

(D) The employees of a church or synagogue which currently holds or is eligible to hold an exemption as a church issued by the internal revenue service under the
provisions of §26 U.S.C. 501(c)(3) who publish, distribute or disseminate materials described in subdivision (1) of this subsection within the membership of the church or synagogue or upon the premises of any facility owned or controlled by the church or synagogue: Provided, That the exemption from the presumption provided by this subparagraph shall not apply to such employees of a church when the church or synagogue otherwise advocates or opposes the nomination, election or defeat of any candidate, or the passage of any issue, thing or item to be voted upon.

(f) No scorecard, voter guide or other written analysis of a candidate's position or votes on specific issues shall be published, distributed or disseminated within sixty days of an election unless it shall state thereon the name of the person, association, organization, corporation or other legal entity authorizing its publication, distribution or dissemination.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article shall contain the following information:

(1) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars, there shall also be reported the residence and mailing address and, in
the case of an individual, the major business affiliation and
occupation. A contribution totaling more than fifty dol-
ars of currency of the United States or currency of any
foreign country by any one contributor is prohibited and
a violation of this provision is subject to section five-d of
this article.

(4) The total amount of contributions received during
the period covered by the financial statement.

(5) The first name, middle initial, if any, and the last
name, residence and mailing address of any individual or
the full name and mailing address of each firm, associa-
tion or committee making or cosigning a loan and the
amount of any loan received, the date and terms of the
loan, including interest and repayment schedule, along
with a copy of the loan agreement.

(6) The first name, middle initial, if any, and the last
name, residence and mailing address of any individual or
the full name and mailing address of each firm, associa-
tion or committee having previously made or cosigned a
loan for which payment is made or a balance is outstand-
ing at the end of the period, together with the amount of
repayment on the loan made during the period and the
balance at the end of the period.

(7) The total outstanding balance of all loans at the
end of the period.

(8) The first name, middle initial, if any, and the last
name, residence and mailing address of any individual, or
the full name and mailing address of each firm, associa-
tion or committee to whom each expenditure was made or
liability incurred, together with the amount and purpose of
each expenditure or liability incurred and the date of each
transaction.

(9) The total expenditure for the nomination, election
or defeat of a candidate or any person or organization
advocating or opposing the nomination, election or defeat
of any candidate, or the passage or defeat of any issue,
thing or item to be voted upon, in whose behalf an expen-
diture was made or a contribution was given for the prima-
(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses
in writing to the person required to report under this sec-

94 tion the first name, middle initial, if any, and the last name
95 in the case of an individual, or the full name in case of a
96 firm, association or committee, residence and mailing
97 address and the major business affiliation and occupation
98 of the person, firm, association or committee which fur-
99 nished the funds to such contributor. All such disclosures
100 shall be included in the statement required by this section.

101 (g) Any firm, association, committee or fund permit-
102 ted by section eight of this article to be a political commit-
103 tee shall disclose on the financial statement its corporate or
104 other affiliation.

105 (h) No contribution may be made, directly or indi-
106 rectly, in a fictitious name, anonymously or by one person
107 through an agent, relative or other person so as to conceal
108 the identity of the source of the contribution or in any
109 other manner so as to effect concealment of the contribu-
110 tor's identity.

111 (i) No person, firm, association or committee may
112 accept any contribution for the purpose of influencing the
113 nomination, election or defeat of a candidate or for the
114 passage or defeat of any issue or thing to be voted upon
115 unless the identity of the donor and the amount of the
116 contribution is known and reported.

117 (j) When any candidate, organization, committee or
118 person receives any anonymous contribution which can-
119 not be returned because the donor cannot be identified,
120 that contribution shall be donated to the general revenue
121 fund of the state. Any anonymous contribution shall be
122 recorded as such on the candidate's financial statement,
123 but may not be expended for election expenses. At the
124 time of filing, the financial statement shall include a state-
125 ment of distribution of anonymous contributions, which
126 total amount shall equal the total of all anonymous contri-
127 butions received during the period.

128 (k) Any membership organization which raises funds
129 for political purposes by payroll deduction assessing
130 them as part of its membership dues or as a separate as-
131 sessment may report the amount raised as follows:
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(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(1) For purposes of this section:

(1) "Political purposes" means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the retirement of the debt of a candidate or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee or advocating or opposing the passage of a ballot issue.

(2) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its
membership dues for purposes other than political purposes. This term shall not include organizations that grant membership upon receiving a contribution.

(3) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(m) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party executive committee or a political action committee representing a political party in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of reporting shall report: (i) The name of the committee; (ii) the type of fund-raising activity undertaken; (iii) the location where the activity occurred; (iv) the date of the fund raiser; (v) the name of any individual who contributed more than fifty dollars worth of items to be sold; (vi) the name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia; (vii) the gross receipts of the fund raiser; and (viii) the date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

(a) The sworn financial statements provided for in this
article shall be filed, by or on behalf of candidates, with
the secretary of state for legislative offices and for state
and other offices to be nominated or elected by the voters
of a political division greater than a county, and with the
clerk of the county commission by all other candidates for
offices to be nominated or elected.

(b) The statements may be filed by mail, in person, or
by facsimile or other electronic means of transmission.

(c) For purposes of this article, the filing date of a
financial statement shall, in the case of mailing, be the date
of the postmark of the United States postal service, and in
the case of hand delivery or delivery by facsimile or other
electronic means of transmission, the date delivered to the
office of the secretary of state or to the office of the clerk
of the county commission, in accordance with the provi-
sions of subsection (a) of this section, during regular busi-
ness hours of such office.

§3-8-5d. Offenses and penalties.

(a) Any person who makes or receives a contribution
of currency of the United States or currency of any for-
earn country of more than fifty dollars in value is guilty
of a misdemeanor, and, upon conviction, shall be fined a
sum equal to three times the amount of the contribution.

(b) Notwithstanding any provision of section
twenty-four, article nine of this chapter to the contrary, a
criminal prosecution or civil action for a violation of this
article may be commenced within five years after the vio-
laction occurred.

(c) No person required to report under this article
shall be found in violation of this article if any person,
firm, association or committee making a contribution has
provided false information to such person: Provided,
That any person, firm, association or committee who pro-
vides false information to a person required to report
under this article is guilty of a misdemeanor and subject to
the penalties provided in section twenty-three, article nine
of this chapter.

§3-8-6. Financial statement forms; filing; disposition.
Blank forms for all financial statements required under this article shall be provided by the state election commission. The content of the forms shall be as prescribed by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Pending legislative approval of such legislative rule, the state election commission may by emergency rule prescribe the contents of the forms. Copies thereof, together with a copy of this article, shall be furnished through the county clerk or otherwise, as the secretary of state may deem expedient, to all treasurers of political committees, to all political financial agents, and to all candidates for nomination or election to any office, upon the filing of a petition or announcement for nomination, and to all other persons required by law to file such statements who shall apply therefor. The form shall also be furnished, at a nominal cost, on computer disc or magnetic media. All statements filed in accordance with the provisions of this article shall be received, endorsed and filed by the secretary of state and county clerks, and shall be preserved for five years, after which time they may be destroyed, if not required to be further preserved by the order of any court.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any candidate, financial agent or treasurer of a political party committee, who fails to file a sworn, itemized statement within the time limitations specified in this article, or who willfully files a grossly incomplete or grossly inaccurate statement, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars, or imprisoned in the county jail for not more than one year, or both, in the discretion of the court. Forty days after any such primary or other election, the secretary of state, or county clerk, as the case may be, shall give notice of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement, to the prosecuting attorney of the county where such candidate, agent or treasurer resides.
(b) (1) Any candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as provided in this article, or who files a grossly incomplete or grossly inaccurate statement, may be assessed a civil penalty by the secretary of state of twenty-five dollars a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Forty days after any such primary or other election the county clerk shall give notice to the secretary of state of any failure to file such sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the secretary of state.

(2) A civil penalty assessed pursuant to the provisions of this section shall be payable to the state of West Virginia and is collectable in any manner authorized by law for the collection of debts.

(3) The secretary of state may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The secretary of state and county clerk may review and audit any sworn statement required to be filed pursuant to the provisions of this article. The state election commission shall propose legislative rule for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election, who has failed to file a sworn statement, as required by the provisions of this article, shall have his name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required
by the provisions of this article, and no such person may
enter upon the duties of his office until he has filed such
statement, nor may he receive any salary or emolument
for any period prior to the filing of such statement.

§3-8-9. Lawful and unlawful election expenses; public opinion
polls and limiting their purposes; limitation upon
expenses; use of advertising agencies and reporting
requirements; delegation of expenditures.

(a) No candidate, financial agent or treasurer of a
political party committee shall pay, give or lend, either
directly or indirectly, any money or other thing of value
for any election expenses, except for the following pur-
poses:

(1) For rent, maintenance and furnishing of offices to
be used as political headquarters and for the payment of
necessary clerks, stenographers, typists, janitors and mes-
sengers actually employed therein;

(2) In the case of a candidate who does not maintain a
headquarters, for reasonable office expenses, including,
but not limited to, filing cabinets and other office equip-
ment and furnishings, computers, computer hardware and
software, scanners, typewriters, calculators, audio visual
equipment, or the rental of the use of the same, and for the
payment of necessary clerks, stenographers and typists,
actually employed;

(3) For printing and distributing books, pamphlets,
circulars and other printed matter and radio and television
broadcasting and painting, printing and posting signs,
banners and other advertisements, all relating to political
issues and candidates;

(4) For renting and decorating halls for public meet-
ings and political conventions, for advertising public meet-
ings, and for the payment of traveling expenses of speak-
ers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of
candidates, political agents and committees, and for station-
nery, postage, telegrams, telephone, express, freight and
public messenger service;
(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: Provided, That nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9) and (10) of this subsection;

(12) For the purchase of memorials, flowers or citations by political party executive committees or political action committees representing a political party; and

(13) For the purchase of nominal noncash expressions
of appreciation following the close of the polls of an election or within thirty days thereafter.

(b) Every liability incurred and payment made shall be at a rate and for a total amount which is proper and reasonable and fairly commensurate with the services rendered.

(c) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(d) Any candidate may designate a financial agent by a writing duly subscribed by him which shall be in such form and filed in accordance with the provisions of section four of this article.

§3-8-10. Use of certain contributions.

Amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be used by the candidate to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of public office, may be contributed to any charitable organization, or may be transferred, without limitation, to any national, state or local committee of any political party.

The state election commission shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-11. Specific acts forbidden; penalties.

(a) Any person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict, or threaten to inflict, any damage, harm or loss, upon or against any person, or by any other means attempt to intimidate or exert any undue influence, in
order to induce such person to vote or refrain from voting, 
or on account of such person having voted or refrained
from voting, at any election, or who shall, by abduction, 
duress or any fraudulent device or contrivance, impede or
prevent the free exercise of the suffrage by any elector, or
shall thereby compel, induce or prevail upon any elector
either to vote or refrain from voting for or against any
particular candidate or measure; or

(b) Any person who, being an employer, or acting for
or on behalf of any employer, shall give any notice or
information to his employees, containing any threat, either
express or implied, intended or calculated to influence the
political view or actions of the workmen or employees; or

(c) Any person who shall, knowingly, make or publish,
or cause to be made or published, any false statement in
regard to any candidate, which statement is intended or
tends to affect any voting at any election whatever; or

(d) Any person who shall pay any owner, publisher,
editor or employee or any newspaper or other periodical,
to advocate or oppose editorially, any candidate for nomi-
ation or election, or any political party, or any measure
to be submitted to the vote of the people; or any owner,
publisher, editor or employee, who shall solicit or accept
such payment:

Is guilty of a misdemeanor, and, on conviction there-
of, shall be fined not more than ten thousand dollars, or
confined in jail for not more than one year, or, in the
discretion of the court, shall be subject to both such fine
and imprisonment.

§3-8-12. Additional acts forbidden; circulation of written mat-
ter; newspaper advertising; solicitation of contribu-
tions; intimidation and coercion of employees;
promise of employment or other benefits; limita-
tions on contributions; public contractors; penalty.

(a) No person shall publish, issue or circulate, or cause
to be published, issued or circulated, any anonymous
letter, circular, placard, or other publication tending to
influence voting at any election.

(b) No owner, publisher, editor or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) No person shall, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision thereof, solicit orally or by written communication delivered therein, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision thereof. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision thereof, who may have charge or control of any building, office or room, occupied for any official purpose, shall knowingly permit any person to enter the same for the purpose of therein soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision thereof.

(d) Except as provided in section eight of this article, no person entering into any contract with the state or its subdivisions, or any department or agency thereof, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land or building is to be made in whole or in part from public funds shall, during the period of negotiation for or performance under such contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor shall any person or firm
solicit any contributions for any such purpose during any such period.

(e) No person shall, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) No person shall, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide or national elective office, or in excess of the value of one thousand dollars, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office.

(g) (1) Notwithstanding the provisions of subsection (f) of this section to the contrary, the aggregate contributions made to a state party executive committee shall be permitted only pursuant to the limitations imposed by the provisions of this subsection.

(2) No person shall, directly or indirectly, make contributions to a state party executive committee which, in the aggregate, exceed the value of one thousand dollars in any calendar year.

(h) No person shall solicit any contribution from any nonelective salaried employee of the state government or of any of its subdivisions or coerce or intimidate any such employee into making such contribution. No person shall coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions hereof shall not be construed to prevent any such employee from making such a contribution or from engaging in political activity voluntarily, without coercion, intimidation or solicitation.
(i) No person shall solicit a contribution from any other person without informing such other person at the time of such solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of such contribution being successfully collected. Nothing in this subsection shall be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(j) Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, be subject to both such fine and confinement.

CHAPTER 102
(S. B. 216—By Senator Scott)

[Passed March 6, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article seven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to elections; contested elections; and providing that when a contested election involves a member of a county commission that member may not participate in judging the election, qualifications and returns.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. CONTESTED ELECTIONS.

§3-7-6. County and district contests; notices; time.

In all cases of contested elections, the county commission shall be the judge of the election, qualifications and returns of their own members and of all county and district officers: Provided, That a member of the county commission whose election is being contested may not participate in judging the election, qualifications and returns.

A person intending to contest the election of another to any county or district office, including judge of any criminal, intermediate, common pleas or other inferior court, or any office that shall hereafter be created to be filled by the voters of the county or of any magisterial or other district therein, shall, within ten days after the result of the election is declared, give the contestee notice in writing of such intention, and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant objects to the legality of the election, or the qualification of the person returned as elected, the notice shall set forth the facts on which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.
AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the director of the division of environmental protection to employ legal counsel.

Be it enacted by the Legislature of West Virginia:

That section six, article one, 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 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code or to sit in his or
her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the director. Additionally, the director has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the division his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the division, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of the intergovernmental relations of the division, including assuring: (1) That the division carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and (2) that appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the director by this chapter, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore
granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director;
(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other
public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the division funds.

CHAPTER 104

(S. B. 313—By Senators Wooton and Love)

[Passed March 11, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and twelve, article sixteen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to environmental resources; solid waste landfill closure assistance program; providing when a permittee that is a municipality, county, county solid waste authority or regional solid waste authority is ineligible for closure assistance funds; increasing the limit on the percentage of the closure assistance fund that may be used for administrative purposes from one percent to two percent; providing for closure extension; and providing for reporting requirements.

Be it enacted by the Legislature of West Virginia:
That sections ten and twelve, article sixteen, 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 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-10. Limitation on assistance.

§22-16-12. Solid waste facility closure cost assistance fund; closure extension; reporting requirements.

§22-16-10. Limitation on assistance.

1 The director may provide closure assistance only to permittees who meet the following requirements:

2 (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 seventeen, article fifteen 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;

3 (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 fifteen of this chapter and any rules promulgated pursuant thereto: Provided, That any permittee required to close a landfill, or any portion thereof, due to the lack of an approved composite liner system, who collects solid waste within this state which is disposed outside this state, shall not be eligible for closure assistance: Provided, however, That any permittee which is a Class I municipality shall be eligible for closure assistance when the permittee elects to and pays the solid waste assessment fee which would otherwise be levied and imposed upon the disposal of the solid waste by subsection (a), section four of this article, if the solid waste was disposed of within the state; and
(3) The permittee must maintain a permit for the land-fill pursuant to the provisions of section ten, article fifteen of this chapter and maintain the full amount of the bond required to be submitted pursuant to section twelve of said article.

§22-16-12. Solid waste facility closure cost assistance fund; closure extension; reporting requirements.

(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 subaccounts 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 eighteen, article fifteen 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 fifteen of this article, as provided in subsection (f) of this section and for payment of bonds and notes issued pursuant to section five of this article: Provided, That no more than two 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.

(g) Any landfills which were ordered to close by the thirty-first day of December, one thousand nine hundred ninety-four, and which have been granted a certificate of need pursuant to the provisions of subsection (b), section one-c, article two, chapter twenty-four of this code or section one-i of said article are hereby granted a closure extension until the first day of January, one thousand nine hundred ninety-six: Provided, That no landfill which closed on or before the thirtieth day of September, one thousand nine hundred ninety-four, shall be eligible for such an extension.

(h) The department of environmental protection is required to file, by the first day of January of each ensuing year, an annual report with the joint committee on government and finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

CHAPTER 105

(Com. Sub. for S. B. 287—By Senators Wooton and Love)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]
best available technology and best professional judgment prohibited; granting variance without demonstration of potential for improvement prohibited; and granting variance if degradation will result prohibited.

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

That section four, 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:

**ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.**

**§22B-3-4. Environmental quality board rule-making authority.**

(a) In order to carry out the purposes of this chapter and chapter twenty-two of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.

(b) Except for the alternate procedures provided for in subsection (c) of this section, the board shall promulgate legislative rules setting water quality standards in accordance with the provisions of article three, chapter twenty-nine-a of this code and the declaration of policy set forth in section two, article eleven, chapter twenty-two of this code.

(c) The board may grant site specific variance only for remined areas of coal remining operation from the standards of water quality set forth in legislative rule 46-CSR-1, et seq., setting standards for iron manganese and pH prior to the issuance of a national pollutant discharge elimination system (NPDES) permit by the division of environmental protection in accordance with 33 USC Section 1311(p) of the federal Water Pollution Control Act. The standards established in the variance will exist for the term of the NPDES permit. The board will pro-
mulgate procedural rules on granting site specific coal
remining variances in accordance with the provisions of
article three, chapter twenty-nine-a of this code on or
before the first day of July, one thousand nine hundred
ninety-five. At a minimum, the procedures for granting
or denying a remining variance will include the following:
A description of the data and information to be submitted
to the board by the applicant for such variance; the criteria
to be employed by the board in its decision; and provi-
sions for a public comment period and public hearing
prior to the board's decision. The board may not grant a
variance without requiring the applicant to improve the
instream water quality as much as is reasonably possible
by applying best available technology economically
achievable using best professional judgment which re-
quirement will be included as a permit condition. The
board may not grant a variance without a demonstration
by the applicant that the coal remining operation will
result in the potential for improved instream water quality
as a result of the remining operation. The board may not
grant a variance where the board determines that degrada-
tion of the instream water quality will result from the
remining operation.

(d) No rule of the board may specify the design of
equipment, type of construction or particular method
which a person shall use to reduce the discharge of a pol-
lutant.

CHAPTER 106

(Com. Sub. for S. B. 419—By Senators Oliverio and Kimble)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]
terms for purposes of descent provisions; redefining the term "beneficiary"; right to elective share of surviving spouse; revising valuations of elective share; providing for the augmented estate; excluding certain powers of appointment, property or property rights, proceeds of insurance, pension, profit sharing, retirement and other benefit plans and other transfers made by a decedent within two years preceding his or her death from augmented estate; payor or third party reliance on governing instrument; payment of funds or transfer or deposit of property to court; filing fee discretionary; discharge of payor or third party; liability of payor or third party upon receipt of written notice of petition for elective share; where notice to be mailed or served; rights of bona fide purchaser of property from recipient of assets; proceedings for elective share; service of petition; written notice of time and place for hearing; exclusions of portions of decedent's estate for purposes of satisfying certain elective share amounts; and clarifying liability of others for elective share entitlement.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Descent.

ARTICLE 1. DESCENT.

§42-1-1. General definitions.

1. Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts or sections, and unless the context otherwise requires in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an individual authorized to make decisions for anoth-
er under a natural death act.

(2) "Beneficiary" as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an account with POD designation, of a security registered in beneficiary form (TOD) or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised.

(3) "Court" means the county commission or branch in this state having jurisdiction in matters relating to the affairs of decedents.

(4) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(5) "Descendant" of an individual means all of his or her descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code.

(6) "Devise" when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(7) "Devisee" means a person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(8) "Distributee" means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed
assets or increment thereto remaining in his or her hands.
A beneficiary of a testamentary trust to whom the trustee
has distributed property received from a personal repre-
sentative is a distributee of the personal representative.
For the purposes of this provision, "testamentary trustee"
includes a trustee to whom assets are transferred by will, to
the extent of the devised assets.

(9) "Estate" includes the property of the decedent, trust
or other person whose affairs are subject to this code as
originally constituted and as it exists from time to time
during administration.

(10) "Exempt property" means that property of a
decedent's estate which is provided for in section
forty-eight, article VI of the constitution.

(11) "Fiduciary" includes a personal representative,
guardian, conservator and trustee.

(12) "Foreign personal representative" means a per-
sonal representative appointed by another jurisdiction.

(13) "Formal proceedings" means proceedings con-
ducted before a judge with notice to interested persons.

(14) "Governing instrument" means a deed, will, trust,
insurance or annuity policy, account with POD designa-
tion, security registered in beneficiary form (TOD), pen-
sion, profit sharing, retirement or similar benefit plan,
instrument creating or exercising a power of appointment
or a power of attorney or a donative, appointive or nomi-
native instrument of any other type.

(15) "Guardian" means a person who has qualified as a
guardian of a minor or incapacitated person pursuant to
testimonial or court appointment, but excludes one who
is merely a guardian ad litem.

(16) "Heirs" means persons, including the surviving
spouse and the state, who are entitled under the statutes of
intestate succession to the property of a decedent.

(17) "Informal proceedings" mean those conducted
without notice to interested persons by an officer of the
court acting as a registrar for probate of a will or appoint-
ment of a personal representative.

(18) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(19) "Issue" of a person means descendant as defined in subdivision (5) of this section.

(20) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(21) "Lease" includes an oil, gas or other mineral lease.

(22) "Letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship.

(23) "Minor" means a person who is under eighteen years of age.

(24) "Mortgage" means any deed of trust, conveyance, agreement or arrangement in which property is encumbered or used as security.

(25) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his or her death.

(26) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession
from the child whose relationship is in question and ex-
cludes any person who is only a stepparent, foster parent
or grandparent.

(27) "Payor" means a trustee, insurer, business entity,
employer, government, governmental agency or subdivi-
sion or any other person authorized or obligated by law or
a governing instrument to make payments.

(28) "Person" means an individual or an organization.

(29) "Personal representative" includes executor, ad-
ministrator, successor personal representative, special ad-
ministrator and persons who perform substantially the
same function under the law governing their status. "Gen-
eral personal representative" excludes special administra-
tor.

(30) "Petition" means a written request to the court for
an order after notice.

(31) "Proceeding" includes action at law and suit in
equity.

(32) "Property" includes both real and personal prop-
erty or any interest therein and means anything that may
be the subject of ownership.

(33) "Security" includes any note, stock, treasury
stock, bond, debenture, evidence of indebtedness, certifi-
cate of interest or participation in an oil, gas or mining
title or lease or in payments out of production under such
title or lease, collateral trust certificate, transferable share,
voting trust certificate or, in general, any interest or instru-
ment commonly known as a security or any certificate of
interest or participation, any temporary or interim certifi-
cate, receipt or certificate of deposit for, or any warrant or
right to subscribe to or purchase, any of the foregoing.

(34) "Settlement" in reference to a decedent's estate,
includes the full process of administration, distribution
and closing.

(35) "State" means a state of the United States, the
District of Columbia, the Commonwealth of Puerto Rico
or any territory or insular possession subject to the juris-
"Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

"Successors" means persons, other than creditors, who are entitled to property of a decedent under his or her will or this code.

"Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event. The term includes its derivatives, such as "survives", "survived", "survivor" and "surviving".

"Surviving spouse" means the person to whom the decedent was married at the time of the decedent's death.

"Testacy proceeding" means a proceeding to establish a will or determine intestacy.

"Testator" includes an individual of either sex.

"Trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives and custodial arrangements, including that relating to gifts or transfers to minors, dealing with special custodial situations, business trusts providing for certificates to be issued to beneficiaries.

"Trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

"Will" includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate
ARTICLE 3. PROVISIONS RELATING TO HUSBAND OR WIFE OF DECEDEENT.

§42-3-1. Right to elective share.
§42-3-2. Augmented estate.
§42-3-4. Proceeding for elective share; time limit.
§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

§42-3-1. Right to elective share.

(a) The surviving spouse of a decedent who dies domiciled in this state has a right of election, against either the will or the intestate share, under the limitations and conditions stated in this part, to take the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other

<table>
<thead>
<tr>
<th>Time of Marriage</th>
<th>Elective-Share Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1 year</td>
<td>Supplemental Amount Only</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>3% of the augmented estate.</td>
</tr>
<tr>
<td>2 years but less than 3 years</td>
<td>6% of the augmented estate.</td>
</tr>
<tr>
<td>3 years but less than 4 years</td>
<td>9% of the augmented estate.</td>
</tr>
<tr>
<td>4 years but less than 5 years</td>
<td>12% of the augmented estate.</td>
</tr>
<tr>
<td>5 years but less than 6 years</td>
<td>15% of the augmented estate.</td>
</tr>
<tr>
<td>6 years but less than 7 years</td>
<td>18% of the augmented estate.</td>
</tr>
<tr>
<td>7 years but less than 8 years</td>
<td>21% of the augmented estate.</td>
</tr>
<tr>
<td>8 years but less than 9 years</td>
<td>24% of the augmented estate.</td>
</tr>
<tr>
<td>9 years but less than 10 years</td>
<td>27% of the augmented estate.</td>
</tr>
<tr>
<td>10 years but less than 11 years</td>
<td>30% of the augmented estate.</td>
</tr>
<tr>
<td>11 years but less than 12 years</td>
<td>34% of the augmented estate.</td>
</tr>
<tr>
<td>12 years but less than 13 years</td>
<td>38% of the augmented estate.</td>
</tr>
</tbody>
</table>
23 13 years but less than 14 years ... 42% of the augmented estate.
24 14 years but less than 15 years ... 46% of the augmented estate.
25 15 years or more ............... 50% of the augmented estate.

(b) If the sum of the amounts described in subdivisions (3) and (4), subsection (b), section two of this article, and subdivisions (1) and (3), subsection (a), section six of this article, and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under subsections (b) and (c), section six of this article, is less than twenty-five thousand dollars, the surviving spouse is entitled to a supplemental elective-share amount equal to twenty-five thousand dollars, minus the sum of the amounts described in said sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in subsections (b) and (c), section six of this article.

(c) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death.

§42-3-2. Augmented estate.

1 (a) Definitions.

2 (1) In this section:

3 (i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim. The notation of a state documentary fee on a recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

4 (ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that he or she possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.
(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in himself or herself or his or her creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) The augmented estate consists of the sum of:

(1) The value of the decedent's probate estate, reduced by funeral and administration expenses, homestead exemption, property exemption and enforceable claims;

(2) The value of the decedent's reclaimable estate. The decedent's reclaimable estate is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) Property to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment created by the decedent during the marriage and held by the decedent alone if the decedent held that power immediately before his or her death;
(ii) Property, to the extent of the decedent's contribution to it during the marriage, as a percentage of the whole, by which the property is held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, acquired during the marriage of the decedent and the surviving spouse, if the decedent held that interest immediately before his or her death;

(iii) Property transferred by the decedent to any person other than a bona fide purchaser at any time during the decedent's marriage to the surviving spouse, to or for the benefit of any person, other than the decedent's surviving spouse, if the transfer is of any of the following types:

(A) Any transfer to the extent that the decedent retained at the time of his or her death the possession or enjoyment of, or right to income from the property;

(B) Any transfer to the extent that, at the time of the decedent's death, the income or principal was subject to a power, exercisable by the decedent alone or in conjunction with any other person or exercisable by a nonadverse party, for the benefit of the decedent or the decedent's estate; or

(C) Any transfer made to a donee within two years before the decedent's death to the extent that the aggregate transfers to any one donee in either of the years exceed ten thousand dollars;

(3) The value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead exemption, exempt property, testate succession or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(4) The value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includible in the surviving spouse's reclaimable estate had the spouse predeceased the decedent.
(c) Any transfer is excluded from the decedent's reclaimable estate: (i) To the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise or release; or (ii) if irrevocably made with the written consent or joinder of the surviving spouse. Life insurance, accident insurance, pension, profit sharing, retirement and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate is also excluded.

(d) Property is valued as of the decedent's death, but property irrevocably transferred during the two-year period next preceding the decedent's death which is included in the decedent's reclaimable estate under paragraph (iii), subdivision (2), subsection (b) of this section is valued as of the time of the transfer. If the terms of more than one of the paragraphs or subparagraphs of subdivision (2), subsection (b) of this section apply, the property is included in the augmented estate under the paragraph or subparagraph that yields the highest value.

(e) (1) Although under this section a payment, item of property or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is only liable for actions taken two or more business days after the payor or other third party has actual receipt of such written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

Any form of service of notice other than that described in subdivision (2) of this subsection shall not be sufficient to impose liability on a payor or other third party for actions taken pursuant to the governing instrument.
(2) The written notice shall indicate the name of the decedent, the date of the decedent's death, the name of the person asserting an interest, the nature of the payment or item of property or other benefit and a statement that the spouse intends to file a petition for the elective share or that a petition for the elective share has been filed.

(3) The written notice must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Notice to a sales representative of the payor or other third party shall not constitute notice to the payor or other third party. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The availability of such actions under this section shall not prevent the payor or other third party from taking any other action authorized by law or the governing instrument. If no probate proceedings have been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court shall not charge a filing fee to the payor or other third party for any such payment, transfer or deposit with the court, even if no probate proceedings have been commenced before such payment, transfer or deposit. The court shall hold the funds or item of property and, upon its determination under subsection (d), section four of this article, shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under subsection (a) of said section or, if filed, the demand for an elective share is withdrawn under subsection (c) of said section, the court shall order disbursement to the designated beneficiary. A
filing fee, if any, may be charged upon disbursement
either to the recipient or against the funds or property on
deposit with the court, in the discretion of the court. Pay-
ments, transfers or deposits made to or with the court dis-
charge the payor or other third party from all claims un-
der the governing instrument or applicable law for the
value of amounts paid to or items of property transferred
to or deposited with the court.

(4) Upon petition to the probate court by the benefi-
ciary designated in a governing instrument, the court may
order that all or part of the property be paid to the benefi-
ciary in an amount and subject to conditions consistent
with this section.

(f) (1) A bona fide purchaser who purchases property
from a recipient, or who receives a payment or other item
of property in partial or full satisfaction of a legally en-
forceable obligation, is neither obligated under this part to
return the payment, item or property or benefit nor is
liable under this part for the amount of the payment or the
value of the item of property or benefit. But a person
who, not for value, receives a payment, item of property or
any other benefit included in the decedent's reclaimable
estate is obligated to return the payment, item of property
or benefit, or is personally liable for the amount of the
payment or the value of the item of property or benefit, as
provided in section six of this article.

(2) If any section or part of any section of this part is
preempted by federal law with respect to a payment, an
item of property or any other benefit included in the de-
cedent's reclaimable estate, a person who, not for value,
receives the payment, item of property, or any other bene-
fit is obligated to return that payment, item of property, or
benefit, or is personally liable for the amount of that pay-
ment or the value of that item of property or benefit, as
provided in section six of this article to the person who
would have been entitled to it were that section or part of
that section not preempted.

§42-3-4. Proceeding for elective share; time limit.

(a) Except as provided in subsection (b) of this sec-
tion, the election must be made by filing in the court and
mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. The surviving spouse must serve a copy of the petition for the elective share on, and must give written notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests may be adversely affected by the taking of the elective share. The decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, is not included within the augmented estate for the purpose of computing the elective share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, against whom the spouse chooses to proceed under subsection (d) of this section, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in subdivision (2), subsection (b), section two of this article, in the hands of those persons against whom the spouse chooses to proceed under subsection (d) of this section, is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, but is excluded for the purpose of satisfying the elective share amount and the supplemental elective share amount under subsections (b) and (c), section six of this article, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.
(d) After notice and hearing, the court shall determine the elective share and supplemental elective-share amounts and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under section six of this article. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been under section two of this article had relief been secured against all persons subject to contribution.

(e) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

§42-3-6. Charging spouse with owned assets and gifts received; liability of others for balance of elective share.

(a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's re-claimable estate:

1. Amounts included in the augmented estate which pass or have passed to the surviving spouse by testate or intestate succession;

2. Amounts included in the augmented estate under subdivision (3), subsection (b), section two of this article;

3. Amounts included in the augmented estate which would have passed to the spouse but were disclaimed; and

4. Amounts included in the augmented estate under subdivision (4), subsection (b), section two of this article up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the
elective-share percentage set forth in the schedule in sec-

tion one of this article appropriate to the length of time
the spouse and the decedent were married to each other.

(b) If, after the application of subsection (a), the

elective-share amount is not fully satisfied or the surviving
spouse is entitled to a supplemental elective-share amount,
amounts included in the decedent's probate estate and that
portion of the decedent's reclaimable estate other than
amounts irrevocably transferred within two years before
the decedent's death are applied first to satisfy the unsatis-
fied balance of the elective-share amount or the supple-
mental elective-share amount. The decedent's probate
estate and that portion of the decedent's reclaimable estate
are so applied that liability for the unsatisfied balance of
the elective-share amount or for the supplemental
elective-share amount is equitably apportioned among the
recipients of the decedent's probate estate and that portion
of the decedent's reclaimable estate in proportion to the
value of their interests therein.

(c) If, after the application of subsections (a) and (b)
of this section, the elective share or supplemental
elective-share amount is not fully satisfied, the remaining
portion of the decedent's reclaimable estate is so applied
that liability for the unsatisfied balance of the elective
share or supplemental elective-share amount is equitably
apportioned among the recipients of that portion of the
decedent's reclaimable estate in proportion to the value of
their interests therein.

(d) Only original recipients of the reclaimable estate
described in subdivision (2), subsection (b), section two of
this article, and the donees of the recipients of the reclaim-
able estate to the extent the original recipients or their
donees have the property or its proceeds, are liable to
make a proportional contribution toward satisfaction of
the surviving spouse's elective share or supplemental
elective-share amount. A person liable to make contribu-
tion may choose to give up the proportional part of the
reclaimable estate or to pay the value of the amount for
which he or she is liable.
AN ACT to amend and reenact sections one and twenty-nine, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to proceedings of decedents' estates; references thereon; service and publication of notice of time for receiving claims; proceedings relating thereto; claims against decedents' estates; and providing that final settlement of certain decedents' estates may be waived in specified circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDE

§ 442-1. Reference of decedents' estates; proceedings thereon.

§ 44-2-29. Waiver of final settlement.

§ 44-2-1. Reference of decedents' estates; proceedings thereon.

1 (a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such
commissioners in rotation, in order that, so far as possible, there may be an equal division of the work. \(\text{Provided, however,}\) That a fiduciary commissioner may not charge to the estate a fee greater than two hundred dollars for the settlement of an estate, except upon approval of the county commission because of complicating issues or problems attendant to such settlement and amount of time involved in and about its resolution.

(b) If the personal representative shall deliver to the clerk an appraisement of the assets of the estate showing their value to be fifty thousand dollars or less, exclusive of nonprobate assets, the clerk shall record said appraisement and publish a notice once a week for two successive weeks in a newspaper of general circulation within the county of administration of the estate, substantially as follows:

NOTICE OF PENDING ESTATE

"Notice is hereby given that settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first publication of this notice such reference is requested by a party in interest or an unpaid creditor and good cause is shown to support such reference.

Dated this _____ day of __________________, ____.

__________________________________________

Clerk of the County Commission
of __________________County, West Virginia."

The clerk shall charge to the personal representative, and receive, the reasonable cost of publication of the notice.

The personal representative shall, within a reasonable time after the date of recordation of the appraisement in such case, make a report to the clerk of his receipts, disbursements and distribution, and shall make affidavit that all claims against the estate, for expenses of administration, taxes and debts of the decedent, have been
paid in full. The clerk shall collect a fee of ten dollars for recording such report and affidavit, and for publication of the notice hereafter provided, the fee to be in lieu of any other fee provided by law for recording a report of settlement of the accounts of a decedent's personal representative. At least once a month the clerk shall cause to be published once a week for two successive weeks in a newspaper of general circulation within the county of the administration of the estate, with regard to reports received in the prior month, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

"I have before me the account of the executor(s) or administrator(s) of the estates of the following deceased persons:

Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner or object to confirmation of the accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

Clerk of the County Commission
of _____________ County, W. Va."

If no such request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and thereupon the personal representative and his surety shall be discharged; but if such objection or request is made, the county commission may confirm the accounting and record the same, or may refer the estate to one of its
fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the filing of a claim or claims against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

(c) If upon the return and recordation of the appraisement, it appears to the clerk that there is only one beneficiary of the estate and that the beneficiary is competent at law, there shall be no further administration upon the estate, and no reference to a fiduciary commissioner, unless, for due cause, the county commission orders further administration and a reference to a fiduciary commissioner: Provided, That the personal representative has twenty days after the date of the filing of a claim or claims against the estate of the decedent to approve or reject one claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made. The bond of the personal representative and his surety shall be discharged one year after the date of qualification of the personal representative if no claim has been filed with the county clerk and no suit has been instituted against the personal representative. The clerk shall publish a notice once a week for two successive weeks in a newspaper of general circulation within the county of administration of the estate, substantially as follows:

NOTICE OF UNADMINISTERED ESTATE

"Notice is hereby given that, there being only one beneficiary of the deceased, there will be no administration of the estate unless within ninety days demand for administration be made by a party in interest or an unpaid creditor.

Dated this _____ day of ________________, ___.

________________________________________

Clerk of the County Commission

of ____________________ County, W. Va."
120 The clerk shall charge to the personal representative, 
121 and receive, the reasonable cost of publication of the 
122 notice.

123 If no person demands administration and no creditor 
124 appears in response to the notice hereinabove provided, 
125 the clerk shall enter an order declaring the estate closed, 
126 without final settlement or waiver thereof and alienation of 
127 the decedent's real estate more than six months after the 
128 date of the notice to a bona fide purchaser for value shall 
129 be free of any lien for taxes or debts of the decedent, 
130 notwithstanding the provisions of section five, article eight 
131 of this chapter.

§44-2-29. Waiver of final settlement.

1 In all estates of decedents subject to administration 
2 under this article where a release of lien required by the 
3 provisions of article eleven, chapter eleven of this code has 
4 been filed with the clerk and more than ninety days have 
5 elapsed since the filing of any notice required by the 
6 provisions of this article, even though such estate may 
7 have been referred to a fiduciary commissioner, a final 
8 settlement may be waived by a waiver containing an 
9 affidavit made by the personal representative, that the time 
10 for filing of claims has expired, that no known and unpaid 
11 claims exist against the estate, and that all beneficiaries 
12 have each been advised of the share or shares to which 
13 each is entitled from the estate and signed by every 
14 beneficiary.

15 In the case of a beneficiary under a disability, the duly 
16 qualified personal representative of such beneficiary may 
17 sign in lieu of such beneficiary. A personal representative 
18 signing such waiver shall be responsible to his or her 
19 cestui que trust for any loss resulting from such waiver.

20 The waiver shall be recorded as in the case of and in 
21 lieu of a settlement.
AN ACT to amend article five-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the termination of trusts in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-4. Termination of trusts valued at less than fifty thousand dollars; spendthrift and other protective trusts for incompetents and children.

(a) Upon application of a trustee of a trust with assets valued at less than fifty thousand dollars, the principal of which is not distributable until some future time, a circuit court having in rem jurisdiction over the corpus of the trust may order that the trust be terminated upon a finding that the continued existence of the trust is no longer economically beneficial or practical because, relative to the costs of administering the trust or because of an existing economic circumstance that directly threatens the solvency, financial integrity or monetary value of such trust, continuance of the trust pursuant to its existing terms will defeat or substantially impair the accomplishment of its purposes.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, the court may not, pursuant to
said subsection, order the termination of a spendthrift or other protective trust which exists for the benefit of one or more incompetents or minors in the absence of the court's further finding that there exists or will exist upon the termination of such trust an adequate alternative protective device or provision for the management of the trust assets and protection of the primary beneficiary or beneficiaries for whom the trust was created.

(c) Upon the entry of an order that the trust be terminated pursuant to the provisions of this section, the trustee shall, at least fourteen days prior to the date upon which the trustee proposes to terminate the trust, file with the court such accounting of the activities and assets of the trust as may be directed by the court and serve a copy thereof upon the parties to the action and such other persons that may be affected by the termination of the trust. Upon the court's review of the accounting, the court may enter an order approving the accounting and the terms of the termination of the trust proposed by the trustee or may enter such other order as the court may deem appropriate in the action.

CHAPTER 109

(Com. Sub. for H. B. 2429—By Mr. Speaker, Mr. Chambers, and Delegates Kiss, Farris, Seacrist, Amores and Hunt)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the administration of estates and trusts; uniform management of institutional funds act; revising the definitions of "institution," "institutional fund" and "gift instrument"; and adding a definition of "community foundation" or "community trust."

Be it enacted by the Legislature of West Virginia:
That section two, article six-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

§44-6A-2. Definitions.

The following words or phrases as used in this article shall have the meanings ascribed to them in this section, unless the context of this article clearly indicates otherwise:

(a) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(b) "Gift instrument" means a will, deed, trust agreement, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) that was executed or in effect before or after the effective date of this article under which property is transferred to, or held by or on behalf of, an institution as an institutional fund;

(c) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(d) "Historic dollar value" means the aggregate fair value in dollars of: (i) An endowment fund at the time it became an endowment fund; (ii) each subsequent donation to the fund at the time it is made; and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

(e) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purpose, a governmental organization to the extent that it holds funds exclusively for any of these purposes, or a community foundation or community trust;
(f) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include: (i) A fund held for an institution by a trustee that is not an institution, unless the fund is held exclusively for the benefit of either a community foundation or community trust by a bank, a trust company or another fiduciary that is a trustee of the community foundation or community trust; or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

(g) "Community foundation" or "community trust" means an institution that has been established to attract contributions of a capital or endowment nature for the benefit of a particular community or area whose contributions are often received and maintained in the form of separate trusts or funds which are subject to varying degrees of control by the governing body of the community foundation or community trust and which the governing body in good faith believes meets the requirements of the regulations issued by the internal revenue service, United States department of treasury, presently codified as 26 CFR 1.170A-9(e)(10) and (11), to qualify as a "publicly supported" organization and to be treated as a "single entity" rather than as an aggregation of separate funds.

CHAPTER 110

(H. B. 2328—By Mr. Speaker, Mr. Chambers, and Delegates Rowe and Staton)

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and
reenact sections one, two and four, article three of said chapter, all relating to the ethical standards for elected and appointed officials and public employees; acceptance of honorarium; seeking employment by public officials or employees, solicitation of private business by public employees or officials; financial disclosure statements, filing requirements; definitions; penalties; registration of lobbyists; and reporting by lobbyists.

Be it enacted by the Legislature of West Virginia:

That sections five, six and ten, article two, chapter six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two and four, article three of said chapter be amended and reenacted, all 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.

3. Lobbyists.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-6. Financial disclosure statement; filing requirements.

§6B-2-10. Violations and penalties.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

1 (a) Persons subject to section. — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any
other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inures to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories
the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position as such is subordinate to the soliciting official or employee: Provided, however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.
(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials.
The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when: (1) That official is a part-time elected public official; (2) the fee is not related to the official's public position or duties; (3) the fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and (4) the honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the division of culture and history.

(d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which such part-time appointed public official may have direct authority to enter into or over which he or she may have control when such official has been recused.
from deciding or evaluating and excused from voting on such contract and has fully disclosed the extent of such interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a business; or

(ii) Not exceeding thirty thousand dollars interest in the profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former public official or employee may knowingly and improp-
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183 erly disclose any confidential information acquired by
184 him or her in the course of his or her official duties nor
185 use such information to further his or her personal inter-
186 ests or the interests of another person.

187 (f) Prohibited representation. — No present or former
188 elected or appointed public official or public employee
189 shall, during or after his or her public employment or
190 service, represent a client or act in a representative capacity
191 with or without compensation on behalf of any person in a
192 contested case, rate-making proceeding, license or permit
193 application, regulation filing or other particular matter
194 involving a specific party or parties which arose during his
195 or her period of public service or employment and in
196 which he or she personally and substantially participated
197 in a decision-making, advisory or staff support capacity,
198 unless the appropriate government agency, after consulta-
199 tion, consents to such representation. A staff attorney,
200 accountant or other professional employee who has repre-
201 sented a government agency in a particular matter shall
202 not thereafter represent another client in the same or sub-
203 stantially related matter in which that client's interests are
204 materially adverse to the interests of the government agen-
205 cy, without the consent of the government agency: Provid-
206 ed, That this prohibition on representation shall not apply
207 when the client was not directly involved in the particular
208 matter in which such professional employee represented
209 the government agency, but was involved only as a mem-
210 ber of a class. The provisions of this subsection shall not
211 apply to legislators who were in office and legislative staff
212 who were employed at the time it originally became effec-
213 tive on the first day of July, one thousand nine hundred
214 eighty-nine, and those who have since become legislators
215 or legislative staff and those who shall serve hereafter as
216 legislators or legislative staff.

217 (g) Limitation on practice before a board, agency,
218 commission or department. — (1) No elected or appointed
219 public official and no full-time staff attorney or accoun-
tant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of
(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to sell or lease real or personal property to any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; "seek employment" includes responding to unso-
licitied offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and "subordinate" includes only those agency personnel over whom the public servant has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the ethics commission for an exemption from the prohibition contained in subsection (1). The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) Members of the Legislature required to vote. — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her du-
ties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to articles three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(k) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(l) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with
public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of such institution or has been approved by the employees' department supervisor or the president of the institution by which the faculty or staff member is employed.

(m) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(n) The commission by legislative rule promulgated in accordance with chapter twenty-nine-a of this code may define further exemptions from this section as necessary or appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.
(a) The requirements for filing a financial disclosure statement shall become initially effective on the first day of February, one thousand nine hundred ninety, for all persons holding public office or employment on that date and who are otherwise required to file such statement under the provisions of this section. The initial financial disclosure statement shall cover the period from the first day of July, one thousand nine hundred eighty-nine, for the period ending the thirty-first day of January, one thousand nine hundred ninety. Thereafter, the financial disclosure statement shall be filed on the first day of February of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the ethics commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure state-
ment for the previous twelve months no later than thirty
days after the date on which the person assumes the duties
of the office, unless the person has filed a financial disclo-
sure statement with the commission during the

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twelve-month period before he or she assumed office.

(b) A candidate for public office shall file a financial
disclosure statement for the previous calendar year with
the state ethics commission no later than ten days after he
or she files a certificate of candidacy, but in all circum-
stances, not later than ten days prior to the election, unless
he or she has filed a financial disclosure statement with the
state ethics commission during the previous calendar
year.

The ethics commission shall file a duplicate copy of
the financial disclosure statement required in this section
in the following offices within ten days of the receipt of
the candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have
opted, by ordinance, to be covered by the disclosure pro-
visions of this section, in the office of the clerk of the
municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and
candidates for a county office or county school board in
the office of the clerk of the county commission of the
county in which the candidate is seeking office;

(3) Legislative candidates from multicounty districts
and congressional candidates in the office of the clerk of
the county commission of the county of the candidate's
residence.

After a ninety-day period following any election, the
clerks who receive the financial disclosure statements of
candidates may destroy or dispose of those statements
filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or
her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state ethics commission as required by the provisions of this section.

(d) The state ethics commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

§6B-2-10. Violations and penalties.

(a) If any person violates the provisions of subsection (e), (f) or (g), section five of this article, or violates the provisions of subdivision (1), subsection (e), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor, and shall be punished by confinement in the county jail for a period not to exceed six months or shall be fined not more than one thousand dollars, or both such confinement and fine. If any person violating the provisions of subdivision (1), subsection (e), section four of this article shall be a member of the commission or an employee thereof, he or she shall, upon conviction, be subject to immediate removal or discharge.

(b) If any person violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement, such person shall, upon conviction thereof, be deemed guilty of false swearing and shall be punished as provided in section three, article five,
chapter sixty-one of this code.

(c) If any person knowingly fails or refuses to file a financial statement required by section six of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars.

(d) If any complainant violates the provisions of subdivision (2), subsection (f), section four, article two of this chapter by knowingly and willfully disclosing any information made confidential by an order of the commission, he or she shall be subject to administrative sanction by the commission as provided for in subsection (r), section four of this article.

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.

§6B-3-2. Registration of lobbyists.

§6B-3-4. Reporting by lobbyists.

§6B-3-1. Definitions.

As used in this article, unless the context in which used clearly indicates otherwise:

(1) "Compensation" means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

(2) "Employer" or "lobbyist's employer" means any person who employs or retains a lobbyist.

(3) "Expenditure" means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise or agreement, whether or not legally enforceable.

(4) "Government officer or employee" means a member of the Legislature, a legislative employee, the governor and other members of the board of public works, heads of
16 executive departments, and any other public officer or
17 public employee under the legislative or executive branch
18 of state government who is empowered or authorized to
19 make policy and perform nonministerial functions. In the
20 case of elected offices included herein, the term "gov-21
21 ernment officer or employee" shall include candidates who
22 have been elected but who have not yet assumed office.

(5) "Legislation" means bills, resolutions, motions, 23
amendments, nominations, and other matters pending or
24 proposed in either house of the Legislature, and includes
25 any other matters that may be the subject of action by
26 either house or any committee of the Legislature and all
27 bills or resolutions that, having passed both houses, are
28 pending approval or veto by the governor.

(6) "Lobbying" or "lobbying activity" means the act of
29 communicating with a government officer or employee to
30 promote, advocate or oppose or otherwise attempt to influ-
31 ence:

(i) The passage or defeat or the executive approval or
32 veto of any legislation which may be considered by the
33 Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, 34
34 legislative rule, standard, rate, fee or other delegated legis-
35 lative or quasi-legislative action to be taken or withheld by
36 any executive department.

(7) (A) "Lobbyist" means a person who, through com-
37 munication with a government officer or employee, pro-
38 motes, advocates or opposes or otherwise attempts to influ-
39 ence:

(i) The passage or defeat or the executive approval or
40 veto of any legislation which may be considered by the
41 Legislature of this state; or

(ii) The adoption or rejection of any rule, regulation, 42
43 legislative rule, standard, rate, fee or other delegated legis-
lative or quasi-legislative action to be taken or withheld by any executive department.

(B) The term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements set forth in this article, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

(i) Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies, are exempt.

(ii) Persons who limit their lobbying activities to attending receptions, dinners, parties or other group functions and make no expenditure in connection with such lobbying are exempt.

(iii) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station or television station, are exempt.

(iv) Persons who lobby without compensation or other consideration for acting as lobbyists, and whose total expenditures in connection with such lobbying do not exceed twenty-five dollars during any calendar year, are exempt. The exemption contained in this subparagraph (iv) and subparagraph (ii) are intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph (iv) or subparagraph (ii) may at his or her option register and report under this article.
(v) Persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may at his or her option register and report under this article.

(vi) The governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt.

(vii) Members of the Legislature are exempt.

(viii) Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties are exempt.

(ix) Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation are exempt.

(8) "Person" means any individual, partnership, trust, estate, business trust, association, or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau, or any other instrumentality of the state; or any county, municipal corporation, school district or any other political subdivi-
§6B-3-2. Registration of lobbyists.

(a) Before engaging in any lobbying activity, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the ethics commission by filing a lobbyist registration statement, signed under oath or affirmation. The registration statement shall contain such information and be in such form as the ethics commission may prescribe by legislative rule, including, but not limited to, the following information:

(1) The registrant's name, business address, telephone numbers and any temporary residential and business addresses and telephone numbers used or to be used by the registrant while lobbying during a legislative session;

(2) The name, address and occupation or business of the registrant's employer;

(3) A statement as to whether the registrant is employed or retained by his or her employer solely as a lobbyist or is a regular employee performing services for the employer which include, but are not limited to, lobbying;

(4) A statement as to whether the registrant is employed or retained by his or her employer under any agreement, arrangement or understanding according to which the registrant's compensation, or any portion thereof, is or will be contingent upon the success of his or her lobbying activity;

(5) The general subject or subjects, if known, on which the registrant will lobby or employ some other person to lobby in a manner which requires registration under this article;

(6) An appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be
(b) A registrant who lobbies with regard to matters before the Legislature must file duplicate copies of the lobbyist's registration statement required by subsection (a) or (d) of this section with the clerk of the Senate and the clerk of the House of Delegates contemporaneously with the filing with the ethics commission before engaging in any lobbying activity.

(c) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for lobbying with respect to the same subject is to be paid or contributed by more than one person, then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing.

(d) Whenever a change, modification or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(e) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the Monday preceding the second Wednesday in January of each odd-numbered year, and failure to do so shall terminate his registration. Until such registration is renewed, the person may not engage in lobbying activities unless he or she is otherwise exempt under paragraph (B), subdivision (7), section one of this article.

§6B-3-4. Reporting by lobbyists.

(a) A lobbyist shall file with the commission reports of his lobbying activities, signed under oath or affirmation by the lobbyist. Lobbyists who are required under this
article to file copies of their registration statements with the clerks of the respective houses of the Legislature shall also contemporaneously file copies of all reports required under this section with the clerks. Such reports shall be filed as follows:

(1) On or before the Monday preceding the second Wednesday in January of each year, a lobbyist shall file an annual report of all lobbying activities which he or she engaged in during the preceding calendar year; and

(2) If a lobbyist engages in lobbying with respect to legislation, then:

(A) Between the fortieth and forty-fifth days of any regular session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year; and

(B) Within twenty-one days after the adjournment sine die of any regular or extraordinary session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year or since the filing of the last report required by this section, whichever is later.

(b) (1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by such lobbyist, or on behalf of such lobbyist by the lobbyist's employer, during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to public officials or employees or to members of the immediate family of such persons; and other expenses or services.

(2) Lobbyists are not required to report the following:
(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for his or her own living accommodations;

(C) Any expenses incurred for his or her own travel to and from public meetings or hearings of the legislative and executive branches;

(D) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance; and

(E) Separate expenditures to or on behalf of a public official or employee in an amount of less than five dollars.

(c) If a lobbyist is employed by more than one employer, the report shall show the proportionate amount of such expenditures in each category incurred on behalf of each of his employers.

(d) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(e) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, living accommodations, travel, gifts or other expenditures, other than for those expenditures governed by subsection (f) of this section, which expenditures in any such reporting category total more than twenty-five dollars to or on behalf of any particular public official or employee, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection (e), no portion of the amount of an expenditure for a dinner, party or other function sponsored by a lobbyist or a lobbyist's employer need be attributed to or counted toward the reporting
amount of twenty-five dollars for a particular public official or employee who attends such function if the sponsor has invited to the function all the members of: (1) The Legislature; (2) either house of the Legislature; (3) a standing or select committee of either house; or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

(f) If, during the period covered by the report, the lobbyist made expenditures in the reporting categories of meals and beverages, lodging, travel, gifts and scheduled entertainment, which reporting expenditures in any such reporting category total more than twenty-five dollars for or on behalf of a particular public official or public employee in return for the participation of the public official or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the name of the public official or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.

CHAPTER 111

(Com. Sub. for S. B. 145—By Senators Wagner, Miller and Yoder)

[Passed February 20, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to excepting certain board members of local development authorities from being in violation of the state ethics law solely by serving on an authority board.

Be it enacted by the Legislature of West Virginia:
That sections four and five, article twelve, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-4. Qualifications of members.

§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.

§7-12-4. Qualifications of members.

(a) In addition to the appointing agencies as provided for in section three of this article, such other persons, firms, unincorporated associations and corporations, which reside or maintain offices in the county of the development authority, are eligible to participate in and request the governing body to appoint members to the development authority as the said authority by its bylaws provides. Members can also be drawn from citizens of a county contiguous to the county in which the county development authority is located regardless of their state of residence.

(b) Any person employed by, owning an interest in, or otherwise associated with a public utility company as defined in section two, article one, chapter twenty-four of this code or bank as defined in section two, article one, chapter thirty-one-a of this code may serve as a board member and shall not be disqualified from serving as a board member because of conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under the provisions of said section when the violation is created solely as a result of his or her relationship with the bank or public utility. This member must recuse himself or herself from board participation regarding the conflicting issue as provided for in section five of this article.

§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.

(a) No member of the authority shall receive any com-
pensation, whether in formal salary, per diem allowance or otherwise, in connection with his or her services as such member. Each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as such member.

(b) Whenever a person associated with a public utility or bank as set out in section four of this article has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

CHAPTER 112

(H. B. 2130—By Delegates Border, Kiss, Anderson, Manuel and Love)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight and section three, article two-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to firefighters; providing for payment of the cost of providing immunizations against hepatitis-b and other blood borne pathogens to firefighters; requiring volunteer and part volunteer fire departments to obtain no cost or lowest cost vaccinations from local boards of health or from a licensed health care provider; requiring local health departments to maintain records of immunizations; and approval of general plan of operation of local boards of health by the commissioner of public health.

Be it enacted by the Legislature of West Virginia:
That section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article two-a, chapter sixteen of said code be amended and reenacted, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subdivisions (a) through (h) of this section. Such expenditures may be made for the following:

(a) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;

(b) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(c) Compliance with insurance service office recommendations relating to fire departments;

(d) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;
20 (e) Capital improvements reasonably required for 
21 effective and efficient fire protection service and 
22 maintenance thereof;

23 (f) Retirement of debts;

24 (g) Payment of utility bills; and

25 (h) Payment of the cost of immunizations, including 
26 any laboratory work incident thereto, for firefighters 
27 against hepatitis-b and other blood borne pathogens:
28 Provided, That the vaccine shall be purchased through the 
29 state immunization program or from the lowest cost 
30 vendor available: Provided, however, That volunteer and 
31 part volunteer fire companies and departments shall seek 
32 to obtain no cost administration of the vaccinations 
33 through local boards of health: Provided further, That in 
34 the event any volunteer or part volunteer fire company or 
35 department is unable to obtain no cost administration of 
36 the vaccinations through a local board of health, the 
37 company or department shall seek to obtain the lowest 
38 cost available for the administration of the vaccinations 
39 from a licensed health care provider.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING 
LOCAL HEALTH AGENCIES.

§16-2A-3. Powers and duties of county and municipal boards 
of health; filing of rules.

1 County or municipal boards of health created and 
established pursuant to the provisions of this article shall 
direct, supervise and control all matters relating to the 
general health and sanitation of their respective counties 
or municipalities. The local boards of health also have the 
power and authority to adopt and promulgate and from 
time to time amend rules, consistent with the public health 
laws of this state and the rules of the West Virginia state 
department of health and human resources, as may be 
necessary and proper for the protection of the general
health of the county or municipality and the prevention of
the introduction, propagation and spread of disease. All
rules shall be filed, in the case of a county board, with the
clerk of the county commission, and in the case of a
municipal board, with the clerk, recorder or similar officer
of the municipality. The rules shall be kept by the clerk or
recording officer in a separate book and shall be public
records.

It is the duty of local boards of health to protect the
general health and supervise and control the sanitation of
their respective counties and municipalities; to enforce the
laws of this state pertaining to public health, and the rules
of the department of health and human resources, insofar
as they are applicable to counties or municipalities, and to
perform duties in relation to public health as may be
prescribed by order of the county commission or by
ordinance of the municipality consistent with the public
health laws of this state and the regulations duly adopted
by the department of health and human resources. All
local boards of health receiving state or federal funds for
health purposes shall submit a general plan of operation
for health purposes to the commissioner of the bureau of
public health for approval. The commissioner may act
through any county or municipal board of health created,
established and operated pursuant to the provisions of this
article.

Local departments of health created and established
pursuant to the provisions of either this article or article
two of this chapter shall be notified of each immunization
for hepatitis-b and other blood borne pathogens received
by firefighters within the service area of the local
department of health. Local departments of health shall
maintain, for a period of not less than thirty years, a
record of the date of the immunization and the name of
each firefighter within the service area of the local health
department immunized against hepatitis-b and other blood
borne pathogens.
AN ACT to amend and reenact section fourteen, article four, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to audits of volunteer fire departments receiving state funds or grants in the amount of fifteen thousand dollars or more; providing that the volunteer fire department may satisfy the audit requirement by submitting a sworn statement of expenditures which is made under oath and acknowledged before a notary public; filing fees; making it a felony to file such a sworn statement of expenditures which is fraudulent; and prescribing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article four, 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 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

1 Any corporation, association or other organization in West Virginia, whether nonprofit or for profit, which receives state funds or grants in the amount of fifteen thousand dollars or more shall file an audit of the disbursement of funds with the legislative auditor's office. The audit shall be filed within two years of the disbursement of funds or grants by the grantee and shall be made by an independent certified public accountant at the cost of the corporation, association or other organization and must show that the funds or grants were spent for the purposes intended when the grant was made.
State funds or audits of state funds or grants under fifteen thousand dollars may be authorized by the joint committee on government and finance to be conducted by the legislative auditor's office at no cost to the grantee: Provided, That volunteer fire departments will satisfy the audit requirements of this section by submitting a sworn statement of annual expenditures to the legislative auditor's office, along with a filing fee of seventy-five dollars, on or before the fourteenth day of February of each year, if such volunteer fire department elects not to be audited. The sworn statement of expenditures must be signed by the chief or director of the volunteer fire department, and shall be made under oath and acknowledged before a notary public. The office of the legislative auditor may assign an employee or employees to perform random audits of the disbursement of funds or grants to volunteer fire departments. Any person who files a fraudulent sworn statement of expenditures under this section is guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or imprisoned in the state penitentiary for a period of time not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 114

(H. B. 2519—By Delegates Seacrist and Hunt)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the state fire marshal to accept gifts and donations, and setting forth the uses of such gifts and donations.

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-9. Powers, duties and authority of state fire commission and state fire marshal.

(a) The state fire commission may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of its office.

(b) The state fire commission is responsible for fire programs within this state, including the state fire marshal's office, training, uniform standards and certification, finance and planning and fire prevention.

(c) All state and area training and education in fire service shall be coordinated by the state fire commission. The state fire marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commissioner.

(d) The state fire commission shall develop minimum training levels for firefighters, minimum levels of equipment needed to protect life and property within fire service areas, minimum performance standards the departments must meet in response times, communications, minimum levels of water flow and pressure and other performance measures as considered necessary to meet the overall goals of improved fire prevention and control. The state fire commission may make recommendations to the state insurance commissioner regarding town classifications for fire insurance rates.

(e) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the state fire commission. The state fire commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(f) The state fire commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: Manpower needs; location of training centers; location of fire prevention and control
units; communications; fire-fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(g) The state fire commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

(h) The state fire marshal may accept, on behalf of the state fire commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. The state fire marshal, acting on behalf of the state fire commission, may enter into, sign and execute any agreements and do and perform any acts that may be necessary, useful, desirable or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the state fire marshal shall be deposited into the special account set forth in subsection (c), section twelve-b of this article, and the state fire marshal, with the approval of the state fire commission, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

CHAPTER 115

(Com. Sub. for S. B. 482—By Senators Love, Wiedebusch, Bowman, Schoonover, Buckalew and Blatnik)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section eighty-six; and to amend and reenact section twenty-three, article three, chapter twenty-nine of said code, all relating to authorizing sparklers and novelties sales; requiring registration of businesses which sell sparklers and novelties; and preventing sparklers and sparkler devices from being sold to persons under sixteen years of age.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 eighty-six; and that section twenty-three, article three, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

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

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-86. Sparkler and novelty registration fee.

1 The tax commissioner shall establish an annual "Sparkler and Novelty Registration Fee" which shall be charged all businesses licensed to do business in the state of West Virginia desiring to sell sparklers and novelties authorized for sale in section twenty-three, article three, chapter twenty-nine of this code. This fee shall run concurrent with the business registration certificate set forth in section five of this article. This fee shall not be prorated. Each business shall pay fifteen dollars for each registration and shall be issued a sticker or card by the tax commissioner to be posted in a conspicuous position at the location of the business which has paid the registration fee. This fee shall be collected for each separate location where sparklers and novelties are sold. The tax commissioner may, in his discretion, require a separate certificate which shall be posted as set forth herein, or provide that the evidence of compliance with this section may be by a stamp or language added to the business registration certificate or
The term "fireworks" means and includes any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, the type of unmanned balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, roman candles, daygo bombs or other fireworks of like construction and any fireworks containing any explosive or flammable compound or any tablets or other device containing any explosive substance, except that the term "fireworks" shall not include:

Model rockets and model rocket engines, designed, sold and used for the purpose of propelling recoverable acro models and shall not include toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with the United States department of transportation regulations for packing and shipping of toy paper or plastic caps are used and toy paper or plastic caps manufactured as provided therein, the sale and use of which shall be permitted at all times. Each package containing toy paper or plastic caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

The following sparklers and novelties shall not be considered fireworks and require a business registration fee be paid to be authorized to sell, as provided for in section eighty-six, article twelve, chapter eleven of this code:

(1) Explosive caps designed to be fired in toy pistols,
provided that the explosive mixture of the caps shall not exceed twenty-five hundredths of a grain for each cap.

(2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large snake-like ash when burning.

(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.

(4) Trick noisemakers which produce a small report designed to surprise the user and which include:

(a) A party popper, which is a small plastic or paper item containing not in excess of twenty-five hundredths of a grain of explosive mixture. A string protruding from the device is pulled to activate the device, expelling paper streamers and producing a small report.

(b) A string popper which is a small tube containing not in excess of twenty-five hundredths of a grain of explosive mixture with string protruding from both ends. The strings are pulled to activate the friction-sensitive mixture, producing a small report.

(c) A snapper or drop pop, which is a small paper wrapped item containing no more than twenty-five hundredths of a grain of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed one hundred grams of mixture per item.

(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, are hand-held or ground-based, cannot propel themselves through the air and contain not more than seventy-five grams of chemical compound per tube or not more than a total of two hundred grams if multiple tubes are used. Provided, That sparklers and sparkler devices as provided for herein shall not be sold to anyone below the age of sixteen years old.
AN ACT to amend and reenact section three, article twenty-four, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing by two the number of members on the West Virginia forest management review commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. WEST VIRGINIA FOREST MANAGEMENT REVIEW COMMISSION.

§5-24-3. Commission continued; composition; appointment of members.

The West Virginia forest management review commission heretofore created is hereby continued for the purposes set forth in this article. This commission shall be comprised of five members from the West Virginia Senate, a co-chairman and four members to be appointed by the Senate president, and five members of the House of Delegates, a co-chairman and four members to be appointed by the speaker; four members to be representatives from the commercial forest industry in the state, and three members of the public-at-large. The seven nonlegislative members shall be appointed by the governor, with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; three members shall be appointed to serve a term of four years; and two
members shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for an overlapping term of six years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only to the remainder of such term. Each board member shall serve until the appointment of his or her successor.

CHAPTER 117

(Com. Sub. for H. B. 2242—By Delegates J. Martin, Michael, Love, Border, Evans, Komlnar and Cann)

[Passed February 16, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting the division of natural resources, the division of forestry and the department of agriculture from travel rules in the purchasing division.

Be it enacted by the Legislature of West Virginia:

That section forty-eight, 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-3-48. Travel rules; exceptions.

1 The secretary of administration shall promulgate rules relating to the ownership, purchase, use, storage, maintenance and repair of all motor vehicles and aircraft owned by the state of West Virginia and in the possession

Clerk's Note: This section was also amended by S. B. 547 (Chapter 99), which passed subsequent to this act.
of any department, institution or agency thereof: Provided, That the provisions of sections forty-eight through fifty-three of this article shall not apply to the division of highways of the department of transportation, the division of public safety of the department of military affairs and public safety, the division of natural resources, the division of forestry and the department of agriculture. If, in the judgment of the secretary, economy or convenience indicate the expediency thereof, the secretary may require all vehicles and the aircraft subject to regulation by this article, or such of them as he or she may designate, to be kept in such garages, and other places of storage, and to be made available in such manner and under such terms for the official use of such departments, institutions, agencies, officers, agents and employees of the state as the secretary may designate by any such rule as he or she may from time to time promulgate. The secretary also has the authority to administer the travel regulations promulgated by the governor in accordance with section eleven, article three, chapter twelve of this code, unless otherwise determined by the governor.

CHAPTER 118

(Com. Sub. for S. B. 148—By Senators Ross, Love, Miller, Plymale and Sharpe)

[Passed March 7, 1995; in effect ninety days from passage. Approved by the Governor.]
excluding life insurance companies from the definition of "trustee"; requirement of certificate of authority from the consumer protection division of the office of the attorney general for persons controlling funds paid pursuant to a preneed funeral contract and for persons who offer preneed funeral contract; exceptions; application for certificate; biennial reporting period; renewal of certificate of authority; providing for a temporary certificate and establishing a fee therefor; issuance of certificate; records of certificate holder; license for agents and employees of preneed funeral contract sellers; fee and requirements for license; limiting authorized deduction of overhead costs from contract proceeds; deposit of contract proceeds or insurance premiums; restrictions on management of proceeds; review of accounts by division of banking; promulgation of legislative rules by the consumer protection division of the office of the attorney general; disbursement of proceeds; authority to provide services or goods after the death of a contract beneficiary; refund of proceeds; cancellation of contract; immunity from civil liability; interest on proceeds; unenforceable contracts and recovery of proceeds; trustees and fidelity bond for trust funds; investment standards; irrevocable contracts; contract recording requirements and fee; allocation of recording fee to preneed burial contract regulation fund and preneed guarantee fund and subjecting said funds to legislative appropriation; payment of lost benefits from preneed guarantee fund on pro rata basis; performance and fulfillment of contract; transfer and assignment of contract; credit life insurance; sale of business; forms; limitations on solicitation of contracts; prohibited acts; proceedings, actions and remedies upon occurrence of prohibited acts; statutory lien for claim against contract provider; liability of certificate holder for acts and omissions of employees and agents; specific civil actions against contract providers; award of punitive damages and attorney fees and deposit thereof into preneed burial contract regulation fund; severability; and criminal penalties.

Be it enacted by the Legislature of West Virginia:
That article fourteen, 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 14. PRENEED FUNERAL CONTRACTS.

§47-14-1. Declaration of policy; legislative intent.
§47-14-2. Definitions.
§47-14-3. Certificate of authority required; fees to go to division; special account established; duties of certificate holder.
§47-14-4. Agents and employees; licenses required; fee to go to division.
§47-14-5. Disposition of proceeds; trusts; procedure for administration; division to promulgate rules.
§47-14-6. Withdrawal of funds.
§47-14-7. Income on trust accounts.
§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trust; contracts may be irrevocable; “Preneed Guarantee Fund” established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

§47-14-10. Solicitation.
§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.
§47-14-12. Civil action; attorney’s fees.
§47-14-13. Penalty.
§47-14-14. Severability.

§47-14-1. Declaration of policy; legislative intent.

1 It is contrary to public policy for any person to receive, hold, control or manage funds or proceeds received from the sale of, or from a contract to sell, funeral services, funeral goods, burial goods or any one or combination of them, where payments for the same are made either outright or on an installment basis, prior to the death of the person or persons so purchasing them, or for whom they are purchased, unless that person holds, controls or manages those funds subject pursuant to the limitations prescribed by this article and the legislative rules promulgated pursuant thereto.

12 It is the legislative intent that the provisions of this article shall be construed as a limitation upon the manner
in which a person is permitted to accept funds in prepayment of funeral services to be performed in the future, or funeral or burial goods to be used in connection with the funeral or final disposition of human remains, so that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of need while at the same time providing all possible safeguards whereunder such prepaid funds cannot be dissipated, whether intentionally or not, in order that such funds are available for the payment of funeral services so arranged. Further, it is the legislative intent that no person may offer, sell or negotiate for the sale of a preneed funeral contract through anyone who is not licensed pursuant to the provisions of this article.

§47-14-2. Definitions.

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

1. "Burial goods" means all merchandise supplied in regard to burial, or entombment in a mausoleum or inurnment in a columbarium, but does not include those services actually performed by a cemetery acting only as such, or the sale by any person of cemetery lots, land or interests therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

2. "Contract beneficiary" means any person specified or implied in a preneed funeral contract, upon whose death funeral services, funeral goods or burial goods are to be performed, provided or delivered.

3. "Contract buyer" means any person, whether or not a contract beneficiary, who purchases goods or services pursuant to a preneed funeral contract but does not include any person other than a natural person.

4. "Contract seller" or "seller" means a person, his agent or his employee who sells, makes available or pro-
vides preneed funeral contracts.

(5) "Division" means the consumer protection division of the office of the attorney general.

(6) "Funds" means moneys or other consideration, other than premiums for insurance policies or annuities paid to a life insurance company, received pursuant to the sale of a preneed funeral contract, including interest accrued or earned thereon.

(7) "Funeral goods" means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as such, or the sale by the cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

(8) "Funeral services" means those services usually performed by a licensed funeral establishment or director including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

(9) "Person" means a natural person, partnership, firm, association or corporation, including any agent or employee thereof residing in or doing business in this state who is engaged in the selling of, making available of or providing of preneed funeral contracts, as defined herein, or who is the recipient of funds paid for such purpose.

(10) "Person who makes a preneed funeral contract available" means a person who, while not directly selling the contents of a preneed funeral contract to the public through his efforts, makes such contracts available to the
public, but does not include manufacturers of funeral
goods or burial goods.

(11) "Personal residence" means any residential build-
ing in which one temporarily or permanently maintains
his abode including, but not limited to, hotels, motels,
apartments, nursing homes, convalescent homes, homes
for the aged and public and private institutions.

(12) "Preneed funeral contract" means any contract,
agreement, mutual understanding, series or combination
of contracts, agreements and mutual understandings, in-
cluding a contract that is financed by the purchase of an
insurance policy or annuity, under which, for a specified
consideration paid in advance of death in a lump sum or
by installments, a person promises to furnish or make
available or provide funeral services, funeral goods or
burial goods for use at a time determinable by the death
of the contract beneficiary who is either named or implied
therein.

(13) "Provider" means a person who, though not nec-
essarily a party to a preneed funeral contract, makes the
services or goods referred to in such a contract available to
the public pursuant to such a contract.

(14) "Trustee" means any natural person, partnership
or corporation, including any bank, trust company, sav-
ings and loan association or credit union, which receives
money pursuant to any agreement or contract made pur-
suant to the provisions of this article. The term "trustee"
does not include an insurance company licensed pursuant
to chapter thirty-three of this code.

§47-14-3. Certificate of authority required; fees to go to divi-
sion; special account established; duties of certifi-
cate holder.

(a) No person may receive, hold, control or manage
any funds or other thing of value tendered as payment on
any preneed funeral contract unless such person has ob-
tained a certificate of authority or renewal thereof from
the division: Provided, That no bank, trust company, savings and loan association or other financial institution regulated by this state or insured by an agency of the United States federal government or life insurance companies licensed pursuant to the provisions of chapter thirty-three of this code is required to obtain a certificate of authority.

(b) No person may sell, make available or be a provider of a preneed funeral contract unless such person has obtained a certificate of authority or renewal thereof from the division.

(c) Any person desiring to obtain a certificate of authority shall file with the division, upon forms provided by the division, a completed application, together with a two hundred dollar application fee for the original certificate of authority. The fee shall be payable to a special revenue account to be known as the "Preneed Burial Contract Regulation Fund" to be used for the purpose of administering the provisions of this article. The original application or a renewal application shall contain at least the following information:

(1) The name and address of each person owning ten percent or more interest in the applicant;

(2) The experience of the applicant;

(3) Such other information as the division may require to determine to its satisfaction that the applicant possesses the ability, experience, financial stability and integrity to negotiate preneed funeral contracts and, in the case of a funeral service provider, to provide the funeral services, funeral goods or burial goods as specified therein; and

(4) The types of preneed funeral contracts proposed to be written or otherwise used and copies of any writings used pursuant thereto; and if a person is a party to or bound by any such contract, an itemization of all outstanding preneed funeral contracts, the dates upon which such contracts were entered into, the names of all parties
involved in such contracts or having any right thereunder, the amount paid toward each contract and, if payments are not completed, the amounts owing on each contract and the present depository or holder of all such funds.

(d) Each certificate of authority holder shall renew its certificate of authority according to the schedule established by this article. The fee for renewal shall be two hundred dollars per each entity, payable to the "Preneed Burial Contract Regulation Fund" established by this section.

(e) Each certificate of authority holder shall file with the division a biennial report which shall contain the following:

(1) An identification of all outstanding preneed funeral contracts, the dates upon which the contracts were entered into by the parties, the names of all parties involved in such contracts or having any right thereunder, including, but not limited to, the contract beneficiary, the amount paid and interest earned on each contract and, if payments are not completed, the amounts owing and the present balance of funds applicable to each such contract.

(2) The date on which any insurance policy or annuity was purchased to fund a preneed funeral contract, the amount paid for each such insurance policy or annuity and the present value of each such insurance policy or annuity.

(3) The name of the contract seller and the name of the provider of the services and goods and a statement that the provider has sufficient funds available to perform all of its obligations under its contracts.

(4) A statement that the contract seller and the person receiving funds paid thereunder have complied with the trust requirements of this article, and the name and address of the present depository or holder of such funds and a statement of all the amounts thereof itemized as to each such contract.
(5) Any changes or amendments in any contracts or obligations of the seller and provider which have occurred since the date of the last report.

(6) Such other information as may be considered necessary by the division in order to meet its responsibilities under this article.

Any person who sells, provides or makes preneed funeral contracts available or receives moneys or other consideration therefor from the public or who otherwise holds or performs such contracts with or without a certificate of authority is required to file a biennial report with the division as prescribed in this subsection. Beginning with the year one thousand nine hundred ninety-five, the reporting period for which a biennial report is to be made pursuant to this section shall be a calendar year ending on the thirty-first day of December every other year. All such reports shall be filed with the division no later than the thirty-first day of March of the year following the reporting period.

(f) Beginning with the calendar year one thousand nine hundred ninety-five, the certificate of authority shall expire on the thirtieth day of June following its issuance: Provided, That a temporary certificate of authority may be issued by the division for a period not to exceed six months for purposes of implementing the change in the certificate of authority reporting period for the year one thousand nine hundred ninety-five. The fee for such temporary certificate shall be one hundred dollars.

(g) Every application, request for renewal and statement filed with the division shall be sworn to by the applicant or certificate holder. If the certificate holder is a partnership, it shall be sworn to by each member thereof. If the certificate holder is a corporation, it shall be sworn to by the president and secretary thereof.

(h) Upon the satisfaction of the division, based upon the application statements and any other information that the applicant meets the requirements of this article and of
the rules promulgated by the division and, if upon investi-
gation by the division of the principals, including direc-
tors, officers, stockholders, employees and agents of such
person, nothing is found to warrant denial of the certifi-
cate, the division shall issue the certificate of authority or
renewal thereof.

(i) (1) The certificate holder shall keep accurate ac-
counts, books and records in this state of all transactions,
copies of all contracts, dates and amounts of payments
made and accepted thereon, the name and address of each
contract buyer, the name of the contract beneficiary of
each contract, the name of the trustee holding trust funds
received under each contract and such other records as the
division may require to determine whether such certificate
holder is complying with the provisions of this article.
Such records must be kept for twelve months after the date
of termination of the applicable preneed contract.

(2) The certificate holder shall make all books and
records pertaining to preneed funeral contracts available
to the division for examination. The division may not
more frequently than once in any calendar year, unless
pursuant to an order of court for good cause shown, dur-
ing ordinary business hours, cause to be examined the
books, records and accounts of the certificate holder with
respect to funds received by said certificate holder and for
that purpose may require the attendance of and examine,
under oath, all persons whose testimony the division may
require.

(3) The certificate holder shall pay for the cost of any
examination which is not the first one in that calendar
year, including the salary and traveling expenses paid to
the person making the examination during the time spent
in making the examination and in traveling to and return-
ing from the point where the records are kept and all other
expenses necessarily incurred in the examination. The
division shall assess and collect a fee for each such exami-
nation, based on the certificate holder's total outstanding
preneed funeral service contracts and the cost of such
examination, but the cost to the person being audited shall
not be more than a total cost of five hundred dollars for
each such examination. This fee shall be payable to the
"Preneed Burial Contract Regulation Fund" established in
this section.

§47-14-4. Agents and employees; licenses required; fee to go
to division.

No agent or employee of a contract seller may sell
preneed funeral contracts in this state without having first
obtained a license from the division. The fee for such
license and the annual renewal thereof is twenty-five dol-
ars. These fees shall be payable to the "Preneed Burial
Contract Regulation Fund" established by section three of
this article. The division shall not issue such license with-
out requiring an applicant for the license, or if the appli-
cant is a corporation, its individual agents, to provide
proof to warrant its issuance by presenting with the appli-
cation affidavits from his employer stating that, to the
employer's best information, knowledge and belief, the
applicant merits a license. The acts of the agent shall be
considered acts of the employer. The division may re-
quire the applicant to pass a written examination to ascer-
tain if the applicant has sufficient knowledge of the indus-
try and the provisions of this article to properly engage in
the business governed by the provisions of this article.

§47-14-5. Disposition of proceeds; trusts; procedure for ad-
ministration; division to promulgate rules.

(a) All sums paid or collected on such preneed funeral
contracts entered into after the seventh day of June, one
thousand nine hundred eighty-three, shall be handled in
the following manner:

(1) The contract seller or other person collecting the
funds may retain for his own use and benefit and for the
purpose of covering selling expenses, servicing costs and
general overhead, an amount not to exceed ten percent of
the total original amount agreed to be paid by the contract
buyer as reflected in the original preneed funeral contract.
Upon retaining such amount, no further deduction from any sums collected pursuant to the contract for such purposes shall be made by any such seller or person or their assignees or transferees. Such ten percent or other amount is exempt from the trust and refunding provisions of this article;

(2) All of the funds collected under the contract, less the amount authorized to be deducted under subdivision (1) of this subsection, shall be deposited under the provisions of subdivision (3) of this subsection;

(3) Unless otherwise specifically exempt under this article, all funds paid to or collected by any person as the result of a preneed funeral contract shall, within thirty days after receipt thereof by such a person, be deposited in this state: (i) In the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state; or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state. In the event a preneed funeral contract is funded by the purchase of an insurance policy or an annuity, the premiums paid on such insurance policy or annuity shall be deposited with an insurer licensed pursuant to the provisions of chapter thirty-three of this code.

(b) The funds to be deposited from more than one preneed funeral contract may at the option of the recipient thereof or the certificate of authority holder be placed in a common or commingled trust fund in this state under a single trust instrument.

(c) All deposits, other than for insurance policies or annuities, shall be placed in an account with a trustee in the name of the contract seller, provider or person making the contract available, as set forth in the contract, to whom the contract buyer makes payment. Each trustee shall
maintain records showing the trust's investment and, as to each contract showing the amount paid, the amount of interest earned and the current balance with respect to any particular buyer's contract.

(d) All funds required to be deposited and covered by this article shall remain in this state.

(e) All accounts of money deposited in any bank, savings institution, building and loan association or credit union in accordance with the provisions of this article are subject to periodic examination by the division of banking of this state.

(f) The division shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of administering the provisions of this article.

§47-14-6. Withdrawal of funds.

(a) Disbursements of funds discharging any preneed funeral contract shall be made by the trustee to the person named in the contract upon receipt of a certified photocopy of the death certificate of the contract beneficiary and evidence satisfactory to the trustee that the preneed funeral contract has been fully performed. In the event that, after the death of the contract beneficiary, the contract services or goods are not desired by the heirs or by the personal representative of the contract beneficiary, the party obligated to provide the funeral services, funeral goods or burial goods under the contract shall have authority to provide such services or goods despite the desires to the contrary expressed by such heirs or personal representative. If the service and goods are not provided upon the death of the contract beneficiary because of actions of the seller, provider or person making the preneed funeral contract available, then all of the funds held on deposit shall in ten days be refunded to the contract buyer or his legal representative who also has available any other remedy set forth in this article.
(b) Any contract buyer or legally authorized person acting in his behalf may cancel a preneed funeral contract prior to the death of the contract beneficiary by notifying in writing the contract seller or present obligor of the provisions thereof, if a different person, of such desire to cancel. The seller or obligor shall, in ten days after receipt of such notice, notify the trustee of such cancellation and the trustee shall within thirty days after receipt of written notification pay to the contract buyer or his legal representative all funds placed in the trust account and paid on the contract.

(c) If the contract buyer is more than one hundred eighty days in default with respect to any payment or installment due on or pursuant to the preneed funeral contract, the contract seller or provider may, on ten days' prior written notice, cancel the contract. All funds in the trust account shall be refunded to the contract purchaser or to the estate of the contract beneficiary.

(d) The seller of a preneed funeral contract may not cancel the contract unless the contract is in default as to the buyer's obligations.

(e) Payment by any depository or any trustee made in good faith pursuant to the terms of this section shall forever relieve such depository or trustee, as such, for any further liability for such funds under the contract and in law.

§47-14-7. Income on trust accounts.

(a) Whether the payments on a preneed funeral contract are placed in a bank, savings institution, building and loan association, credit union or in a common trust fund as permitted in this article, or are part of a commingled common trust fund as permitted in this article, the income from a contract deposit, except as otherwise provided herein, shall accrue to the credit of the individual account of such contract until such time as the burial goods, funeral goods and funeral services for the contract beneficiary are required to be delivered and returned by reason of such beneficiary's death.
(b) Upon the death of such contract beneficiary, the total amount in the trust account attributable to the contract beneficiary shall be disbursed as follows:

(1) If the cost of the goods and services contracted for at the time of such beneficiary's death exceeds the amount paid under the contract, then the provider may have and use the principal and so much of the interest as may be necessary to defray such additional cost over and above the contract cost: Provided, That to the extent that the cost of goods and services provided exceeds the principal and interest thereon, the provider shall provide and make available the goods and services contracted for at no additional cost to the contract purchaser or to the heirs or personal representative of the contract beneficiary;

(2) To the extent the principal and interest thereon exceed the cost of the goods and services contracted for, then the provider may retain only so much of the principal and interest necessary to defray the total of such cost and the balance shall be returned to the estate of the contract beneficiary or to the contract buyer as may be proper under the provisions of this article or the legislative rules promulgated by the division.

(c) The trustee for the trust shall make annual valuations of assets held in trust. No person may withdraw income from the trust, except for the purpose of executing the terms of the contract, disbursing the trust proceeds as provided in this article and paying costs incidental to the trust, including, but not limited to, reasonable trust fees and tax assessments.

§47-14-8. Limitations on enforcement of contract; appointment and removal of trustees; standards for administration of trusts; contracts may be irrevocable; "Preneed Guarantee Fund" established; assignment of contract allowed; credit life insurance allowed; successor in interest defined.

(a) A contract seller, provider or person making the
preneed funeral contract available may not enforce a
preneed funeral contract made in violation of this article,
but a contract buyer or his heirs or legal representative
may recover all amounts paid under his contract and all
accrued income on such amount where the contract seller,
provider or person making the preneed funeral contract
available has violated the provisions of this article as to
such contract. The right of such recovery is in addition to
the remedy provided for in section twelve of this article.

(b) A contract seller, provider or person making the
preneed funeral contract available may appoint a board of
at least three individual trustees under a trust instrument, if
the trustee is other than a chartered state or national bank
or trust company under the supervision of the division of
banking of this state, to serve as trustees of its trust funds.
Each individual trustee shall be a resident of this state and
shall hold office subject to the direction of the seller. Not
more than one member of the board of trustees of a trust
fund may have a proprietary interest in the seller appoint-
ing trustees or in any certificate of authority holder who is
placing funds in such trust.

Individual trustees of a trust fund established under
the provisions of this article shall file a fidelity bond with a
corporate surety thereon which is licensed to do business
in this state with the division in an amount equal to the
funds in trust, guaranteeing payment of damages occa-
sioned by breach of the trustees' fiduciary duties. The
trustees of one or more trust funds need file only one such
bond. The aggregate liability of the surety shall in no
case exceed the face amount of the bond. The division or
any aggrieved person claiming against any bond required
by this section may maintain an action against the trustee
and the surety. Individual trustees shall take no action
respecting trust funds unless there is on file with the divi-
sion a bond as required by this section. If the trustees are
individuals, the division may suspend the certificate of
authority of any contract seller, provider or person mak-
ing the preneed funeral contract available having trust
funds with respect to which there is no bond on file with
the division as required by this section.

(c) All trustees subject to the provisions of this article
shall comply with the following investment standards: In
acquiring, investing, reinvesting, exchanging, retaining,
selling and managing property for the benefit of others,
trustees have the responsibilities which customarily attach
to such offices and to the type of estates entrusted to their
care and shall exercise the judgment and care under the
circumstances then prevailing which men of prudence,
discretion and intelligence exercise in the management of
their own affairs, not in regard to speculation but in regard
to the permanent disposition of their funds, considering
the probable income as well as the probable safety of their
capital.

(d) No preneed funeral contract may restrict any con-
tract buyer who may make his or her contract irrevocable
in accordance with the laws and regulations of this state.
Irrevocable preneed contracts may be transferred pursuant
to the provisions of this section.

(e) All preneed funeral contracts must be in writing
and no contract form may be used without prior approval
of the division.

(f) Each contract buyer shall pay a contract recording
fee of five dollars to the contract seller. Beginning on the
first day of July, one thousand nine hundred ninety-five,
the contract buyer shall pay a fee of ten dollars to the
contract seller. Beginning on the first day of January, one
thousand nine hundred ninety-six, the contract buyer shall
pay a fee of fifteen dollars to the contract seller. Begin-
ing on the first day of January, one thousand nine hun-
dred ninety-seven, the contract buyer shall pay a fee of
twenty dollars to the contract seller. The contract seller is
to forward such sum and a copy of the contract to the
division within ten days after its execution. The division
shall record the contract. Within ten days after receiving
the fee, the division will notify the contract buyer, by mail,
of the recording. Forty percent of the contract recording fees fee shall be placed by the division in an account under the division's control entitled "Preneed Guarantee Fund", and the income thereon shall accrue to the fund. The division may use such income, if necessary in its discretion, to enforce this article. For fiscal years beginning after the thirtieth day of June, one thousand nine hundred ninety-six, no expenditures or disbursements may be made from the "Preneed Burial Contract Regulation Fund" and the "Preneed Guarantee Fund" created in this article except by appropriation by the Legislature. The remaining sixty percent of the contract recording fee shall be placed by the division in the "Preneed Burial Contract Regulation Fund" as provided in section three of this article.

In the event any contract buyer of any preneed funeral contract is unable to receive the benefits of the contract, or to receive the funds due by reason of his cancellation thereof, such buyer may apply therefor to the division on a form supplied by the division. Upon the finding of the division that said benefits or return of payment is not available to the buyer, the division will cause to be paid to the said buyer from the "Preneed Guarantee Fund" the amount actually paid by the buyer under the contract to the extent funds are available in the "Preneed Guarantee Fund". In the event multiple claims are made and there are insufficient funds in the "Preneed Guarantee Fund" to satisfy all claims in full, payments from the "Preneed Guarantee Fund" shall be made on a pro rata basis. If the seller's liability for default is subsequently proven, any judgment resulting therefrom shall, to the extent that it is for amounts paid from the "Preneed Guarantee Fund", be ordered payable to the "Preneed Guarantee Fund".

(g) Notwithstanding any other provision of this article to the contrary, delivery of funeral or burial goods prior to the death of the person for whose benefit they are purchased does not constitute performance or fulfillment, either wholly or in part, of any preneed contract or series
(h) The contract buyer may, on acceptance in writing by a transferee, transfer the obligations of the seller, provider or person making the preneed funeral contract available to other persons within or without this state. The funds on deposit for the contract and any future payments, if any, by the contract buyer shall then be transferred and deposited under applicable state law, if any, in the state wherein the contract buyer resides or to a state where the obligations of the provider of the funeral service and goods will be fulfilled.

Upon such transfer, the contract buyer and transferee shall, in writing, release the contract seller, provider or person making the preneed funeral contract available and the trusts, as applicable, from further liability under such contract.

Nothing in this article or in any preneed funeral contract may limit the right of a contract buyer to assign such a contract to any person whomsoever except as specifically provided herein and except that if the assignee is a resident of this state or the contract is to be fulfilled by the assignee in this state, the assignee must hold a certificate of authority under this article. If the contract is to be fulfilled in another state, the assignee must in all respects be in compliance with the preneed funeral law of that state, if any.

(i) Notwithstanding any other law of this state, a contract seller, provider or person making the preneed funeral contract available may, if requested by the contract buyer where the contract is to be paid in installments, provide for the sale of credit life insurance on the life of the contract beneficiary in order to have the funds necessary to make payment in full under the contract if the beneficiary should die prior to completing all the payments due. The seller shall disclose all costs of such insurance in clear language and shall inquire of the buyer whether he understands the terms of the insurance contract and is aware of
152 the total cost of the insurance.

153 (j) In the event any certificate of authority holder or
154 anyone in violation of this article who has outstanding
155 preneed funeral contracts and is not the current holder of
156 a certificate of authority sells its business, through the sale
157 of assets or stock, which is involved in the fulfillment of
158 obligations under preneed funeral contracts, the buyer of
159 such business is a "successor in interest" and is covered not
160 only by this article but shall assume the obligations of
161 seller under seller's outstanding preneed funeral contracts
162 regardless of whether seller made known to buyer the
163 existence of such contract or contracts.


1 The administration and enforcement of the provisions
2 of this article are vested in the division. The division shall
3 prepare and furnish all forms necessary under this article,
4 including forms for applications for certificates of author-
5 ity, for renewals thereof, for annual statements, for other
6 required reports and for preneed funeral contracts. The
7 division shall promulgate, in accordance with the provi-
8 sions of chapter twenty-nine-a of this code, legislative
9 rules as may be necessary to effectuate the purpose of this
10 article.

§47-14-10. Solicitation.

1 (a) Any contract seller or agent or employee or person
2 acting in behalf of any such person may not:

3 (1) Directly or indirectly call upon individuals or
4 persons in hospitals, rest homes, nursing homes or similar
5 institutions for the purpose of soliciting preneed funeral
6 contracts or making funeral or final disposition arrange-
7 ments without first having been specifically requested by
8 such person to do so;

9 (2) Directly or indirectly employ any agent, assistant,
10 employee, independent contracting person or any other
11 person to call upon individuals or persons in hospitals, rest
homes, nursing homes or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by such person to do so;

(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial or funeral goods for such person;

(4) Solicit or accept or pay any consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons or the services of a specific crematory, mausoleum or cemetery except where such arrangement is the subject of a preneed funeral contract;

(5) Solicit by telephone call or by visit to a personal residence, unless such solicitation has been previously requested by the person solicited or by a family member residing at such residence.

(b) Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to restrict the right of a person to lawfully advertise, to use direct mail or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to such communication or otherwise initiating discussion of the goods or services being offered.

(c) Nothing herein shall be construed to prohibit general advertising.

(d) Anyone making a personal or written solicitation for a preneed funeral contract shall, at the very first instance, divulge the real reason for the contract or solicitation.

(e) The division may promulgate legislative rules regulating the solicitation of preneed contracts by certificate
holders or registrants to protect the public from solicitation practices which utilize undue influence or which take undue advantage of a person's ignorance or emotional vulnerability.

§47-14-11. Disciplinary proceedings; revocation of license or certificate; liquidation upon violation.

(a) No person shall:

1. Violate any provisions of this article;

2. Attempt to procure or procure a certificate of authority or license under this article by bribery or fraudulent misrepresentation;

3. Have had any certificate of authority or license to sell preneed funeral contracts revoked, suspended or otherwise acted against, including denial of licensure, by a licensing authority of another jurisdiction;

4. Have been convicted or found guilty of a crime in any jurisdiction which directly relates to the sale of preneed funeral contracts;

5. Make or file a report required by this article which the certificate holder knows to be false or knowingly fail to make or file a report required by this article;

6. Advertise goods or services in a manner which is fraudulent, false, deceptive or misleading in form or content;

7. Engage in fraud, deceit or misrepresentation in the conduct of business governed by the provisions of this article;

8. Fail to comply with a lawful order of the division;

9. Knowingly make any false or misleading statement, oral or written, directly or indirectly, regarding the sale of services or merchandise in connection with the conduct of the certificate holder's business;
(10) Fail to maintain the funds received under the contracts as required by this article;

(11) Fail to cancel a preneed funeral contract upon proper request and refund that portion of the amount paid on such a contract as required by this article;

(12) Fail to renew or qualify for renewal of its certificate of authority or license;

(13) Fail to produce records in connection with the certificate holder’s business or otherwise fail to comply with the provisions of this article or any rule promulgated by the division pursuant to this article; or

(14) Solicit by the certificate holder, its agents, employees or representatives through the use of fraud, undue influence, misrepresentation or overreaching or other forms of vexatious conduct as defined by law, this article or the legislative rules promulgated by the division.

(b) Upon the violation of any of the provisions of this article, determined in an administrative hearing after notice and an opportunity to be heard, the division may institute revocation proceedings regarding a license to operate a funeral establishment or a certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate of authority or license, or file a complaint in a court of competent jurisdiction setting forth the relevant facts and praying for the issuance of an order to show cause why the license to operate a funeral home or the certificate of authority or license to sell preneed funeral contracts, or both the license and the certificate should not be revoked or the person should not be enjoined from engaging in business governed by the provisions of this article.

(1) Upon application for such rule to show cause, the court may, in its discretion, issue an injunction restraining the defendant from transacting further business until further order of the court.
(2) Upon return of such order to show cause, the court shall hear and try the issue forthwith. If the court determines that the person so charged as defendant in such proceeding has not been guilty of the omission, failure or violation alleged in the complaint by the division, the court shall dismiss such complaint. If the court finds that the charges of the division are supported by the evidence, it may enter an order directing the revocation of a license to operate a funeral home or of a certificate of authority or license to sell preneed funeral contracts, or the revocation of both the license and the certificate of authority or license, or permanently enjoining the person from engaging in business governed by the provisions of this article until its requirements are met. The court shall have the authority to order the liquidation of the business upon a finding that the person engaged therein is in violation of any provision of this article.

(3) In any such order of liquidation or in any order or orders thereafter entered, the court shall provide a notice to creditors for the filing of claims and otherwise direct all other matters necessary and essential to govern an estate in receivership.

c) When the division finds that any person has violated the provisions of subsection (a) of this section after an administrative hearing or finds that any funeral services or funeral or burial goods are offered for sale when the offer is not a bona fide offer to sell such services or goods, it may enter an order imposing one or more of the following penalties:

(1) Denial of an application for a certificate of authority or license, including a renewal;

(2) Revocation or suspension of a certificate of authority or license;

(3) Imposition of an administrative fine not to exceed one thousand dollars for each county where there are separate violations;
(4) Issuance of a reprimand; or

(5) Placement of the licensee or certificate holder on probation for a period of time and subject to such conditions as the division may specify.

(d) All preneed funeral contract buyers have a priority in claims against the provider, to the extent that their interest is set forth in this article. Such priority constitutes a statutory lien at the time the contract was executed to the extent payments on the contract were made and interest has accrued.

(e) For purposes of this section, the acts or omissions of any person employed by or under contract to or on behalf of the certificate holder shall be treated as acts or omissions of the certificate holder.

(f) Subject to the provisions of subsection (b), section seven of this article, all prices or quotations of prices contained in any preneed funeral contract shall be fully and clearly stated.

§47-14-12. Civil action; attorney's fees.

(a) The failure of a certificate holder, a licensee or of any other person engaged in the sale of preneed funeral contracts without a certificate of authority or license required pursuant to the provisions of this article to comply with the provisions of this article gives rise to a civil cause of action in favor of the division, any aggrieved consumer, contract guarantor or contract purchaser. Upon entry of a judgment for damages in favor of the plaintiff, the trial court shall award punitive damages in the amount of three times the actual damages awarded in the judgment.

(b) The prevailing party, after judgment in trial court and exhaustion of all appeals, if any, shall receive reasonable attorney's fees and costs from the nonprevailing party.

(c) The attorney for the prevailing party shall submit a
sworn affidavit of his time spent on the case and his costs incurred for all the motions, hearings and appeals to the trial judge who presided over the civil case.

(d) The trial judge shall award the prevailing party the sum of reasonable costs incurred in the action, plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(e) Any award of attorney's fees or costs shall become part of the judgment and subject to execution as the law allows.

(f) The division shall deposit any penalties or attorney's fees recovered by the division in the "Preneed Burial Contract Regulation Fund" for the purpose of administering and enforcing the provisions of this article.

§47-14-13. Penalty.

(a) Any person who willfully and knowingly conceals or embezzles any funds paid as the result of a preneed funeral contract is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a definite term of not less than three years and fined not more than ten thousand dollars.

(b) Except as provided by subsection (a) of this section, any person who violates any provision of this article or the legislative rules promulgated hereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred nor more than five thousand dollars for each occurrence, or confined in jail for a term not to exceed one year, or both fined and confined.

§47-14-14. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or otherwise invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.
AN ACT to amend and reenact section eight, article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto a new section, designated section fourteen-a, all relating to the nomination or appointment of guardians or conservators of protected persons; providing for the nomination of guardians or conservators; authorizing the nomination of successor guardians or conservators; and limiting the liability of guardians or conservators and of guardians or committees appointed under prior law.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Procedure for Appointment.
3. Guardianship and Conservatorship Administration.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.

§44A-2-8. Nomination of guardian or conservator of alleged or adjudicated protected person; preferences.

1 (a) Any person who has sufficient capacity to form a preference may at any time nominate any individual or entity to serve as his or her guardian or conservator. The nomination may be made in writing, by an oral request to
the court, or may be proved by any other competent evidence. The designation of a representative under a valid medical power of attorney, a living will or of a surrogate decision-maker shall constitute competent evidence of the nomination of a guardian, and the designation of an attorney under a valid durable power of attorney shall constitute competent evidence of the nomination of a conservator.

(b) A guardian or conservator whose appointment has not been terminated or who has not been otherwise removed pursuant to the provisions of section four or section five of this article may nominate a successor guardian or conservator for consideration by the court. The nomination may appear in a will or other writing and shall contain a brief statement of the reason or reasons for the nomination.

(c) The court shall appoint the one so nominated if the nominee is otherwise eligible to act and would serve in the best interests of the alleged or adjudicated protected person.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-14a. No liability of present conservator or guardian for prior acts or failure to act of preceding conservators, guardians or committees.

No liability may accrue to any present conservator or guardian appointed pursuant to the provisions of this chapter solely for the prior acts or failure to act of any committee or guardian appointed under prior law, as defined in subsection (f), section two, article one of this chapter, or solely for the prior acts or failure to act of any preceding conservator or guardian, as defined in section four, article one of this chapter. No liability may accrue to any guardian or committee appointed under prior law, as defined in subsection (f), section two, article one of this chapter, solely for the acts or failure to act of any preceding guardian and committee.
CHAPTER 120
(Com. Sub. for H. B. 2560—By Delegates Prezioso and Mezzatesta)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fines for violations of parking and other privileges reserved to handicapped and physically disabled persons; and providing for signs.

Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

(1) A physically handicapped person with limited mobility;

(2) A relative of a person who is a physically handicapped person with limited mobility;

(3) A person who regularly resides with a person who is a physically handicapped person with limited mobility;

(4) A person who regularly transports a person who is a physically handicapped person with limited mobility, may apply for a special registration plate or a mobile
windshield placard by submitting to the commissioner:

(A) An application therefor on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate or a mobile windshield placard; and

(B) A certificate issued by a person licensed to practice medicine stating that the applicant or the applicant's spouse or a member of the applicant's immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician's certificate and the registration fee, if he finds that the applicant qualifies for the special registration plate or mobile windshield placard provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate or mobile windshield placard. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the mobile windshield placard provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an applicant may be issued the special plate, is guilty of a misdemeanor or, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined one hundred dollars.

(b) Any physically disabled person, any person who is a relative of a physically disabled person, any person who regularly resides with a physically disabled person, or any person who regularly transports a physically disabled person, may apply for a vehicle decal for a Class A vehicle
by submitting to the commissioner:

(1) An application therefor on a form prescribed and furnished by the commissioner;

(2) A certificate issued by a person licensed to practice medicine stating that the applicant or the applicant's relative is a physically disabled person, or that the person regularly residing with the applicant or regularly transported by the applicant is a physically disabled person, as defined in this section, and stating the expected duration of the disability; and

(3) A fee of one dollar.

Upon receipt of the application, the physician's certificate and the registration fee, if he finds that the applicant qualifies for the vehicle decal provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed decal. The decal shall be displayed on the motor vehicle in the manner prescribed by the commissioner and shall be valid for such period of time as the certifying physician has determined that the disability will continue, which period of time, reflecting the date of expiration, shall be conspicuously shown on the face of the decal.

As used in this section "physically disabled person" means any person who has sustained a temporary disability rendering it unduly difficult and burdensome for him to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the vehicle decal provided for in this subsection, and any person who falsely certifies that a person is physically disabled in order that an applicant may be issued the vehicle decal, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined one hundred dollars.

(c) Free stopping, standing or parking places shall be designated in close proximity to all state, county and mu-
nicipal buildings and other public facilities, and shall be marked with the words "reserved for disabled persons", or with words of like import. Such places shall be reserved solely for physically disabled and handicapped persons during the hours that such buildings are open for business.

Any person whose vehicle properly displays a valid special registration plate, mobile windshield placard or decal may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section shall take precedence and shall apply.

The privileges provided for in this subsection shall apply only during those times when the vehicle is being used for the transportation of a physically handicapped or disabled person. Any person who knowingly exercises, or attempts to exercise, such privileges at a time when the vehicle is not being used for the transportation of a physically handicapped or disabled person is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined one hundred dollars.

(d) No person may stop, stand or park a motor vehicle in an area designated, zoned or marked for the handicapped or physically disabled, and no person may stop, stand or park any motor vehicle at special, clearly marked, parking locations provided for the handicapped or physically disabled in or on privately owned parking lots, parking garages, or other parking areas, when such person is not physically disabled or handicapped and does not have
displayed upon his vehicle a distinguishing insignia for
the handicapped issued by the commissioner: Provided,
That any person in the act of transporting a handicapped
or physically disabled person, as defined by this article,
may stop, stand or park a motor vehicle not displaying a
distinguishing insignia for the handicapped in an area
designated, zoned or marked for the handicapped or
physically disabled for the limited purposes of loading or
unloading his handicapped or physically disabled
passenger: Provided, however, That such vehicle shall be
promptly moved after the completion of such limited
purposes.

Any person who violates the provisions of this
subsection is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined one hundred dollars.

(e) The erection of future signs marking areas
designated for the handicapped or physically disabled
shall include the words "$100 fine".

(f) The commissioner shall adopt and promulgate
rules and regulations in accordance with the provisions of
chapter twenty-nine-a of this code to effectuate the
provisions of this section.

CHAPTER 121

(Com. Sub. for H. B. 2476—By Delegates Kiss and Petersen)

[Passed March 10, 1995; in effect from passage.
Became law without Governor’s signature.]
generally to certificate of need procedures; providing the
definition of terms; requiring certificate of need for new
providers of personal care services; setting forth minimum
review criteria for certificate of need; authorizing the health
care cost review authority to amend or modify certificate of
need standards; setting forth the requirements for amending
the standards; and authorizing the health care cost review
authority to declare a limited moratorium for purposes of
amending obsolete or nonexistent standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-3. Certificate of need.
§16-2D-5. Powers and duties of state agency.
§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-2. Definitions.

As used in this article, unless otherwise indicated by
the context:

(a) "Affected person" means:

(1) The applicant;

(2) An agency or organization representing consum-
ers;

(3) Any individual residing within the geographic area
served or to be served by the applicant;

(4) Any individual who regularly uses the health care
facilities within that geographic area;

(5) The health care facilities which provide services
similar to the services of the facility under review and
which will be significantly affected by the proposed project;

(6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third-party payors who reimburse health care facilities similar to those proposed for services;

(8) Any agency which establishes rates for health care facilities similar to those proposed; or

(9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a facility which is free-standing and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a facility which is free-standing and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of
this code: *Provided,* That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: *Provided, however,* That such exemption from review of private office practice shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the governing body or the person proposing to provide such new institutional health service. Incorporators or promoters who will not constitute the governing body or persons responsible for the new institutional health service may not be an applicant.

(e) "Bed capacity" means the number of beds for which a license is issued to a health care facility, or, if a facility is unlicensed, the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards.

(f) "Capital expenditure" means an expenditure:

(1) Made by or on behalf of a health care facility; and

(2) (A) Which (i) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and (B) which (i) exceeds the expenditure minimum, or (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made, or (iii) is a substantial change to the services of such facility. For pur-
poses of subparagraph (i), paragraph (B), subdivision (2) of this definition, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities, including staff effort and consulting and other services, essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in paragraph (B), subdivision (2) of this definition is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review shall be considered capital expenditures, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such subdivisions if a transfer of the equipment or facilities at fair market value would be subject to review. A series of expenditures, each less than the expenditure minimum, which when taken together are in excess of the expenditure minimum, may be determined by the state agency to be a single capital expenditure subject to review. In making its determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(g) "Expenditure minimum" means seven hundred fifty thousand dollars per fiscal year.

(h) "Health," used as a term, includes physical and mental health.

(i) "Health care facility" is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including free-standing hemodialysis units, inter-
mediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies, rehabilitation facilities and health maintenance organizations; community mental health and mental retardation facilities, whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(j) "Health care provider" means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

(k) "Health maintenance organization" means a public or private organization, organized under the laws of this state, which:

(1) Is a qualified health maintenance organization under Section 1310(d) of the Public Health Service Act, as amended, Title 42 United States Code Section 300e-9(d); or

(2) (A) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services and out-of-area coverage; and

(B) Is compensated except for copayments for the provision of the basic health care services listed in paragraph (A), subdivision (2), subsection (k) of this definition to enrolled participants on a predetermined periodic rate basis without regard to the date the health care services are
provided and which is fixed without regard to the frequency, extent or kind of health service actually provided; and

(C) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

(l) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.

(m) "Home health agency" is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services, including, but not limited to, physical, speech and occupational therapy and nutritional and medical social services to persons in their place of residence on a part-time or intermittent basis.

(n) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(o) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services above the level of room and board.

(p) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a
new institutional health service. Each long-range plan shall consist of the information required by the state agency in regulations adopted pursuant to section eight of this article.

(q) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and which costs in excess of three hundred thousand dollars, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 United States Code Sections 1395x (10) and (11). In determining whether medical equipment costs more than three hundred thousand dollars, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(r) "Medically underserved population" means the population of an urban or rural area designated by the state agency as an area with a shortage of personal health services or a population having a shortage of such services, after taking into account unusual local conditions which are a barrier to accessibility or availability of such services. Such designation shall be in regulations adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the Federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 United States Code Section 254(b)(3).
(s) "New institutional health service" means such service as described in section three of this article.

(t) "Offer", when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(u) "Person" means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(v) "Personal care services" means medically oriented activities or tasks ordered by a physician and which is implemented according to a nursing plan of care which has been completed by, and which is supervised by, a registered nurse and billed to the state. These services include those activities which are intended to enable persons to meet their physical needs and to be treated by a physician in their place of residence. The term shall include, but not be limited to, services related to personal hygiene, dressing, feeding, nutrition, environmental support functions and health related tasks.

(w) "Physician" means a doctor of medicine or osteopathy legally authorized to practice by the state.

(x) "Proposed new institutional health service" means such service as described in section three of this article.

(y) "Psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(z) "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrat-
ed program of medical and other services which are provided under competent professional supervision.

(aa) "Review agency" means an agency of the state, designated by the governor as the agency for the review of state agency decisions.

(bb) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(cc) "State agency" means the health care cost review authority created, established, and continued pursuant to article twenty-nine-b of this chapter.

(dd) "State health plan" means the document approved by the governor after preparation by the former health care planning commission, or that document as approved by the governor after amendment by the health care planning council or its successor agency.

(ee) "Substantial change to the bed capacity" of a health care facility means any change, with which a capital expenditure is associated, that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigned existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives shall be excluded from this definition.

(ff) "Substantial change to the health services" of a health care facility means the addition of a health service which is offered by or on behalf of the health care facility and which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered, or the termination of a health
service which was offered by or on behalf of the facility,
but does not include the providing of hospice care, ambu-
lance service, wellness centers or programs, adult day care,
or respite care by acute care facilities.

(gg) "To develop", when used in connection with
health services, means to undertake those activities which
upon their completion will result in the offer of a new
institutional health service or the incurring of a financial
obligation, in relation to the offering of such a service.

§16-2D-3. Certificate of need.

Except as provided in section four of this article, any
new institutional health service may not be acquired, of-
f ered or developed within this state except upon applica-
tion for and receipt of a certificate of need as provided by
this article. Any new provider of personal care service
offered by any person, facility, corporation or entity, other
than an agency of the state, may not be offered or devel-
oped in this state, if the service is to be funded in whole, or
in part, by state or federal medicaid funds, except upon
application for and receipt of a certificate of need as pro-
vided in section six of this article: Provided, That a certif-
icate of need shall not be required for a person providing
specialized foster care personal care services to one indi-
vidual and those services are delivered in the provider's
home. Whenever a new institutional health service for
which a certificate of need is required by this article is
proposed for a health care facility for which, pursuant to
section four of this article, no certificate of need is or was
required, a certificate of need shall be issued before the
new institutional health service is offered or developed.
No person may knowingly charge or bill for any health
services associated with any new institutional health service
that is knowingly acquired, offered or developed in viola-
tion of this article, and any bill made in violation of this
section is legally unenforceable. For purposes of this
article, a proposed "new institutional health service" in-
cludes:
(a) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(c) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(3) In the case of donated property, on the date on which the gift is completed under state law;

(d) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(e) (1) The addition of health services which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered; and
(2) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization;

(f) The deletion of one or more health services, previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which is associated with a capital expenditure;

(g) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(h) The acquisition of major medical equipment;

(i) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subsection, "substantial change" shall be defined by the state agency in regulations adopted pursuant to section eight of this article.

§16-2D-5. Powers and duties of state agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall be responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency's responsibilities under this article.
(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate to advance the purposes of quality assurance, cost effectiveness and access and the other purposes of this article, to allocate the supply of such services.

(f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate
of need shall be granted for the construction or addition
of any intermediate care or skilled nursing beds except in
the case of facilities designed to replace existing beds in
unsafe existing facilities. A health care facility in receipt
of a certificate of need for the construction or addition of
intermediate care or skilled nursing beds which was ap-
proved prior to the effective date of this section must incur
an obligation for a capital expenditure within twelve
months of the date of issuance of the certificate of need.
No extensions shall be granted beyond the twelve-month
period: Provided, however, That a maximum of sixty
beds may be approved, as a demonstration project, by the
state agency for a unit to provide nursing services to pa-
tients with alzheimer's disease if: (1) The unit is located in
an existing facility which was formerly owned and operat-
ed by the state of West Virginia and is presently owned by
a county of the state of West Virginia; (2) the facility has
provided health care services, including personal care
services, within one year prior to the effective date of this
section; (3) the facility demonstrates that awarding the
certificate of need and operating the facility will be cost
effective for the state; and (4) that any applicable lease,
lease-purchase or contract for operating the facility was
awarded through a process of competitive bidding consis-
tent with state purchasing practices and procedures: Pro-
vided further, That an application for said demonstration
project shall be filed with the state agency on or before the
twenty-first day of October, one thousand nine hundred
ninety-three.

(h) No additional intermediate care facility for the
mentally retarded (ICF/MR) beds shall be granted a certifi-
cate of need, except that prohibition does not apply to
ICF/MR beds approved under the Kanawha County circuit
court order of the third day of August, one thousand nine
hundred eighty-nine, civil action number MISC-81-585
issued in the case of E. H. v. Matin, 168 W.V. 248, 284
(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement for any beds so converted. In converting beds, the hospital must convert a minimum of one acute care bed into one medicare certified only skilled nursing bed. The health care cost review authority may require a hospital to convert up to and including three acute care beds for each medicare certified only skilled nursing bed. The health care cost review authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ee), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital must demonstrate a need for the project.

(4) The hospital must use existing space for the medi-
care certified only skilled nursing beds. Under no cir-
sumstances shall the hospital construct, lease or acquire
additional space for purposes of this section.

(5) The hospital must notify the acute care patient,
prior to discharge, of facilities with skilled nursing beds
which are located in or near the patient's county of resi-
dence.

Nothing in this subsection shall negatively affect the
rights of inspection and certification which are otherwise
required by federal law or regulations or by this code of
duly adopted regulations of an authorized state entity.

(j) Notwithstanding the provisions of subsection (g) of
this section, a retirement life care center with no skilled
nursing beds may apply to the health care cost review
authority for a certificate of need for up to sixty skilled
nursing beds provided the proposed skilled beds are medici-
care certified only. On a statewide basis, a maximum of
one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this sub-
section which shall include:

(1) A requirement that the one hundred eighty beds
are to be distributed on a statewide basis;

(2) There shall be a minimum of twenty beds and a
maximum of sixty beds in each approved unit;

(3) The unit developed by the retirement life care
center shall meet all federal and state licensing certifica-
tion and operational requirements applicable to nursing
homes;

(4) The retirement center must demonstrate a need for
the project;

(5) The retirement center must offer personal care,
(6) The retirement center must demonstrate both short and long-term financial feasibility.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

(l) The state agency is hereby empowered to order a moratorium upon the processing of an application or applications for the development of a new institutional health service filed pursuant to section three of this article, when criteria and guidelines for evaluating the need for such new institutional health service have not yet been adopted or are obsolete. Such moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new institutional health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section six of this article.

(m) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, they shall file with the secretary of state, for publication in the state register, a notice of proposed
action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the governor. Within thirty days of receiving said proposed amendments or modifications, the governor shall either approve or disapprove all or part of said amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor may be revised and resubmitted.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsections (f) and (g), section nine of this article, in making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum, consider all of the following criteria that are applicable: Provided, That in the case of a health maintenance organization or an ambulatory care facility or health care facility controlled, directly or indirectly, by a health maintenance organization or combination of health maintenance organizations, the criteria considered shall be only those set forth in subdivision (12) of this subsection: Provided, however, That the criteria set forth in subsection (f) of this section applies to all hospitals, nursing homes and health care facilities when ventilator services are to be provided for any nursing facility bed:

(1) The recommendation of the designated health systems agency for the health service area in which the
proposed new institutional health service is to be located;

(2) The relationship of the health services being reviewed to the state health plan and to the applicable health systems plan and annual implementation plan adopted by the designated health systems agency for the health service area in which the proposed new institutional health service is to be located;

(3) The relationship of services reviewed to the long-range development plan of the person providing or proposing the services;

(4) The need that the population served or to be served by the services has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, are likely to have access to those services;

(5) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated;

(6) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service;

(7) The relationship of the services proposed to the existing health care system of the area in which the services are proposed to be provided;

(8) In the case of health services proposed to be provided, the availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan, applicable health systems plan and annual implementation
(9) The appropriate and nondiscriminatory utilization of existing and available health care providers;

(10) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(11) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(12) To the extent not precluded by subdivision (1), subsection (f), section nine of this article, the special needs and circumstances of health maintenance organizations. These needs and circumstances are limited to:

(A) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization for the health services proposed to be provided by the organization; and

(B) The availability of the new health services from nonhealth maintenance organization providers or other health maintenance organizations in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(i) Would be available under a contract of at least five years' duration;

(ii) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization;
(iii) Would cost no more than if the services were provided by the health maintenance organization; and

(iv) Would be available in a manner which is administratively feasible to the health maintenance organization;

(13) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(14) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, to obtain needed health care;

(15) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(16) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(17) In the case of health services proposed to be provided, if the services are to be available in a limited number of facilities, the extent to which the schools in the area for health professions will have access to the services
(18) In the case of health services proposed to be provided, the extent to which the proposed services will be accessible to all the residents of the area to be served by the services;

(19) In accordance with section five of this article, the factors influencing the effect of competition on the supply of the health services being reviewed;

(20) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section five of this article, and serve to promote quality assurance and cost effectiveness;

(21) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(22) In the case of existing services or facilities, the quality of care provided by the services or facilities in the past;

(23) In the case where an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The state agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(24) The special circumstances of health care facilities with respect to the need for conserving energy;
(25) The contribution of the proposed service in meeting the health related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan, applicable health systems plan and annual implementation plan, as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:

(A) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which medicare, medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by a house staff and admission by personal physician;

(26) The existence of a mechanism for soliciting consumer input into the health care facility's decision making process.

(b) The state agency may include additional criteria which it prescribes by regulations adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the
(d) An application for a certificate of need may not be made subject to any criterion not contained in this article or not contained in regulations adopted pursuant to section eight of this article.

(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current medicaid services. No facility may, by providing ventilator services,
provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(g) In the case where application is made by any person or entity to provide personal care services which are to be billed for medicaid reimbursement, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of the cost of current medicaid services. No person or entity may provide personal care services to be billed for medicaid reimbursement without demonstrating that the provision of the personal care service will result in no additional fiscal burden to the state: Provided, That a certificate of need shall not be required for a person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home. The state agency will also consider the total fiscal liability to the state for all applications which have been submitted.

CHAPTER 122
(H. B. 2722—By Delegate Gallagher)

[Passed March 11, 1995; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section five-a, article five-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to periodic license inspections of hospitals; exemptions; annual self-evaluations; and confidentiality of accreditation reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-5a. Accreditation reports accepted for periodic license inspections.

Notwithstanding any other provision of this article, a periodic license inspection shall not be conducted by the state department of health and human resources for a hospital if the hospital has applied for and received an exemption from that requirement: Provided, That no exemption granted diminishes the right of the state department of health and human resources to conduct complaint inspections: Provided, however, That no exemption granted relieves a hospital from compliance with section six-a of this article.

The state department of health and human resources shall grant an exemption from a periodic license inspection during the year following accreditation if a hospital applies by submitting evidence of its accreditation by the joint commission on accreditation of health care organizations or the American osteopathic association and submits a complete copy of the commission's accreditation report.

If the accreditation of a hospital is for a period longer than one year, the state department of health and human resources may conduct at least one license inspection of the hospital after the first year of accreditation and before the accreditation has expired and may conduct additional license inspections if needed. Hospitals receiving a three-year accreditation shall conduct annual self-evaluations using the current year accreditation manual for hospitals (AMH) unless the state department of health and human resources informs the hospital that the hospital will be inspected by the state department of health and human resources. Hospitals are not required to conduct self-evaluations for any calendar year during which they are inspected by the state department of health and human resources. These self-evaluations shall be completed and placed on file in the hospital by the thirty-first day of
March of each year. Hospitals shall make the results of
the self-evaluation available to the state department of
health and human resources if requested.

Accreditation reports filed with the state department
of health and human resources shall be treated as
confidential in accordance with section ten of this article.

CHAPTER 123

(H. B. 2026—By Delegates Douglas, Gallagher, Beane,
Amores, Staton and Manuel)

[Passed March 10, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eight-a, article five-b, chapter sixteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to substituted consent for
health care services in extended care facilities operated in
connection with hospitals.

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

**ARTICLE 5B.** HOSPITALS AND SIMILAR INSTITUTIONS.

**§1.** Repeal of section relating to substituted consent for health
care services in extended care facilities operated in
connection with hospitals.

Section eight-a, article five-b, chapter sixteen of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, is hereby repealed.
AN ACT to amend and reenact section two, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to nursing, personal and residential care homes; and exempting fraternal homes from the licensing requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-2. Definitions.

1. As used in this article, unless a different meaning appears from the context:

2. (a) The term "director" means the secretary of the department of health and human resources or his or her designee;

3. (b) The term "facility" means any nursing home, personal care home or residential board and care home as defined in subdivisions (d), (e) and (f) of this section:

Provided, That the care or treatment in a household, whether for compensation or not, of any person related by
blood or marriage, within the degree of consanguinity of 
second cousin to the head of the household, or his or her 
spouse, may not be deemed to constitute a nursing home,
personal care home or residential board and care home 
within the meaning of this article. Nothing contained in 
this article applies to hospitals, as defined under section 
one, article five-b of this chapter; or state institutions, as 
defined under section three, article one, chapter 
twenty-five of this code or section six, article one, chapter 
twenty-seven of this code; or nursing homes operated by 
the federal government or the state government; or institu-
tions operated for the treatment and care of alcoholic 
patients; or offices of physicians; or hotels, boarding 
homes or other similar places that furnish to their guests 
only room and board; or extended care facilities operated 
in conjunction with a hospital; or to homes or asylums 
operated by fraternal orders pursuant to article three, 
chapter thirty-five of this code;

(c) The term "limited and intermittent nursing care" 
means care which may only be provided when the need 
for such care meets these factors: (1) The resident re-
quests to remain in the facility; (2) the resident is advised 
of the availability of other specialized health care facilities 
to treat his or her condition; and (3) the need for such 
care is the result of a medical pathology or a result of the 
normal aging process. Limited and intermittent nursing 
care shall only be provided by or under the direct supervi-
sion of a registered professional nurse and in accordance 
with rules promulgated by the board of health;

(d) The term "nursing home" means any institution, 
residence or place, or any part or unit thereof, however 
named, in this state which is advertised, offered, main-
tained or operated by the ownership or management, 
whether for a consideration or not, for the express or im-
plied purpose of providing accommodations and care, for 
a period of more than twenty-four hours, for four or more
persons who are ill or otherwise incapacitated and in need
of extensive, on-going nursing care due to physical or
mental impairment or which provides services for the
rehabilitation of persons who are convalescing from illness
or incapacitation;

(e) The term "personal care home" means any institu-
tion, residence or place, or any part or unit thereof, howev-
er named, in this state which is advertised, offered, main-
tained or operated by the ownership or management,
whether for a consideration or not, for the express or im-
plied purpose of providing accommodations and personal
assistance and supervision, for a period of more than
twenty-four hours, to four or more persons who are de-
pendent upon the services of others by reason of physical
or mental impairment who may require limited and inter-
mittent nursing care, including those individuals who qual-
ify for and are receiving services coordinated by a li-
censed hospice: Provided, That services utilizing equip-
ment which requires auxiliary electrical power in the event
of a power failure may not be used unless the personal
care home has a backup power generator;

(f) The term "residential board and care home" means
any residence or place, or any part or unit thereof, howev-
er named, in this state which is advertised, offered, main-
tained or operated by the ownership or management,
whether for consideration or not, for the express or im-
plied purpose of providing accommodations and personal
assistance and supervision, for a period of more than
twenty-four hours, to four to ten persons who are not
related to the owner or manager by blood or marriage
within the degree of consanguinity of second cousin and
are dependent upon the services of others by reason of
physical or mental impairment or who may require limited
and intermittent nursing care but are capable of
self-preservation and are not bedfast, including those indi-
viduals who qualify for and are receiving services coordi-
nated by a licensed hospice: \textit{Provided}, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential board and care home has a backup power generator;

(g) The term "nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterizations, special procedure contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

(h) The term "personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(i) The term "patient" means an individual under care in a nursing home;

(j) The term "resident" means an individual living in a personal care home or a residential board and care home;

(k) The term "sponsor" means the person or agency legally responsible for the welfare and support of a patient or resident;

(l) The term "person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

The director may define in regulations any term used herein which is not expressly defined.
AN ACT to amend and reenact section two, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the power of county commissions to create, enlarge, reduce, merge, dissolve or consolidate public service districts subject to the approval of the public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) On its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of
this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.
(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information
as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be
inadequate to provide such enlarged service. The clerk of
the county commission of each county into which any
part of such district extends shall retain in his office an
authentic copy of the order creating, enlarging, reducing,
merging, dissolving or consolidating the district: Provided,
however, That within ten days after the entry of an order
creating, enlarging, reducing, merging, dissolving or con-
solidating a district, such order must be filed for review
and approval by the public service commission. The
public service commission shall provide a hearing in the
affected county on the matter and may approve, reject or
modify the order of the county commission if it finds it is
in the best interests of the public to do so. The public
service commission shall adopt rules relating to such
filings and the approval, disapproval or modification of
county commission orders for creating, enlarging,
merging, dissolving or consolidating districts. The
provisions of this section shall not apply to the
implementation by a county commission of an order
issued by the public service commission pursuant to this
section and section one-b of this article.

(g) The county commission may, if in its discretion it
deems it necessary, feasible and proper, enlarge the district
to include additional areas, reduce the area of the district,
where facilities, equipment, service or materials have not
been extended, or dissolve the district if inactive or create
or consolidate two or more such districts. If consolidation
of districts is not feasible, the county commission may
consolidate and centralize management and administration
of districts within its county or multicounty area to achieve
efficiency of operations: Provided, That where the county
commission determines on its own motion by order
entered of record, or there is a petition to enlarge the
district, merge and consolidate districts, or the
management and administration thereof, reduce the area
of the district or dissolve the district if inactive, all of the
applicable provisions of this article providing for hearing,
otice of hearing and approval by the public service
commission shall apply. The commission shall at all times
attempt to bring about the enlargement or merger of
existing public service districts in order to provide
increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year.

CHAPTER 126

(S. B. 563—By Senator Walker)

[Passed March 11, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article twenty-nine-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-nine-e, all relating to the state health care and human services programs generally, including, but not limited to, terminating the uncompensated health care and medicaid expenditures task force and transferring their duties to the legislative oversight commission on health and human resources accountability; creating a legislative oversight commission on health and human resources accountability; appointments; compensation and expenses; powers and duties; studies; and annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

Article

29C. Indigent Care.
29E. Legislative Oversight Commission on Health and Human Resources Accountability.

ARTICLE 29C. INDIGENT CARE.

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

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

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

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

(b) The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and human resources and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administration of health care and health care related programs and the citizens of this state. Of the members of the Senate appointed by the president, not more than two shall be from the same political party. Of the members of the House of Delegates appointed by the speaker, not more than two shall be from the same political party.
(c) Members originally appointed to the task force shall serve for terms beginning on the date of appointment and ending on the thirtieth day of June, one thousand nine hundred ninety-five, unless sooner replaced by the president or the speaker as applicable, or, in the discretion of the president and the speaker, unless the work of the task force is completed or the need for the task force no longer exists prior to that date. The task force shall cease to exist on the thirtieth day of June, one thousand nine hundred ninety-five. The duties of the task force, as defined in this section, shall be assumed by the legislative oversight commission on health and human resources accountability created pursuant to the provisions of article twenty-nine-e of this chapter.

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

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

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

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

This article shall be effective from passage and, notwithstanding the provisions of section four of this article, shall terminate on the thirtieth day of June, one thousand nine hundred ninety-five.

ARTICLE 29E. LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY.

§16-29E-1. Findings and purpose.
§16-29E-2. Legislative intent.
§16-29E-3. Definitions.
§16-29E-4. Creation of a legislative oversight commission on health and human resources accountability.
§16-29E-5. Powers and duties of commission.
§16-29E-1. Findings and purpose.

The Legislature hereby finds and declares that:

1. A crisis exists in the funding of health and social programs of this state;
2. These programs exist to provide federal and state supported services to citizens in need;
3. The health and well-being of these citizens is jeopardized when uncontrolled growth in various programs uses a disproportionate share of the available funding;
4. State programs are often developed and implemented with limited private or federal grant moneys, which require future funding from the limited state resources; and
5. The problem is exacerbated when various state agencies make competing or conflicting policy decisions.

§16-29E-2. Legislative intent.

It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the various agencies within the department of health and human resources serve the following core set of principles:

1. That all health and social programs offered under state authority be coordinated to maximize efficiencies and minimize competition within the various agencies thereby addressing the needs of the citizens more effectively;
2. That communication be facilitated among the various agencies within the department of health and human resources and between the department and the Legislature;
3. That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with existing programs and stated...
goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding; and

(6) That agencies previously exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect the health and well-being of the citizens of West Virginia.

§16-29E-3. Definitions.

As used in this article:

(a) "Agency" means those various agencies, authorities, boards, committees, commissions or departments of the department of health and human resources with authority to promulgate legislative rules pursuant to this chapter that regulate health care providers, practitioners or consumers; or those offering social services programs;

(b) "Commission" means the legislative oversight commission on health and human resources accountability; and

(c) "Department" means the department of health and human resources.

§16-29E-4. Creation of a legislative oversight commission on health and human resources accountability.

(a) There is hereby created a joint commission of the Legislature known as the legislative oversight commission on health and human resources accountability. The commission shall be composed of six members of the Senate appointed by the president of the Senate and six members of the House of Delegates appointed by the speaker of the House of Delegates. No more than five of the six members appointed by the president of the Senate and the speaker of the House of Delegates, respectively, may be
members of the same political party. In addition, the
president of the Senate and speaker of the House of Dele-
gates shall be ex officio nonvoting members of the com-
mission and shall designate the cochairpersons. At least
one of the Senate appointees and one of the House of
Delegates appointees shall be the chairperson of the com-
mittee on health and human resources of the Senate and
House of Delegates, respectively, and at least one of the
Senate appointees and at least one of the House of Dele-
gates appointees shall be a member of the committee on
finance of the Senate and House of Delegates, respective-
ly. The members shall serve until their successors shall
have been appointed as heretofore provided.

(b) Members of the commission shall receive such
compensation and expenses as provided in article two-a,
chapter four of this code. Such expenses and all other
expenses including those incurred in the employment of
legal, technical, investigative, clerical, stenographic, adviso-
ry and other personnel shall be paid from an appropria-
tion to be made expressly for the legislative oversight
commission on health and human resources accountabili-
ty: Provided, That if no such appropriation be made, such
expenses shall be paid from the appropriation under
"Fund No. 0175 for Joint Expenses" created pursuant to
the provisions of said chapter: Provided, however, That no
expense of any kind payable under the account for joint
expenses shall be incurred unless first approved by the
joint committee on government and finance.

(c) The commission shall meet at any time both dur-
ing sessions of the Legislature and in the interim or as
often as may be necessary.

§16-29E-5. Powers and duties of commission.

(a) The powers, duties and responsibilities of the com-
mission shall include the following:

(1) Make a continuing investigation, study and review
of the practices, policies and procedures of the health care
and social services agencies in this state;

(2) Make a continuing investigation, study and review
of all matters related to health and social policy in the state;

(3) Review program development by the various agencies of the department of health and human resources if those programs impact the physical, emotional or social well-being of the citizens of West Virginia;

(4) Conduct studies on:

(A) The amount of funds expended by hospitals and other health care providers of this state for services to persons who are unable to pay for those services and for which they receive no other form of reimbursement;

(B) The extent to which persons in this state forego needed medical services because of insufficient income and assets to pay for those services;

(C) The extent to which the state is maximizing available federal programs and moneys in providing health care services to the citizens of this state;

(D) The operation of the programs and funds created by article twenty-nine-c of this chapter; and

(E) The roles of the public, private and private nonprofit sectors in providing health care services to the citizens of this state;

(5) Review and study the state medicaid program in order to determine if the state medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate private insurance resources for medicaid beneficiaries;

(6) Review and study the feasibility and financial impact upon the state of assuring increased access to medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment in a primary care clinic program, if available;

(7) Review and study the feasibility and financial impact upon the state of the establishment of different and lesser schedules of payment for primary health services delivered by a hospital emergency room as compared to the schedule of payments for emergency room services of
a true medical emergency nature;

(8) Conduct a study on the effects of rural health networks, including effects on the quality, cost and availability of care; and

(9) Meet jointly with the advisory committee created in article thirty-five of this chapter to determine methods for coordinating the collection and analysis of health care information within the state, including the development of health information systems that will allow for the electronic transmittal of data and access by the various agencies of government.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies and reviews pursuant to the provisions of section seven of this article.

§16-29E-6. Examination and subpoena powers; contempt proceedings.

(a) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation.

(b) All witnesses appearing before the commission under subpoena shall testify under oath or affirmation. Any member of the commission may administer oaths or affirmations to such witnesses.

(c) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the cochairpersons, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.
(d) If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there pro-
pounded, or shall fail or refuse to produce books, records, documents, papers or any other tangible thing within his control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§16-29E-7. Legislative reports.

(a) The commission shall submit annual reports to the Legislature, as required by the provisions of section five of this article, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the several health and human resources agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to:

(A) The implementation of health care or social services programs;

(B) Improving the accessibility of appropriate health care in all areas of this state;

(C) Improving the health status of the citizens of this state; and

(D) Coordinating social services programs to reflect a cohesive delivery of transitional services.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(b) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of health and social services programs and to improve the quality of health and social services available in this state.
CHAPTER 127

(Com. Sub. for S. B. 161—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1995; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, six and nine, article sixteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the West Virginia rural health advisory panel; legislative findings; definitions; continuing the rural health initiative; reports and audit required; and termination date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-2. Legislative findings and declarations.

§18B-16-3. Definitions.

§18B-16-4. Establishment of rural health initiative; goals of rural health initiative.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

§18B-16-9. Accountability; reports and audit required.

§18B-16-2. Legislative findings and declarations.

(a) The Legislature hereby finds and declares that the health of the citizens of West Virginia is of paramount importance; that the education of health care professionals must be reshaped; that the delivery of health care services must be improved; that refocusing health sciences education will aid in the recruitment of health care professionals and their retention in the state; that the educational process should incorporate clinical experience in rural areas and
provide improved availability of health care services throughout the state, especially in rural areas; and that the state investment in such education and services must be contained within reasonable limits.

(b) The Legislature further hereby finds and declares that the vice chancellor for health sciences shall provide an integral link among the advisory panel created in section six of this article, the health sciences programs at the state institutions of higher education, the governing boards of the state's institutions of higher education and the joint commission for vocational-technical-occupational education to assure cooperation and the coordination of efforts to effectuate the goals set forth in section four of this article.

(c) It is the further finding of the Legislature that the appropriations pursuant to section eight of this article are made with the understanding that the educational and clinical programs existing at the schools of medicine on the effective date of this section, as well as the goals of this article, will be met without requests for increases in the annual appropriations through the fiscal year beginning on the first day of July, one thousand nine hundred ninety-five, with the exception of requested increases in appropriations for the purpose of meeting any increases in the salaries of personnel as may be given to other employees at state institutions of higher education under the board of trustees.

(d) The Legislature further finds that there is a serious need throughout the state for a greater number of primary care physicians and allied health care professionals and a serious need for improved accessibility to adequate health care throughout the state, especially in rural areas; that the state's medical schools are finding it difficult to satisfy the ever increasing demand for qualified persons to deliver these health care services; and that the state's institutions of higher education and rural health care facilities existing throughout the state are a major educational resource for training students in these health care services, as well as a
major resource for providing health care to underserved citizens of this state.

(e) The Legislature further finds that in order to provide adequate health care in rural communities there must be a cooperative initiative among educators, physicians, mid-level providers, allied health care providers and the rural communities.

(f) The Legislature further finds that the rural health initiative and the Kellogg program have together implemented a nationally acclaimed, highly successful effort to enable the health professions schools to serve the rural and primary care health needs of the state and should be continued as a single program within the office of the vice chancellor for health sciences.

§18B-16-3. Definitions.

For purposes of this article, and in addition to the definitions set forth in section two, article one of this chapter, the terms used in this article have the following definitions ascribed to them:

(a) "Advisory panel" or "panel" means the West Virginia rural health advisory panel created under section six of this article.

(b) "Allied health care" means health care other than that provided by physicians, nurses, dentists and mid-level providers and includes, but is not limited to, care provided by clinical laboratory personnel, physical therapists, occupational therapists, respiratory therapists, medical records personnel, dietetic personnel, radiologic personnel, speech-language-hearing personnel and dental hygienists.

(c) "Mid-level provider" includes, but is not limited to, advanced nurse practitioners, nurse-midwives and physician assistants.

(d) "Office of community and rural health services" means that agency, staff or office within the department of health and human resources which has as its primary focus
21 the delivery of rural health care.
22 (e) "Primary care" means basic or general health care
23 which emphasizes the point when the patient first seeks
24 assistance from the medical care system and the care of
25 the simpler and more common illnesses. This type of care
26 is generally rendered by family practice physicians, gener-
27 al practice physicians, general internists, obstetricians,
28 pediatricians, psychiatrists and mid-level providers.
29 (f) "Primary health care education sites" or "sites",
30 whether the term is used in the plural or singular, means
31 those rural health care facilities established for the provi-
32 sion of educational and clinical experiences pursuant to
33 section seven of this article.
34 (g) "Rural health care facilities" or "facilities", whether
35 the term is used in the plural or singular, means nonprofit,
36 free-standing primary care clinics in medically
37 underserved or health professional shortage areas and
38 nonprofit rural hospitals with one hundred or less licensed
39 acute care beds located in a nonstandard metropolitan
40 statistical area.
41 (h) "Schools of medicine" means the West Virginia
42 university school of medicine, which is the school of
43 health sciences; the Marshall school of medicine, which is
44 the Marshall medical school; and the West Virginia school
45 of osteopathic medicine.
46 (i) "Vice chancellor" means the vice chancellor for
47 health sciences provided for under section six, article two
48 of this chapter.

§18B-16-4. Establishment of rural health initiative; goals of
rural health initiative.

1 There is hereby established a rural health initiative
2 under the auspices of the board of trustees and under the
3 direction and administration of the vice chancellor. This
4 initiative shall combine the efforts of the rural health ini-
5 tiative as created by this article in the year one thousand
6 nine hundred ninety-one, and the Kellogg program as
administered by the vice chancellor before the effective
date of this section. The goals of the rural health initiative
include, but are not limited to:

(a) The development of at least six primary health care
education sites;

(b) The establishment of satellite programs from the
primary health care education sites to provide additional
opportunities for students and medical residents to serve
under role models in rural areas;

(c) The provision of training to all medical students
under the direction of primary care physicians practicing
in rural areas;

(d) The provision of admission preferences for qualified students entering primary care in needed specialties in
underserved areas;

(e) The creation of medical residency rotations in
hospitals and clinics in rural areas and the provision of
incentives to medical residents to accept the residencies at
these hospitals and clinics;

(f) The placement of mid-level providers in rural com-
munities and the provision of support to the mid-level
providers;

(g) The extension of rural hospital physician respite
loan programs to rural primary health care clinics;

(h) The development of innovative programs which
enhance student interest in rural health care opportunities;

(i) The increased placement of primary care physi-
cians in underserved areas;

(j) The increased retention of obstetrical providers and
the availability of prenatal care;

(k) The increased use of underserved areas of the state
in the educational process;

(l) An increase in the number of support services pro-
vided to rural practitioners;

(m) An increase in the retention rate of graduates from West Virginia medical schools, nursing schools and allied health care education programs;

(n) The development of effective health promotion and disease prevention programs to enhance wellness; and

(o) The establishment of primary health care education sites which complement existing community health care resources and which do not relocate the fundamental responsibility for health care from the community to the board of trustees.

§18B-16-6. Creation of the West Virginia rural health advisory panel.

(a) The West Virginia rural health advisory panel is hereby created and the rural health initiative advisory panel is hereby terminated as of the first day of July, one thousand nine hundred ninety-five. The advisory panel, which shall be appointed by the governor after consulting with the vice chancellor, shall consist of one community representative from each of the consortia of primary health care education sites; five members shall be rural health care providers, two of whom shall be representatives of rural health care facilities selected from such lists as may be submitted by associations interested or involved in the provision of rural health care, two of whom shall be physicians engaged in the private practice of rural medicine, and one of whom shall be an advanced nurse practitioner or a nurse midwife with experience in rural health care delivery; the dean or designee from each of the participating health sciences schools, ex officio; one representative from private colleges; one representative from the state college system; one site coordinator; the commissioner of public health, ex officio; and the director of the office of community and rural health services, ex officio. Except for the ex officio members, members of the panel shall serve for staggered three-year terms: Provided, That one third of the initial appointments shall be designated...
Members of the advisory panel shall be reimbursed for the cost of reasonable and necessary expenses actually incurred in the performance of their duties: Provided, That members of the panel who are employed by the state of West Virginia shall not be reimbursed for their expenses under the provisions of this section.

(b) The functions and duties of the panel are to recommend policies and procedures to the vice chancellor related to the rural health initiative and to oversee and coordinate implementation of those policies and procedures.

(c) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia rural health advisory panel shall continue to exist until the first day of July, two thousand one, to allow for the completion of a preliminary performance review by the joint committee on government operations.

(d) The advisory panel has the power and the duty to recommend rural health care facilities to be established as primary health care education sites. Such recommendation shall be made to the vice chancellor in accordance with the criteria set forth in section seven of this article. After review of the proposals submitted to the vice chancellor by the schools of medicine pursuant to section eight of this article, the panel's recommendation shall include an estimation of the costs to be allocated per site from available funds in the university of West Virginia health sciences account in the line item designated for rural health initiative site support.

(e) The advisory panel shall adopt guidelines regarding the application by rural health care facilities for selection as primary health care education sites and shall approve an application form which provides the panel with sufficient information to consider the criteria set forth in
The guidelines and application shall be sent by registered mail to each rural health care facility in the state as soon as practicable after the effective date of this section.

(f) The advisory panel shall provide an ongoing evaluation of the rural health initiative and shall make the reports required under this article.

§18B-16-9. Accountability; reports and audit required.

(a) The vice chancellor, with the assistance of the advisory panel, shall report in detail to the board of trustees on the expenditure and planned expenditure of public funds to the schools of medicine under section eight of this article. The board of trustees shall report to the governor, the president of the Senate and the speaker of the House of Delegates annually prior to the first day of December as a part of the higher education report cards required by section eight-a, article one of this chapter.

(b) The vice chancellor, with the guidance and recommendations of the advisory panel, shall develop additional performance indicators, including, but not limited to: (1) An analysis of the health care needs of the targeted areas; (2) the number of persons served and the nature of the services provided; (3) the number of full-time and part-time faculty, students, interns and residents, by discipline, participating in the health science and allied health care education programs; (4) the number of health providers in each community served by primary health care education sites; (5) the financial, social and health status changes in each community served by primary health care education sites; and (6) the extent to which the plans and policies of the office of rural health and the health care planning commission are being effectuated. The vice chancellor shall provide information on the performance indicators to the board of trustees for inclusion in the higher education accountability report card for health sciences provided for in section eight-a, article one of this chapter.
(c) The advisory panel shall report at least annually to the joint legislative oversight commission on education accountability created under section eleven, article three-a, chapter twenty-nine-a of this code and to the area health education centers subcommittee of the joint committee on government and finance regarding the status of the rural health care initiative, paying particular attention to the role of the communities.

(d) The vice chancellor shall report at least annually to the joint legislative oversight commission on education accountability created under section eleven, article three-a, chapter twenty-nine-a of this code and to the area health education centers subcommittee of the joint committee on government and finance regarding the status of the rural health care initiative, paying particular attention to the role of the schools of medicine.

(e) The board of trustees shall facilitate a meeting at least quarterly for the chief administrators of each primary health care education site established pursuant to this article and each chief administrator at other rural health care facilities providing educational and clinical experiences to students, interns and residents at the state's schools of medicine. The meetings shall commence no later than the first day of July, one thousand nine hundred ninety-two, and shall be for the purpose of discussing the status, efficiency and effectiveness of the various programs and their operation and recommending any changes to the board of trustees, which may include statutory recommendations to be made to the Legislature.

In addition to the reports otherwise required and commencing with a report for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, the chief administrators shall submit to the board of trustees an annual evaluation of the extent to which the goals set forth in section four of this article and other goals relating to collaborative efforts between the schools of medicine and rural health care facilities are being attained. Such report shall be forwarded annually in its entirety to
the governor, the president of the Senate and the speaker of the House of Delegates no later than the fifteenth day of January.

(f) The legislative auditor, at the direction of the joint committee on government and finance, shall perform on an ongoing basis a fiscal audit of the medical education components within the university of West Virginia system, the state college system and the rural health initiative for periodic review by the Legislature.

CHAPTER 128

(Com. Sub. for H. B. 2557—By Delegates Prezioso, Ball, Beach, Heck, Kallai, Henderson and Anderson)

[Passed March 10, 1995; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend article three, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three, relating to the creation of the health sciences scholarship program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-3. Health sciences scholarship program; establishment; administration; eligibility.

(a) Legislative findings—The Legislature finds that there is a critical need for additional practicing health care professionals in West Virginia. Therefore, there is hereby created a health sciences scholarship program to be administered by the vice chancellor of health sciences.
The purpose of this program is to provide an incentive for health professional students to complete their training and provide primary care in underserved areas of West Virginia.

(b) Establishment of special account—There is hereby established a special revolving fund account under the board of trustees in the state treasury to be known as the "Health Sciences Scholarship Fund" that shall be used to carry out the purposes of this section. The fund shall consist of one or more of the following: (1) All unexpended health sciences scholarship funds on deposit in the state treasury on the effective date of this section; (2) appropriations as may be provided by the Legislature; (3) repayments, including interest as set by the vice chancellor of health sciences, collected from scholarship recipients who fail to practice in West Virginia under the terms of the scholarship agreement as set forth under this section; or (4) amounts that may become available from other sources. Balances remaining in the fund at the end of the fiscal year shall not expire or revert to the general revenue. All costs associated with the administration of this section shall be paid from the health sciences scholarship fund under the direction of the vice chancellor of health sciences.

(c) Eligibility requirements—An individual is eligible for consideration for a health sciences scholarship; if the individual (1) either (A) a fourth-year medical student at the Marshall university school of medicine, West Virginia school of osteopathic medicine or West Virginia university school of medicine who has been accepted in a primary care internship/residency program in West Virginia, or (B) is enrolled or accepted for enrollment in an approved education program at a West Virginia institution leading to a degree or certification in the field of nurse practitioner, nurse midwife, physician assistant, or other disciplines identified as shortage fields by the vice chancellor of health sciences; and (2) signs an agreement to practice for at least two years in an underserved area of West Virginia as determined by the bureau of public health. Awarding preference will be given to West Virginia residents.

(d) Scholarship awards—Scholarships shall be in the amount of ten thousand dollars and may be awarded by the vice chancellor of health sciences, with the advice of an
advisory panel, from the pool of all applicants with a commitment to practice in an underserved area of West Virginia as determined by the bureau of public health. Nothing herein shall be construed as granting or guaranteeing any applicant any right to such a scholarship.

(e) Repayment provisions—A scholarship recipient who fails to practice in an underserved area of West Virginia within six months of the completion of his or her training, or who fails to complete his or her training, is in breach of contract and is liable for repayment of the total scholarship amount received plus interest. The granting or renewal of a license to practice in West Virginia or to reciprocal licensure in another state based upon licensure in West Virginia shall be contingent upon beginning payment and continuing payment until complete repayment of the total scholarship amount if the recipient fails to practice in an underserved area. No license, renewal or reciprocity shall be granted to persons whose repayments are in arrears. The appropriate regulatory board shall inform all other states where a recipient has reciprocated based upon West Virginia licensure of any refusal to renew licensure in West Virginia as a result of failure to repay the scholarship amount. This provision shall be explained in bold type in the scholarship contract. Repayment terms, not inconsistent with this section, shall be established by the vice chancellor of health sciences pursuant to rules as required under subsection (f) of this section.

(f) Promulgation of rules—The board of trustees shall promulgate rules pursuant to article three-a, chapter twenty-nine-a of this code necessary for the implementation and administration of this section.

(g) Definitions—For purposes of the repayment provisions of this section, the term "training" means the entire degree program or certification program for nurse midwives, nurse practitioners, physician assistants and other disciplines identified as shortage field by the vice chancellor. The term also means the completion of a degree program and includes completion of an approved residency/internship program for students pursuing a degree in medicine or a degree in osteopathy.
AN ACT to amend and reenact sections ten and twelve-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-c, all relating to pari-mutuel taxation; providing for an alternative method to calculate taxes; setting forth specific time periods during which such alternative method will be in effect; providing for eligibility to receive awards or purses through the greyhound breeding development fund; providing for payment of certain percentage of net simulcast income into thoroughbred development fund; exception; defining net simulcast income; repealing the requirement that the handle from televised simulcast racing be included in the calculation of average daily handle; permitting interstate simulcasting by licensed racetracks; and providing relief from the two hundred twenty day racing schedule for cause.

Be it enacted by the Legislature of West Virginia:

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

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.
§19-23-12c. Interstate simulcasts by licensed racetracks.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax set forth in subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article. The tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand
nine hundred eighty-seven, be calculated at two percent of
the pool; for fiscal year one thousand nine hundred
eighty-eight, be calculated at one and one-half percent;
for fiscal year one thousand nine hundred eighty-nine, be
calculated at one percent of the pool; for fiscal year one
thousand nine hundred ninety, seven tenths of one per-
cent, and for fiscal year one thousand nine hundred
ninety-one and each fiscal year thereafter be calculated at
four tenths of one percent of the pool; and, on the
pari-mutuel pools conducted or made each day during all
other months, shall from the effective date of this section
and for fiscal year one thousand nine hundred eighty-five,
be calculated at three and six-tenths percent; for fiscal
year one thousand nine hundred eighty-six, be calculated
at three and three-tenths percent; for fiscal year one thou-
sand nine hundred eighty-seven, be calculated at three
percent of the pool; for fiscal year one thousand nine
hundred eighty-eight, be calculated at two and one-half
percent; for fiscal year one thousand nine hundred
eighty-nine, be calculated at two percent of the pool; for
fiscal year one thousand nine hundred ninety, be calculat-
ed at one and seven-tenths percent of the pool; and for
fiscal year one thousand nine hundred ninety-one and
each fiscal year thereafter, be calculated at one and
four-tenths percent of the pool: Provided, That out of the
amount realized from the three tenths of one percent de-
crease in the tax effective for fiscal year one thousand
nine hundred ninety-one and thereafter, which decrease
correspondingly increases the amount of commission
retained by the licensee, the licensee shall annually expend
or dedicate (i) one half of the realized amount for capital
improvements in its barn area at the track, subject to the
racing commission's prior approval of the plans for the
improvements, and (ii) the remaining one half of the real-
ized amount for capital improvements as the licensee may
determine appropriate at the track. The term "capital
improvement" shall be as defined by the Internal Revenue
Code: Provided, however, That any racing association
operating a horse racetrack in this state having an average
daily pari-mutuel pool on horse racing of two hundred
eighty thousand dollars or less per day for the race meet-
ings of the preceding calendar year shall, in lieu of pay-
ment of the pari-mutuel pool tax, calculated as in this subsection, be permitted to conduct pari-mutuel wagering at the horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be one thousand dollars plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of three hundred thousand dollars: Provided further, That upon the effective date of the reduction of the daily pari-mutuel pool tax to one thousand dollars from the former two thousand dollars, the association or licensee shall daily deposit five hundred dollars into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: And provided further, That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia thoroughbred development fund for more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount
wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of the pari-mutuel pools, five percent of the next fifty thousand dollars of the pari-mutuel pools, six percent of the next one hundred thousand dollars of the pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of the pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundredths of one percent in fiscal year one thousand nine hundred ninety-one; two tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding and racing of greyhounds in the state through awards and purses to resident owners of accredited West Virginia whelped greyhounds. In order to be eligible to receive an award or purse through the fund, the owner of the accredited West Virginia whelped greyhound must be a resident of this state. The moneys shall be expended by the racing commission for purses for
stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules and regulations promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules and regulations promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the owner of an accredited greyhound or, if the greyhound is leased, the owner may choose to designate a percentage of the purse earned directly to the lessor as agreed to via a written purse distribution form on file with the racing commission.

The owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of purses earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements.

The owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the racing commission for a percentage of his or her dog's earnings to be paid directly to the lessor of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.
In no event shall purses earned at a meet held at a track which did not make contributions to the West Virginia greyhound breeder's development fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of fifty thousand dollars per annum, to be paid in equal quarterly installments of twelve thousand five hundred dollars per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on the first day of July, one thousand nine hundred ninety-three, and ending the thirtieth day of June, one thousand nine hundred ninety-six. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: Provided, That each pari-mutuel track shall have one juvenile and one open stake race annually. The racing commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the racing commission and placed in a special revenue account hereby created in the state treasury called the "administration, promotion and educational account". The racing commission is authorized to expend the moneys deposited in the administration, promotion and educational account at such times and in such amounts as the commission determines to be necessary for purposes of administering and promoting the greyhound development program: Provided, That
beginning with fiscal year one thousand nine hundred ninety-five and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion and education. The commission shall make an annual report to the Legislature on the status of the administration, promotion and education account, including the previous year's expenditures and projected expenditures for the next year.

The racing commission, for the fiscal year one thousand nine hundred ninety-four only, may expend up to thirty-five thousand dollars from the West Virginia greyhound breeding development fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.
(a) For the purposes of this section:

(1) "Televised racing day" means a calendar day, assigned by the commission, at a licensed racetrack on which pari-mutuel betting is conducted on horse or dog races run at racetracks outside of the state which are broadcast by television at a licensed racetrack and which day or days have had the prior written approval of the representative of the majority of the owners and trainers who hold permits required by section two of this article; and

(2) "Host racing association" means any person who, pursuant to a license or other permission granted by the host state, conducts the horse or dog race subject to the interstate wager.

(b) A licensee conducting not less than two hundred twenty live racing dates for each horse or dog race meeting may, with the prior approval of the state racing commission, contract with any legal wagering entity in any other state to receive telecasts and accept wagers on races conducted by the legal wagering entity: Provided, That at those thoroughbred racetracks, the licensee, in applying for racing dates, shall apply for not less than two hundred twenty live racing dates for each horse race meeting. If, thereafter, for reasons beyond the licensee’s control, related to adverse weather conditions or unforeseen casualty occurrences the licensee concludes that this number of racing days cannot be attained, the licensee may file a request with the racing commission to reduce the authorized live racing days. Upon receipt of the request the racing commission shall within seventy-two hours of the receipt of the request notify the licensee and the representative of a majority of the owners and trainers at the requesting track that such request has been received and that if no objection to the request is received within ten days of the notification the request will be approved: Provided, That the commission shall give consideration to whether there existed available unscheduled potential live racing dates following the adverse weather or casualty and prior to the end of the race meeting which could be used as new live racing dates in order to maintain a full two hundred
twenty day live racing schedule. If an objection is received
by the commission within the time limits, the commission
shall establish a binding arbitration board. The board
shall consist of one member appointed by the licensee,
one member appointed by the representative of a majority
of the owners and trainers at the racetrack and a third
member to be selected by the two appointed members. In
the event the two members cannot agree on the third
member, each member shall submit two names to the rac-
ing commission and from those names the racing commis-
sion shall appoint the third member of the board. The
board shall hear from all parties concerned and thereupon
shall make recommendations to the racing commission on
the required number of live racing days. The recommen-
dations of the board are final. The telecasts may be re-
ceived and wagers accepted at any location authorized by
the provisions of section twelve-a of this article. The con-
tract must receive the approval of the representative of the
majority of the owners and trainers who hold permits
required by section two of this article at the receiving
racetrack.

(c) The commission may allow the licensee to com-
mingle its wagering pools with the wagering pools of the
host racing association. If the pools are commingled, the
wagering at the licensee's racetrack must be on tabulating
equipment capable of issuing pari-mutuel tickets and be
electronically linked with the equipment at the sending
racetrack. Subject to the approval of the commission, the
types of betting, licensee commissions and distribution of
winnings on pari-mutuel pools of the sending licensee
racetrack are those in effect at the licensee racetrack.
Breakage for pari-mutuel pools on a televised racing day
must be calculated in accordance with the law or rules
governing the sending racetrack and must be distributed
in a manner agreed to between the licensee and the send-
ing racetrack.

(d) The commission may assign televised racing days
at any time. When a televised racing day is assigned, the
commission shall assign either a steward or an auditor to
preside over the televised races at the licensee racetrack.
(e) (1) From the licensee commissions authorized by subsection (c) of this section, the licensee shall pay one tenth of one percent of each commission into the general fund of the county, in which the racetrack is located and at which the wagering occurred and there is imposed and the licensee shall pay, for each televised racing day on which the total pari-mutuel pool exceeds one hundred thousand dollars, the greater of either: (i) The total of the daily license tax and the pari-mutuel pools tax required by section ten of this article; or (ii) a daily license tax of one thousand two hundred fifty dollars. For each televised racing day on which the total pari-mutuel pool is one hundred thousand dollars or less, the licensee shall pay a daily license tax of five hundred dollars plus an additional license tax of one hundred dollars for each ten thousand dollars, or part thereof, that the pari-mutuel pool exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars. Payments of the tax imposed by this section are subject to the requirements of subsection (e), section ten of this article.

(2) From the 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.

(3) From the licensee commissions authorized by subsection (c) of this section, after payments are made in accordance with the provisions of subdivisions (1) and (2) of this subsection, the licensee shall pay, for each televised racing day on or after the first day of July, nine hundred ninety-six, one-half percent of net simulcast income and for each televised racing day on or after the first day of July, one thousand nine hundred ninety-seven, an additional one-half percent of net simulcast income into the West Virginia thoroughbred development fund established by the racing commission according to section...
thirteen-b of this article: *Provided*, That the payments shall be reduced by an amount equal to one-third of direct simulcast expenses which shall include, but not be limited to, the cost of simulcast signals and decoder costs: *Provided, however*, That no licensee qualifying for the alternate tax provisions of subsection (b), section ten of this article shall be required to make the payments unless the licensee has participated in the West Virginia thoroughbred development fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. The term "net simulcast income" means the total simulcast handle less direct simulcast expenses, including, but not limited to, the cost of simulcast signals and decoder costs.

(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 Horseracing 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.

§19-23-12c. Interstate simulcasts by licensed racetracks.

Any racing association which is licensed under this article to hold live races may be authorized by the commission to transmit broadcasts of races conducted at its racetrack to legal wagering entities located outside this state: *Provided*, That all broadcasts of horse races shall be in accordance with all of the provisions of the "Federal Interstate Horseracing Act of 1978", also known as Public Law 95-515, section 3007 of Title 15 of the United States Code.
CHAPTER 130

(Com. Sub. for H. B. 2037—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 10, 1995; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one 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 fifteen-b, all relating to authorizing the sale of bonds for water, sewer and infrastructure purposes; increasing the number of public members of council; specifying qualifications for public members; authorizing expenses for public members of council; exempting economic development authority and civil contingent fund from council review; providing for the deposit of proceeds in the infrastructure fund derived from the sale of bonds; providing that the fund may be operated as a trust account in a local bank; establishing minimum rates for loans; providing for engineering assistance program; limiting types of engineering information required; providing requirements for disbursement of funds by loan or grant; setting minimum end user utility rates; providing for disbursements to pay debt service on infrastructure general obligation bonds; empowering the governor to issue infrastructure general obligation bonds; creating the infrastructure obligation debt service fund; funding the infrastructure general obligation debt service funds; providing terms for general obligation bonds; setting forth a cap on the interest rate of bonds; directing the use of funds deposited in infrastructure general obligation debt service fund; setting forth the covenants of the state; providing for the sale of general obligation bonds and their minimum price; prohibiting funds inuring to the benefit of or being distributable to directors or officers; providing that
infrastructure general obligation bonds are lawful investments; authorizing the water development authority to issue refunding bonds; providing for the termination or dissolution of the water development authority; allowing the governor to select legal advisors; setting forth duties of bond counsel; authorizing the treasurer to select financial advisor; allowing the payment of expenses from debt service fund.

Be it enacted by the Legislature of West Virginia:

That sections three, nine, ten and sixteen, article fifteen-a, chapter thirty-one 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 fifteen-b, all to read as follows:

Article

15A. West Virginia Infrastructure and Jobs Development Council.

15B. Infrastructure Bonds.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

§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, grant or for engineering assistance.


§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

(a) The West Virginia infrastructure and jobs development council is hereby continued. The council is 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 eleven members, in-clud-ing the executive director of the housing development
fund or his or her designee, the director of the division of
environmental protection or his or her designee, the direc-
tor 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 four members representing the general public: Pro-
vided, That there shall be at least one member represent-
ing the general public from each congressional district:
Provided, however, That after the expiration of the term
of office of the members first appointed as representatives
of the general public, no more than one member repre-
senting the general public may be a resident of the same
county. The governor shall appoint the public members
of the council who shall serve three-year staggered terms.
The commissioner of the division of highways, the execu-
tive 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 gov-
ernor shall appoint the legislative members of the council:
Provided further, That no more than three of the legisla-
tive members may be of the same political party. The
governor shall appoint the representatives of the govern-
ing boards from a list of three names submitted by each
governing board. The advisory members shall be ex offi-
cio, nonvoting members of the council.

(c) The council shall annually elect one of its mem-
bers as chairman, and shall appoint a secretary, who need
not be a member of the council and who shall keep records of its proceedings. Six 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 who serves by virtue of his or her office shall receive any compensation or reimbursement of expenses for serving as a member. The members of the council who represent the general public shall receive reimbursement for actual expenses incurred in the service of the council.

(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 necessary. Notwithstanding any other provision of this article to the contrary, the economic development authority shall not be subject to council review with regard to any action taken pursuant to the authority established in article fifteen, chapter thirty-one of this code nor shall the governor's civil contingent fund be subject to council review with regard to projects or infrastructure projects funded through the governor's civil contingent fund.

(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, rural economic community development, the United States economic development agency and the United States army corps of engineers or any successors there-
to. The council shall also invite such other appropriate
parties as may be necessary to effectuate the purposes of
this article.

§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) The water development authority shall create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan to be known as the "West Virginia Infrastructure Fund". This fund shall be governed, administered and accounted for by the directors, officers and managerial staff of the water development authority as a special purpose account separate and distinct from any other moneys, funds or funds owned and managed by the water development authority. The infrastructure fund shall consist of sub-accounts, as deemed necessary by the council or the water development authority, for the deposit 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; (6) all funds deposited in accordance with section four of article fifteen-b; and (7) all proceeds derived from the sale of bonds issued pursuant to article fifteen-b of this chapter.

Any money collected pursuant to this section shall be paid into the West Virginia infrastructure fund by the state agent or entity charged with the collection of the same,
29 credited to the infrastructure fund, and used only for purposes set forth in this article or article fifteen-b.

30 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.

45 (b) Notwithstanding any provision of this code to the contrary, amounts in the infrastructure fund shall be deposited by the water development authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a banking institution located in this state. The banking institution shall be selected by the water development authority by competitive bid. 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 and article fifteen-b of this chapter, 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 guar-
antee 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 pursu-
ant 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 au-
thority 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
the 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 de-
velopment 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 agree-
(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.

(f) The interest rate on any loan to governmental, quasi-governmental, or not for profit project sponsors for projects made pursuant to this article shall not exceed three percent per annum. Due to the limited availability of funds available for loans for projects, it is the public policy of this state to prioritize funding needs to first meet the needs of governmental, quasi-governmental and not for profit project sponsors and to require that loans made to for-profit entities shall bear interest at the current market rates. Therefore, no loan may be made by the council to a for-profit entity at an interest rate which is less than the current market rate at the time of the loan agreement.

(g) The water development authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to the receipts, disbursements, contracts, leases, assignments, loans, grants and all other matters relating to the financial operation of the infrastructure fund, including the operating of any sub-account within the infrastructure fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Legislature's joint committee on government and finance.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant or for engineering assistance.

(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 under-
taken by a project sponsor: Provided, That any moneys
disbursed from the infrastructure fund in the form of
grants shall not exceed twenty percent of the total funds
available for the funding of projects. No loan, loan guar-
antee, 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 project sponsor
that is not a governmental agency or a not for profit cor-
poration 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 on preliminary application forms
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 re-
quirements of this section have been met. The council
shall base any decisions to loan money for projects to
project sponsors pursuant to this article solely on the need
of the project sponsors.

(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 unreas-
sonable burden given the users' likely ability to pay; or (2)
the absence of a sufficient number of users prevents fund-
ing of the project except through grants: Provided, That
no project sponsor shall receive infrastructure grant mon-

ey in an amount in excess of fifty percent of the total cost of the project. 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 procedural rules shall be adopted pursuant to article three, chapter twenty-nine-a of this code.

(c) The council shall affix a mandatory minimum end user utility rate that must be met by the project sponsor before grant assistance may be awarded. The mandatory minimum utility rate shall be established by legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. The rule shall provide that the mandatory minimum utility rate be based upon a uniform statewide percentage of the median household income in a particular geographic area which is rationally related to the geographic area of the project to be served.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines
that the engineering studies and requirements for the
pre-application would impose an undue hardship on any
project sponsor, the council may provide funding assis-
tance to project sponsors to defray the expenses of the
pre-application process from moneys available in the
infrastructure fund for making loans: Provided, That the
council may only provide funding assistance in an amount
equal to five thousand dollars or fifty percent of the total
pre-application cost of the project, whichever amount is
greater. If the project is ultimately approved for a loan by
the council, the amount of funding assistance provided to
the project sponsor for the pre-application process shall be
included in the total amount of the loan to be repaid by
the project sponsor. If the project is not ultimately ap-
proved by the council, then the amount of funding assis-
tance provided to the project sponsor will be considered a
grant by the council and the total amount of the assistance
shall be forgiven. In no event may the amount of funding
assistance provided to all project sponsors exceed, in the
aggregate, one hundred thousand dollars annually.


(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 improve-
ment of water supply and sewage treatment systems and
for the acquisition, preparation, construction and improve-
ment 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 mil-
lion 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 general obli-
gation debt service fund created pursuant to section three,
article fifteen-b of this chapter: 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.

(c) On or before the first day of May of each year,
commencing the first day of May, one thousand nine
hundred ninety-five, the council, by resolution, shall certi-
fy to the treasurer and the water development authority the
principal and interest coverage ratio and amount for the
following fiscal year on any infrastructure general obliga-
tion bonds issued pursuant to the provisions of article
fifteen-b of this chapter.

ARTICLE 15B. INFRASTRUCTURE BONDS.

§31-15B-1. Definitions.
§31-15B-2. Infrastructure general obligation bonds; amount; when may
issue.
§31-15B-3. Creation of debt service fund; disbursements to pay debt service
on infrastructure general obligation bonds.
§31-15B-4. Infrastructure general obligation debt service fund; sources used
to pay bonds and interest; investment of remainder.
§31-15B-5. Covenants of state.
§31-15B-6. Sale by governor; minimum price.
§31-15B-7. Prohibition on funds inuring to the benefit of or being distrib-
tutable to directors or officers; transactions between the
council and West Virginia water development authority and
directors or officers having certain interests in such trans-
actions.
§31-15B-8. Infrastructure bonds lawful investments.
§31-15B-10. Termination or dissolution.
§31-15B-11. Treasurer to determine financial advisor.
§31-15B-13. Approval and payment of all necessary expenses.

§31-15B-1. Definitions.
For purposes of this article and article fifteen-a of this chapter:

(a) "Council" means the West Virginia infrastructure and jobs development council created in section three, article fifteen-a of this chapter;

(b) "Infrastructure amendment" means the amendment to the constitution of this state entitled "infrastructure amendment" as approved by referendum in the month of November, one thousand nine hundred ninety-four;

(c) "Infrastructure general obligation bond" means any bond or bonds issued by the state pursuant to section two of this article;

(d) "Water development authority" means the West Virginia water development authority established under article one, chapter twenty-two-c of this code, or any successor to all or any substantial part of its powers and duties.

§31-15B-2. Infrastructure general obligation bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the infrastructure improvement amendment of 1994, of the par value not to exceed in the aggregate three hundred million dollars, are hereby authorized to be issued and sold 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 as provided for by the constitution and the provisions of this article.

These bonds may be issued by the governor upon resolution by the infrastructure council and certification to the governor. The bonds shall bear such date and mature at such time, bear interest at such rate not to exceed eight percent per annum, be in such amounts, be in such de-
nominations, be in such registered form, carry such registration privileges, be due and payable at such time and place and in such amounts, and subject to such terms of redemption as such resolution may provide: Provided, That in no event may the amount of bonds outstanding exceed an amount for which sixteen million dollars would not be sufficient to provide annual service on the total amount of debt outstanding.

Both the principal and interest of the bonds shall be payable in the lawful money of the United States of America and the bonds and the interest thereon shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which fact shall appear on the face of the bonds as part of the contract with the holder of the bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state.

§31-15B-3. Creation of debt service fund; disbursements to pay debt service on infrastructure general obligation bonds.

There is hereby created a special account in the state treasury, which shall be designated and known as the "West Virginia Infrastructure General Obligation Debt Service Fund", into which shall be deposited amounts pursuant to the provisions of section sixteen, article fifteen-a of this chapter, as well as any amounts appropriated by the Legislature.

§31-15B-4. Infrastructure general obligation debt service fund; sources used to pay bonds and interest; investment of remainder.

All money from any and all appropriations made by the state, all moneys transferred pursuant to the provisions
of section sixteen, article fifteen-a of this chapter and all
moneys from any other source whatsoever which is made
liable by law for the payment of the principal of such
bonds or the interest thereon shall be deposited into the
infrastructure general obligation debt service fund. Mon-
eys shall be kept by the treasurer in a separate account,
under the designation aforesaid, and all moneys belonging
to the infrastructure general obligation debt service fund
shall be deposited in the state treasury to the credit there-
of.

This fund shall be applied by the treasurer to the pay-
ment of the principal and interest on such bonds as shall
become due as herein provided. Any funds remaining
after certification of the amount necessary for the pay-
ment of principal and interest as provided by section six-
teen, article fifteen-a and expenses authorized pursuant to
section thirteen of this article shall be deposited to the
credit of the infrastructure fund.

§31-15B-5. Covenants of state.

The state of West Virginia covenants and agrees with
the holders of the bonds issued pursuant hereto as follows:
(1) That such bonds shall constitute a direct and general
obligation of the state of West Virginia; (2) that the full
faith and credit of the state is hereby pledged to secure the
payment of the principal and interest of such bonds; (3)
that an annual state tax shall be collected in an amount
sufficient to pay as it may accrue the interest on such
bonds and the principal thereof; and (4) that such tax shall
be levied in any year only to the extent that the moneys
transferred to the infrastructure general obligation debt
service fund as provided in section sixteen, article fifteen-a
of this chapter which are irrevocably set aside and appro-
priated for and applied to the payment of the interest on
and principal of any bond becoming due and payable in
such year are insufficient therefor.

§31-15B-6. Sale by governor; minimum price.
The governor shall sell the bonds herein authorized at such time or times as the council, by resolution, may determine necessary to provide funds for purposes set forth in this article and article fifteen-a of this chapter. Sales shall be at not less than par and accrued interest.

The bonds must be offered for competitive bids from recognized financial investment institutions before the bonds may be sold: Provided, That the bid process is not subject to the provisions of article three-a, chapter five-a of this code. Any and all of the bids may be rejected. If the bonds are not sold pursuant to the competitive bid process, the bonds may, within sixty days after the date the bids are received, be sold at private sale: Provided, however, That no private sale shall be made at a price less than the highest bid received.

§31-15B-7. Prohibition on funds inuring to the benefit of or being distributable to directors or officers; transactions between the council and West Virginia water development authority and directors or officers having certain interests in such transactions.

No part of the infrastructure fund shall inure to the benefit of or be distributable to the commissioners of the public service commission, the council, or the West Virginia water development authority's directors or officers. The council may approve and the water development authority make loans and exercise other powers as previously specified in furtherance of their corporate purpose: Provided, That no loans shall be made, nor shall any property be purchased or leased from, or sold, leased or otherwise disposed of, to any commissioner, director or officer of the council, the public service commission or the West Virginia water development authority.

§31-15B-8. Infrastructure bonds lawful investments.

All infrastructure bonds issued pursuant to this article shall be lawful investments for banking institutions, societ-
Refunding bonds.


Any infrastructure general obligation bonds which are outstanding may at any time be refunded by the issuance of refunding bonds in an amount deemed necessary to refund the principal of the bonds to be refunded, together with any unpaid interest thereon; to accomplish the purpose of this article and article fifteen-a of this chapter; and to pay any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the infrastructure general obligation bonds to be refunded shall have then matured or shall thereafter mature. Any refunding bonds issued pursuant to this article shall be payable from the infrastructure general obligation bond debt service fund, and shall be subject to the provisions contained in section eleven, article fifteen-a of this chapter and shall be secured in accordance with the provisions of this article.

§31-15B-10. Termination or dissolution.

Upon the termination or dissolution of the West Virginia water development authority, all rights and properties of the West Virginia water development authority with respect to the infrastructure fund shall pass to and be vested in the state, subject to the rights of bondholders, lienholders and other creditors.

§31-15B-11. Treasurer to determine financial advisor.

The treasurer shall select a competent person or firm to serve as financial advisor for the issuance and sale of general obligation bonds issued pursuant to this article.

The governor shall select a competent person or firm to serve as bond counsel who shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of general obligation bonds issued pursuant to this article. Notwithstanding the provisions of article three, chapter five of this code, bond counsel may represent the council in court, render advice to the council and provide other legal services as may be requested by the council regarding any bond issuance pursuant to this article and all other matter relating to the bond issue.

§31-15B-13. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses, incurred in the issuance of any general obligation bonds pursuant to this article shall be paid out of the infrastructure general obligation debt service fund. The amount of any expenses incurred shall be certified to the water development authority.

CHAPTER 131

(Com. Sub. for H. B. 2491—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 11, 1995; in effect ninety days from passage. Became law without Governor's signature.]
savings accounts from adjusted gross income for purposes of personal income tax and from taxable income for purposes of corporation net income tax, requiring the guaranty of renewability for individual accident and sickness policies, establishing rate criteria for individual major medical policies, deleting an optional relation of earnings to insurance proviso, permitting establishment of individual medical savings accounts to serve as self-insurance for the payment of medical expenses, authorizing combined plans to defray medical expenses included within deductible provisions of an individual or group insurance plan and therefore not payable under that plan, definitions, ownership of accounts, contributions, trustees, restricting withdrawals from medical savings accounts for purposes other than payment of medical expenses, requiring insurance commissioner to issue regulations for plan standards, and authorizing tax commissioner to provide penalties for early withdrawal by legislative rule.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

13. Insurance.

CHAPTER 11. TAXATION.

Article


ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.
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(a) **General.** — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

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

1. Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;
2. Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;
3. Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
4. Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;
5. Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;
6. The amount allowed as a deduction from federal gross income under Section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modifica-
tion shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided, That:

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

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

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

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

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

(12) Individual, employee and employer contributions and interest accruing to medical savings accounts offset by withdrawals for purposes other than payment of medical expenses or retirement on or after age fifty-five established pursuant to section twenty, article fifteen or section fifteen, article sixteen, chapter thirty-three of this code, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That the amount subtracted pursuant to this subsection for any one taxable year may not exceed two thousand dollars; and

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

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

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

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.
(a) General. — In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

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

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

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

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

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

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

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

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

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

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

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

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

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

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

(8) Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of this code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses: Provided, That the amount subtracted pursuant to
this subsection for any one taxable year may not exceed the maximum amount that would have been deductible from the corporation's federal adjusted gross income for federal income tax purposes if the aggregate amount of the corporation's contributions to individual medical savings accounts established under section fifteen, article sixteen, chapter thirty-three of this code had been contributed to a qualified plan as defined under the Employee Retirement Income Security Act of 1974, as amended; and

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

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

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

(C) Gains, profits or other income from the sale of intangible or real property located without the United States.

In determining the source of "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

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

(1) Special rules. —

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

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

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

(c) Special adjustments for expenditures for water and air pollution control facilities. —

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-1a. Premium rate increase requests; loss ratio requirement.

To be eligible to make a premium rate increase request after the first day of July, one thousand nine hundred ninety-five, any insurer offering or which has in force accident and sickness insurance policies which are subject to the provisions of this article shall have a minimum anticipated loss ratio of sixty-five percent as to such policy form. In calculating its minimum anticipated loss ratio, an insurer shall include in its actual incurred claims the amount of premium taxes for the same experience period which are attributable to the policy forms affected by this section and which were paid to the state of West
§33-15-lb. Rates, individual major medical policies.

(a) No individual major medical coverage policy may be approved by the commissioner for use in this state unless:

(1) The premium rates for the policy, after adjustment for any difference in policy benefits, which include, but are not limited to, deductibles, copayments and levels of care management, do not exceed by more than thirty percent the premium rates charged by the same insurer on any and all other individual major medical policies for those individuals with similar characteristics and factors, which the insurer has had approved by the commissioner within a five-year period preceding the date of the new policy filing by the insurer;

(2) The insurer files with the commissioner the opinion of a qualified actuary or other person acceptable to the commissioner which states:

(A) That the policy premium rate is in compliance with subdivision (1) of this subsection; and

(B) That the anticipated loss ratio for the combined experience of the policy taken together with all other individual major medical coverage policies which the insurer has had approved by the commissioner within a five-year period preceding the date of the new policy filing is equal to or greater than the loss ratio requirements set forth in section one-a of this article.

(3) For a period of three years after the effective date of this section, an insurer may have one or more policy forms which exceed the one hundred thirty percent requirement of subdivision (2) of this subsection: Provided, That any rate schedule increase for such policy form shall not exceed thirty-three and one-third percent of the rate schedule increase for the lowest rate policy form. During the final twelve months of this three-year period, an insurer may request an extension of time for compliance from the commissioner based on extenuating circumstances.
(b) An initial individual major medical policy form may be disapproved by the commissioner if the commissioner determines that the rates proposed by the insurer for the policy form are set at a level substantially less than rates charged by other insurers for comparable insurance coverage.

(c) Nothing contained in this section may be construed to prevent the use of age, sex, area, industry, occupational, and avocational factors in setting premium rates or to prevent the use of different rates after approval by the commissioner for smokers and nonsmokers or for any other habit or habits of an insured person which have a statistically proven effect on the health of the person. Nothing contained in this section shall preclude the establishment of a substandard classification based upon the health condition of the insured: Provided, That the initial classification may not be changed adversely to the insured after the initial issuance of the policy.

(d) The commissioner has the right, upon application by an insurer, and for good cause shown, to grant relief from any requirement of this section.


No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:

(a) The entire money and other considerations therefore are expressed therein; and

(b) The time at which the insurance takes effect and terminates is expressed therein; and

(c) It purports to insure only one person, except that a policy may insure, originally or by subsequent amendment upon the application of an adult member of a family who shall be deemed the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the policyholder; and
(d) The policy is guaranteed to be renewable by the insured unless there is fraud, nonpayment of premium, or material misrepresentation by the insured in the application for insurance and the misrepresentation has been acted upon by the insurer within two years from the date of the issuance of the policy. Notwithstanding the foregoing an insurer may request the commissioner to terminate coverage. If the commissioner does not approve a request for termination of coverage, then the insurer may terminate the coverage but shall be prohibited from writing new business on coverage of the type terminated in this state for a period of five years from the date of notice to the commissioner. The insurer shall provide notice to all affected policyholders and the commissioner at least one hundred twenty days prior to renewal. In the event of nonrenewal, the commissioner and the insurer shall assist policyholders regardless of geographic area, in finding appropriate coverage without imposition of preexisting coverage or benefit restrictions, if already satisfied, of the form; and

(e) The style, arrangement and over-all appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions), the policy shall clearly indicate on the first page the conditions of renewability; and

(f) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in sections four and five of this article, are printed, at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions": Provided, That if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of
such exception or reduction shall be included with the benefit provision to which it applies; and

(g) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first part thereof; and

(h) It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.


Except as provided in section six of this article, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this section in the words in which the same appear in this section: Provided, That the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(a) A provision as follows:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions."

(b) A provision as follows:

"Time Limit on Certain Defenses: (1) After two years from the date of issue of this policy no misstatements,
except fraudulent misstatements, made by the applicant in
the application for such policy shall be used to void the
policy or to deny a claim for loss incurred or disability (as
defined in the policy) commencing after the expiration of
such two-year period."

The foregoing policy provision shall not be so con­
strued as to affect any legal requirement for avoidance of
a policy or denial of a claim during such initial two-year
period, nor to limit the application of subdivisions (a), (b),
(c), (d) and (e) of section five of this article in the event of
misstatement with respect to age or occupation or other
insurance. A policy which the insured has the right to
continue in force subject to its terms by the timely pay­
ment of premium (i) until at least age fifty, or (ii) in the
case of a policy issued after age forty-four, for at least five
years from its date of issue, may contain in lieu of the
foregoing the following provision (from which the clause
in parentheses may be omitted at the insurer's option)
under the caption "Incontestable" :

"After this policy has been in force for a period of two
years during the lifetime of the insured (excluding any
period during which the insured is disabled), it shall be­
come incontestable as to the statements contained in the
application.

(2) No claim for loss incurred or disability (as defined
in the policy) commencing after two years from the date
of issue of this policy shall be reduced or denied on the
ground that a disease or physical condition not excluded
from coverage by name or specific description effective
on the date of loss had existed prior to the effective date
of coverage of this policy."

(c) A provision as follows:

"Grace Period: A grace period of ________________
(insert a number not less than '7' for weekly premium
policies, '10' for monthly premium policies and '31' for all
other policies) days will be granted for the payment of
each premium falling due after the first premium, during
which grace period the policy shall continue in force."
(d) A provision as follows:

"Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, as subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy: Provided, That if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement."

(e) A provision as follows:

"Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ______ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."

In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

"Subject to the qualifications set forth below, if the
insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability, in whole or in part, by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given."

(f) A provision as follows:

"Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made."

(g) A provision as follows:

"Proof of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required."

(h) A provision as follows:
"Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid ______ (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof."

(i) A provision as follows:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured."

The following provisions, or either of them, may be included with the foregoing provisions at the option of the insurer:

"If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $________ (insert an amount which shall not exceed one thousand dollars), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment."

"Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital nurs-
(j) A provision as follows:

"Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."

(k) A provision as follows:

"Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."

(l) A provision as follows:

"Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."

The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.


Except as provided in section six of this article, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in
which the same appear in this section: *Provided*, That the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this section or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

(a) A provision as follows:

"Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation."

(b) A provision as follows:
"Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age."

(c) A provision as follows:

"Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for _________ (insert type of coverage or coverages) in excess of $__________ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate."

Or, in lieu thereof:

"Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies."

Provided that no policy hereafter issued for delivery in this state which provides, with or without other benefits, for the payment of benefits or reimbursement for expenses with respect to hospitalization, nursing care, medical or surgical examination or treatment, or ambulance transportation shall contain any provision for a reduction of such benefits or reimbursement, or any provision for avoidance of the policy, on account of other insurance of such nature carried by the same insured with the same or another insurer.

(d) A provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided
hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definitions shall be limited in subject matter to coverage provided by organizations subject to regulations by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provisions with respect to any insured any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

(e) A provision as follows:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for
123 the same loss under all such coverage upon the insured at
124 the time such disability commences and for the return of
125 such part of the premiums paid during such two years as
126 shall exceed the pro rata amount of the premiums for the
127 benefits actually paid hereunder; but this shall not operate
128 to reduce the total monthly amount of benefits payable
129 under all such coverage upon the insured below the sum
130 of two hundred dollars or the sum of the monthly benefits
131 specified in such coverages, whichever is the lesser, nor
132 shall it operate to reduce benefits other than those payable
133 for loss of time."
134
135 The insurer may, at its option, include in this provision
136 a definition of "valid loss of time coverage," approved as
137 to form by the commissioner, which definition shall be
138 limited in subject matter to coverage provided by govern-
139 mental agencies or by organizations subject to regulation
140 by insurance law or by insurance authorities of this or any
141 other state of the United States or any province of Canada,
142 or to any other coverage the inclusion of which may be
143 approved by the commissioner or any combination of
144 such coverages. In the absence of such definition such
145 term shall not include any coverage provided for such
146 insured pursuant to any compulsory benefit statute (in-
147 cluding any workers' compensation or employer's liability
148 statute), or benefits provided by union welfare plans or by
149 employer or employee benefit organizations.
150
151 (f) A provision as follows:
152 "Unpaid Premium: Upon the payment of a claim un-
153 der this policy, any premiums then due and unpaid or
154 covered by any note or written order may be deducted
155 therefrom."
156
157 (g) A provision as follows:
158 "Return of Premium on Cancellation: If the insured
159 cancels this policy, the earned premium shall be computed
160 by the use of the short-rate table last filed with the state
161 official having supervision of insurance in the state where
162 the insured resided when the policy was issued. Canceilla-
163 tion shall be without prejudice to any claim originating
164 prior to the effective date of cancellation."
(h) A provision as follows:

"Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes."

(i) A provision as follows:

"Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

(j) A provision as follows:

"Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician."

§33-15-20. Individual medical savings accounts; definitions; ownership; trustees; regulations.

(a) Any individual resident of this state may establish a medical savings account to serve as self-insurance for the payment of medical expenses. As used in this section "individual medical savings account" means a trust for the payment of medical expenses created or organized for the exclusive benefit of an individual, his or her children and dependents, and his or her beneficiaries: Provided, That an individual establishing a medical savings account may designate a percentage of the account that may be withdrawn by the individual if not needed for medical expenses of the individual, his or her children or other dependents and his or her beneficiaries: Provided, however, That any amount remaining in a medical savings account on the earlier of the date of retirement, at the age of fifty-nine and one-half years or more, of the individual who established the account, or the date of death of that individual, may be withdrawn by the individual or by his or her personal representative for a purpose other than the
payment of medical expenses: Provided further, That any withdrawal for a purpose other than to pay medical expenses as provided in this section shall be added to the federal adjusted gross income of the payee or distributee for purposes of calculating West Virginia adjusted gross income: And provided further, That no withdrawal pursuant to this subsection shall be subject to the additional twenty percent tax as provided in subsection (d) of this section. "Medical expenses" means amounts paid for services for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, which expenses may be included in calculating the federal deduction for medical and dental expenses for federal income tax purposes; for insurance premiums for combined plans issued pursuant to this section; but excluding expenses for cosmetic surgery as defined in Section 213 of the Internal Revenue Code of 1986, as amended. Funds in an individual medical savings account may not be used for payment of medical expenses which any third-party payor is obligated to pay, except for expenses of a medicaid-eligible individual covered under the state's medicaid program. The interest of an individual in a medical savings account established for his or her benefit pursuant to this section shall be non-forfeitable.

(b) The trustee for an individual medical savings account shall be a bank or other entity qualified as a trustee of individual retirement accounts under Section 408 of the Internal Revenue Code of 1986, as amended. An insurer qualified under the Internal Revenue Code of 1986, as amended, may act as trustee. The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund. A trustee who is an insurer may hold the assets of individuals insured under individual accident and sickness plans in a common fund for the account of all individuals who have an interest in the trust, if there is a separate accounting for the interest of each individual or member.

(c) Any insurer issuing accident and sickness policies in this state in accordance with the provisions of this article may offer a benefit plan including deductibles or copay-
ments combined with individual self-insurance through
the establishment of individual medical savings accounts. A benefit plan established pursuant to this subsection shall provide that medical expenses included within deductible or copayment provisions of the accident and sickness policy for the individual or for his or her covered dependents and therefore not payable under that policy be paid by the trustee, either directly or as reimbursement to an individual who has previously paid medical expenses. From the individual medical savings investment account. A benefit plan may limit payment of medical expenses until the group plan annual deductible is met from the medical savings account to expenses which are covered services under the policy.

(d) The insurance commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code to establish specific standards for individual medical savings accounts and for plans in which a policy of insurance is combined with self-insurance under an individual medical savings account. Such standards shall be in addition to and in accordance with the applicable laws of this state and may cover, but shall not be limited to:

(1) Definitions of terms;

(2) An annual contribution minimum for individual medical savings accounts;

(3) An annual contribution maximum for individual medical savings accounts;

(4) Limitations upon an individual's access to or use of individual medical savings account funds and circumstances under which funds in the account may be disbursed: Provided, That if, during any taxable year, the beneficial owner of an individual medical savings account borrows any money under or by use of that account, the account ceases to be an individual medical savings account as of the first day of that taxable year: Provided, however, that any amount paid or distributed out of a medical savings account for any purpose other than to defray medical expenses as provided in this section shall be add-
ed to the federal adjusted gross income of the payee or distributee for purposes of calculating West Virginia adjusted gross income: Provided further, That the payee's or distributee's tax under this article for the taxable year in which the amount is received, except as specifically provided in subsection (a) of this section or except for a distribution of account assets pursuant to order of a federal bankruptcy court, shall be increased by an amount equal to ten percent of the portion of the payment or distribution that is includible in the payee's or distributee's federal adjusted gross income;

(5) Circumstances under which a combined benefit plan offered through an insurer may permit reduced contributions to the individual medical savings account, which circumstances may include the accruing of a specified account balance;

(6) Provisions relating to reporting payments for the benefit of an individual from an individual medical savings account for medical expenses to an insurer offering a combined benefit plan; and

(7) Provisions relating to change or redesignation of a trustee.

(e) The tax commissioner is authorized to establish penalties for early or unauthorized withdrawals from individual medical savings accounts pursuant to rules promulgated pursuant to article three, chapter twenty-nine-a of this code, which penalties may not exceed federal penalties for early or unauthorized withdrawals from individual retirement accounts under the Internal Revenue Code of 1986, as amended.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-15. Individual medical savings accounts; definitions; ownership; contributions; trustees; regulations.

(a) Any insurer issuing group accident and sickness policies in this state, the public employees insurance agency and any employer offering a health benefit plan pursuant to the Employee Retirement Income Security Act of 1974, as amended, may offer a benefit plan including
deductibles or copayments combined with employee self-insurance through the establishment of individual medical savings accounts. As used in this section "individual medical savings account" means a trust for the payment of medical expenses created or organized for the exclusive benefit of an individual, his or her dependents covered under a group accident and sickness policy, and his or her beneficiaries: Provided, That an employee establishing a medical savings account, or for whom a medical savings account is established by an employer, may designate a percentage of the employee's contributions, if any, to that account that may be withdrawn by the employee if not needed for medical expenses of the employee, his or her children or other dependents and his or her beneficiaries: Provided, however, That any amount remaining in a medical savings account on the earlier of the date of retirement, at the age of fifty-nine and one-half years or more, of the employee or the date of death of the employee, may be withdrawn by the employee or by his or her personal representative for a purpose other than the payment of medical expenses: Provided further, That any withdrawal for a purpose other than to pay medical expenses as provided in this section shall be added to the federal adjusted gross income of the payee or distributee: And provided further, That no withdrawal pursuant to this subsection shall be subject to the additional twenty percent tax as provided in subsection (d) of this section. "Medical expenses" means amounts paid for services for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, which expenses may be included in calculating the federal deduction for medical and dental expenses for federal income tax purposes; for insurance premiums for combined plans issued pursuant to this section; but excluding expenses for cosmetic surgery as defined in Section 213 of the Internal Revenue Code of 1986, as amended. Funds in an individual medical savings account may not be used for payment of medical expenses which any third-party payor is obligated to pay, except for medical expenses of a medicaid-eligible individual covered under the state's medicaid program. A benefit plan established pursuant to this section shall provide that medical expens-
es included within deductible or copayment provisions of
the group accident and sickness policy and therefore not
payable under the group policy for the employee or for
his or her covered dependents be paid by the trustee, ei-
ther directly or as reimbursement to an employee who has
previously paid medical expenses, from the individual
medical savings account. A benefit plan may limit pay-
ment of medical expenses until the group plan annual
deductible is met from the medical savings account to
expenses which are covered services under the group poli-
cy.

(b) The interest of an employee in a medical savings
account established for his or her benefit pursuant to this
section shall be nonforfeitable.

(c) The trustee for an individual medical savings ac-
count shall be a bank or other entity qualified as a trustee
of individual retirement accounts under Section 408 of the
Internal Revenue Code of 1986, as amended. An insurer
so qualified may act as trustee. The assets of the trust shall
not be commingled with other property except in a com-
mon trust fund or common investment fund. The trustee
may hold the assets of employees insured under a group
accident and sickness plan in a common fund for the
account of all individuals who have an interest in the trust,
if there is a separate accounting for the interest of each
employee or member. Combined plans are subject to the
protections afforded by article twenty-six-a of this chap-
ter.

(d) The insurance commissioner shall promulgate
legislative rules pursuant to article three, chapter
twenty-nine-a of this code to establish specific standards
for plans in which a group policy is combined with
self-insurance under an individual medical savings ac-
count. These standards shall be in addition to and in ac-
cordance with the applicable laws of this state and may
cover, but shall not be limited to:

(1) Definitions of terms;

(2) An annual contribution minimum for individual
medical savings accounts;
(3) An annual contribution maximum for individual medical savings accounts;

(4) Limitations which a plan may impose upon an employee's access to or use of individual medical savings account funds and circumstances under which funds in the account may be disbursed: Provided, That if, during any taxable year, the beneficial owner of an individual medical savings account borrows any money under or by use of that account, the account ceases to be an individual medical savings account as of the first day of that taxable year: Provided, however, That any amount paid or distributed out of a medical savings account for any purpose other than to defray medical expenses as provided in this section shall be added to the federal adjusted gross income of the payee or distributee for purposes of calculating West Virginia adjusted gross income: Provided further, That the payee's or distributee's tax under this article for the taxable year in which the amount is received except as specifically provided in subsection (a) of this section or except for a distribution of account assets pursuant to order of a federal bankruptcy court, shall be increased by an amount equal to ten percent of the portion of the payment or distribution that is includible in the payee's or distributee's federal adjusted gross income;

(5) Circumstances under which a plan may permit reduced contributions to the individual medical savings account, which circumstances may include the accruing of a specified account balance;

(6) Provisions relating to reporting payments for the benefit of an employee from an individual medical savings account for medical expenses to the group policy insurer; and

(7) Provisions relating to change or redesignation of a trustee and provisions relating to circumstances requiring or permitting continuation of coverage by the group plan or conversion to an individual medical savings account upon termination of an employee's employment.

(e) The tax commissioner is authorized to establish penalties for early or unauthorized withdrawals from indi-
vidual medical savings accounts pursuant to rules promulgated in accordance with article three, chapter twenty-nine-a of this code, which penalties may not exceed federal penalties for early or unauthorized withdrawals from individual retirement accounts under the Internal Revenue Code of 1986, as amended.

CHAPTER 132

(H. B. 2505—By Delegates Adkins, Gallagher and Nesbitt)

[Passed March 2, 1995; in effect January 1, 1996. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; to amend and reenact section nine, article seven; section two, article twenty-two; and to amend and reenact article forty, all of said chapter, all relating to insurance; insurance commissioner; confidentiality of information; standard valuation for life insurance policies; farmers' mutual fire insurance companies, applicability of other provisions; risk-based capital for insurers; definitions; risk-based capital reports; company action level event; regulatory action level event; authorized control level event; mandatory control level event; hearings; confidentiality, prohibition on announcements; prohibition on ratemaking; supplemental provisions, rules, exemptions; foreign insurers; immunity; severability clause; and effective date.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Insurance Commissioner.
22. Farmers' Mutual Fire Insurance Companies.
40. Risk-based Capital (RBC) for Insurers.

ARTICLE 2. INSURANCE COMMISSIONER.


1 In order to assist the commissioner in the regulation of insurers in this state, it is the duty of the commissioner to maintain, as confidential, any documents or information received from the national association of insurance commissioners or insurance departments of other states which is confidential in such other jurisdictions. It is within the power of the commissioner to share information, including otherwise confidential information, with the national association of insurance commissioners or insurance departments of other states: Provided, That such other jurisdictions agree to maintain the same level of confidentiality as is available under this statute.

ARTICLE 7. ASSETS AND LIABILITIES.


1 (a) Title. — This section shall be known as the standard valuation law.

3 (b) Reserve valuation. — The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he may use group methods and
approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(c) Actuarial opinion of reserves. — This subsection shall become operative on the first day of January, one thousand nine hundred ninety-six.

(1) General. — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

(2) Actuarial analysis of reserves and assets supporting such reserves. —

(A) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subdivision (1) of this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves
and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(B) The commissioner may provide by regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this subsection.

(3) Requirement for opinion under subdivision (2). — Each opinion required by subdivision (2) of this subsection shall be governed by the following provisions:

(A) A memorandum in form and substance acceptable to the commissioner as specified by regulation shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) Requirement for all opinions. — Every opinion shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the thirty-first day of December, one thousand nine hundred ninety-five.

(B) The opinion shall apply to all business in force, including individual and group health insurance plans, in
form and substance acceptable to the commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by regulation prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(H) Any memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection therewith, shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: Provided, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; or (ii) to the American academy of actuaries upon request stating that the
memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) Computation of minimum standards. — Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the effective date of this section shall be the commissioners reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies: The commissioners 1941 standard ordinary mortality table for such policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter, the commissioners 1958 standard ordinary mortality table for
such policies issued on or after the operative date of said
subsection, and prior to the operative date of subsection
(4c) of said section: Provided, That for any category of
such policies issued on female risks, all modified net
premiums and present values referred to in this section
may be calculated according to an age not more than six
years younger than the actual age of the insured; and for
such policies issued on or after the operative date of
subsection (4c), section thirty, article thirteen of this
chapter: (i) The commissioners 1980 standard ordinary
mortality table; or (ii) at the election of the company for
any one or more specified plans of life insurance, the
commissioners 1980 standard ordinary mortality table
with ten-year select mortality factors; or (iii) any ordinary
mortality table, adopted after the year one thousand nine
hundred eighty by the national association of insurance
commissioners, that is approved by regulation promul-
gated by the commissioner for use in determining the
minimum standard of valuation for such policies.

(2) For all industrial life insurance policies issued on
the standard basis, excluding any disability and accidental
death benefits in such policies: The 1941 standard
industrial mortality table for such policies issued prior to
the operative date of subsection (4b), section thirty, article
thirteen of this chapter, and for such policies issued on or
after such operative date, the commissioners 1961
standard industrial mortality table or any industrial
mortality table, adopted after the year one thousand nine
hundred eighty by the national association of insurance
commissioners, that is approved by regulation pro-
mulgated by the commissioner for use in determining the
minimum standard of valuation for such policies.

(3) For individual annuity and pure endowment
contracts, excluding any disability and accidental death
benefits in such policies: The 1937 standard annuity
mortality table, or at the option of the company, the
annuity mortality table for 1949, ultimate, or any
modification of either of these tables approved by the
commissioner.
(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: The group annuity mortality table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued
on or after the first day of January, one thousand nine
hundred sixty-one, and prior to the first day of January,
one thousand nine hundred sixty-six, either such table or,
at the option of the company, the inter-company double
indemnity mortality table; and for policies issued prior to
the first day of January, one thousand nine hundred
sixty-one, the inter-company double indemnity mortality
table. Either table shall be combined with a mortality table
for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on
the substandard basis and other special benefits: Such
tables as may be approved by the commissioner.

(e) Computation of minimum standard for annuities.
— Except as provided in subsection (f) of this section, the
minimum standard for the valuation of all individual
annuity and pure endowment contracts issued on or after
the operative date of this subsection, as defined herein, and
for all annuities and pure endowments purchased on or
after such operative date under group annuity and pure
endowment contracts, shall be the commissioner's reserve
valuation methods defined in subsections (g) and (h) of
this section and the following tables and interest rates:

(1) For individual annuity and pure endowment
contracts issued prior to the sixth day of April, one
thousand nine hundred seventy-seven, excluding any
disability and accidental death benefits in such contracts:
The 1971 individual annuity mortality table, or any
modification of this table approved by the commissioner,
and six percent interest for single premium immediate
annuity contracts and four percent interest for all other
individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity
contracts issued on or after the sixth day of April, one
thousand nine hundred seventy-seven, excluding any
disability and accidental death benefits in such contracts:
The 1971 individual annuity mortality table or any
individual annuity mortality table, adopted after the year
one thousand nine hundred eighty by the national
association of insurance commissioners that is approved
by regulation promulgated by the commissioner for use in
determining the minimum standard of valuation for such
contracts, or any modification of these tables approved by
the commissioner, and seven and one-half percent interest;

(3) For individual annuity and pure endowment
contracts issued on or after the sixth day of April, one
thousand nine hundred seventy-seven, other than single
premium immediate annuity contracts, excluding any
disability and accidental death benefits in such contracts:
The 1971 individual annuity mortality table or any
individual annuity mortality table adopted after the year
one thousand nine hundred eighty by the national
association of insurance commissioners, that is approved
by regulation promulgated by the commissioner for use in
determining the minimum standard of valuation for such
contracts, or any modification of these tables approved by
the commissioner, and five and one-half percent interest
for single premium deferred annuity and pure endowment
contracts and four and one-half percent interest for all
other such individual annuity and pure endowment
contracts;

(4) For all annuities and pure endowments purchased
prior to the sixth day of April, one thousand nine hundred
seventy-seven, under group annuity and pure endowment
contracts, excluding any disability and accidental death
benefits purchased under such contracts: The 1971 group
annuity mortality table, or any modification of this table
approved by the commissioner, and six percent interest;

(5) For all annuities and pure endowments purchased
on or after the sixth day of April, one thousand nine
hundred seventy-seven, under group annuity and pure
endowment contracts, excluding any disability and
accidental death benefits purchased under such contracts:
The 1971 group annuity mortality table, or any group
annuity mortality table adopted after the year one
thousand nine hundred eighty by the national association
of insurance commissioners, that is approved by regula-
tion promulgated by the commissioner for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the commissioner, and seven and one-half percent interest.

After the third day of June, one thousand nine hundred seventy-four, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred seventy-nine, which shall be the operative date of this subsection for such company, provided, if a company makes no such election, the operative date of this section for such company shall be the first day of January, one thousand nine hundred seventy-nine.

(f) Computation of minimum standard by calendar year of issue. —

(1) Applicability of this subsection. — The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;

(C) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts, shall be the calendar year statutory
valuation interest rates as defined in this subsection.

(2) Calendar year statutory valuation interest rates. —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance,

\[ I = 0.03 + W(R_1 - 0.03) + \frac{W}{2}(R_2 - 0.09); \]

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

\[ I = 0.03 + W(R - 0.03) \]

where \( R_1 \) is the lesser of \( R \) and 0.09,

\( R_2 \) is the greater of \( R \) and 0.09,

\( R \) is the reference interest rate defined in this subsection, and \( W \) is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;
(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subsection (4c), section thirty, article thirteen of this chapter, as amended, becomes operative.

(3) Weighting factors. —

(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) Weighting Factors for Life Insurance:

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>.50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.35</td>
</tr>
</tbody>
</table>

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under
options to convert to plans of life insurance with premium
rates or nonforfeiture values or both which are guaranteed
in the original policy;

(ii) Weighting factor for single premium immediate
annuities and for annuity benefits involving life
contingencies arising from other annuities with cash
settlement options and guaranteed interest contracts with
cash settlement options: .80;

(iii) Weighting factors for other annuities and for
guaranteed interest contracts, except as stated in
subparagraph (ii) of this paragraph, shall be as specified in
clauses (I), (II) and (III) below, according to the rules and
definitions in clauses (IV), (V) and (VI) below:

(I) For annuities and guaranteed interest contracts
valued on an issue year basis:

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
</tr>
<tr>
<td>5 or less:</td>
<td>.80</td>
</tr>
<tr>
<td>More than 5, but not more than 10:</td>
<td>.75</td>
</tr>
<tr>
<td>More than 10, but not more than 20:</td>
<td>.65</td>
</tr>
<tr>
<td>More than 20:</td>
<td>.45</td>
</tr>
</tbody>
</table>

(II) For annuities and guaranteed interest contracts
valued on a change in fund basis, the factors shown in
subparagraph (i) of this paragraph increased by:

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
</tr>
<tr>
<td>.15</td>
</tr>
</tbody>
</table>

(III) For annuities and guaranteed interest contracts
valued on an issue year basis (other than those with no
cash settlement options) which do not guarantee interest
on considerations received more than one year after issue
or purchase and for annuities and guaranteed interest
contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (I) or derived in (II) increased by:

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>.05</td>
<td>.05</td>
<td>.05</td>
</tr>
</tbody>
</table>

(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only:

1. With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or
2. without such adjustment but in installments over five years or more; or
3. as an immediate life annuity; or
4. no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only:

1. With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or
2. without such adjustment but in installments over five years or more; or
3. no withdrawal
permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate. —

(A) Reference interest rate referred to in subparagraph (ii), paragraph (A), subdivision (2) of this subsection shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of
June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) above, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average
of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(5) Alternative method for determining reference interest rates. —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's Investors Service, Inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(g) Reserve valuation method — life, insurance and endowment benefits. —

Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy
shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of subdivision (1) over subdivision (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(2) A net one year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of
benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code (26 U.S.C. §408), as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

(h) Reserve valuation method — annuity and pure endowment benefits. —

This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code (26 U.S.C. §408), as now or hereafter amended.
Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves. —

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) Optional reserve calculation. —

Reserves for all policies and contracts issued prior to the effective date of this section may be calculated, at the option of the company, according to any standards which
produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the commissioner, issued on or after the effective date of this section, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: Provided, That for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (c) of this section shall not be deemed to be the adoption of a higher standard of valuation.

(k) Reserve calculation — valuation net premium exceeding the gross premium charged. —

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by
the method actually used for such policy or contract but
using the minimum valuation standards of mortality and
rate of interest and replacing the valuation net premium
by the actual gross premium in each contract year for
which the valuation net premium exceeds the actual gross
premium. The minimum valuation standards of mortality
and rate of interest referred to in this section are those
standards stated in subsections (d) and (f) of this section:
Provided, That for any life insurance policy issued on or
after the first day of January, one thousand nine hundred
eighty-five, for which the gross premium in the first policy
year exceeds that of the second year and for which no
comparable additional benefit is provided in the first year
for such excess and which provides an endowment benefit
or a cash surrender value or a combination thereof in an
amount greater than such excess premium, the foregoing
provisions of this subsection shall be applied as if the
method actually used in calculating the reserve for such
policy were the method described in subsection (g) of this
section, ignoring the second paragraph of said subsection.
The minimum reserve at each policy anniversary of such a
policy shall be the greater of the minimum reserve
calculated in accordance with said subsection, including
the second paragraph of that section, and the minimum
reserve calculated in accordance with this subsection.

(l) Reserve calculation — indeterminate premium
plans. —

In the case of any plan of life insurance which
provides for future premium determination, the amounts
of which are to be determined by the insurance company
based on then estimates of future experience, or in the
case of any plan of life insurance or annuity which is of
such a nature that the minimum reserves cannot be
determined by the methods described in subsections (g),
(h) and (k) of this section, the reserves which are held
under any such plan must:

(1) Be appropriate in relation to the benefits and the
pattern of premiums for that plan; and
(2) Be computed by a method which is consistent with the principles of this standard valuation law, as determined by regulations promulgated by the commissioner.

(m) Minimum standards for health (disability, accident and sickness) plans. —

The commissioner shall promulgate a regulation containing the minimum standards applicable to the valuation of health (disability, sickness and accident) plans.

(n) The commissioner shall promulgate a rule on or before the first day of November, one thousand nine hundred ninety-five, prescribing the guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection (c) of this section and for memoranda in support thereof; guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from subdivision (2), subsection (c) of the standard valuation law; and rules applicable to the appointment of an appointed actuary.

(o) Effective date. —

All acts and parts of acts inconsistent with the provision of this section are hereby repealed as of the effective date of this section. This section shall take effect the first day of January, one thousand nine hundred ninety-six.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1 Each company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions) except that section sixteen of said article 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 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 of said article, 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);
aver article thirty-nine (disclosure of material transactions); and
article forty (risk-based capital for insurers); but only to
the extent these provisions are not inconsistent with the
provisions of this article.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.

§33-40-1. Definitions.
§33-40-2. RBC 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.
§33-40-8. Confidentiality; prohibition on announcements, prohibition on
use in ratemaking.
§33-40-10. Foreign insurers.


As used in this article, these terms shall have the following meanings:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with subsection (e), 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) "Commissioner" means the insurance commissioner of the state of West Virginia.

(d) "Domestic insurer" means any insurance company or farmers' mutual fire insurance company domiciled in this state.

(e) "Foreign insurer" means any insurance company which is licensed to do business in this state under article three of this chapter but is not domiciled in this state.

(f) "NAIC" means the national association of insurance commissioners.

(g) "Life and/or health insurer" means any insurance company licensed under article three of this chapter or a licensed property and casualty insurer writing only accident and health insurance.

(h) "Property and casualty insurer" means any insurance company licensed under article three of this chapter or any farmers' mutual fire insurance company licensed under article twenty-two of this chapter, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(i) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as
(j) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as such RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(k) "RBC level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to any insurer, the product of two and its authorized control level RBC;

(2) "Regulatory action level RBC" means the product of one and one half and its authorized control level RBC;

(3) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(4) "Mandatory control level RBC" means the product of seven tenths and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan containing the elements specified in subsection (b), section three of this article. If the commissioner rejects the RBC plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the revised RBC plan.

(m) "RBC report" means the report required in section two of this article.

(n) "Total adjusted capital" means the sum of:

(1) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the financial statements required to be filed under section fourteen, article four of this chapter; and

(2) Such other items, if any, as the RBC instructions
§33-40-2. RBC reports.

(a) Every domestic insurer shall, on or prior to each first day of March (the "filing date"), prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(1) With the NAIC in accordance with the RBC instructions; and

(2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(A) Fifteen days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(b) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC 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 RBC instructions determined in each case by applying the factors in the manner set forth in the RBC instructions.

(c) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the
RBC instructions. The formula shall take into account (and may adjust for the covariance between):

1. Asset risk;
2. Credit risk;
3. Underwriting risk; and
4. All other business risks and such other relevant risks as are set forth in the RBC instructions determined in each case by applying the factors in the manner set forth in the RBC instructions.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in this article and the formulas, schedules and instructions referenced in this article is desirable in the business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by this article. Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this article.

(e) If a domestic insurer files an RBC report which in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "Adjusted RBC Report".

§33-40-3. Company action level event.

(a) "Company action level event" means any of the following events:

1. The filing of an RBC report by an insurer which indicates that:

(A) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC; or
(B) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and two and one half and has a negative trend;

(2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (1) of this subsection, provided the insurer does not challenge the adjusted RBC report under section seven of this article; or

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

(b) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan which shall:

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

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

(3) Provide projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections 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 projections 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, if any, in each case.

(c) The RBC plan shall be submitted:

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

(2) If the insurer challenges an adjusted RBC 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 submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC 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 RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(1) Within forty-five days after the notification from the commissioner; or

(2) If the insurer challenges the notification from the commissioner under section seven of this article, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the
commissioner's discretion, subject to the insurer's right to a hearing under section seven of this article, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) Such state has an RBC provision substantially similar to subsection (a), section eight of this article; and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

§33-40-4. Regulatory action level event.

(a) "Regulatory action level event" means, with respect to any insurer, any of the following events:

(1) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) The notification by the commissioner to an insurer of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the insurer does not challenge the adjusted RBC report under section seven of this article;

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

(4) The failure of the insurer to file an RBC 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 submit an RBC plan to
the commissioner within the time period set forth in
subsection (c), section three of this article;

(6) Notification by the commissioner to the insurer
that:

(A) The RBC plan or revised RBC plan submitted by
the insurer is, in the judgment of the commissioner,
unsatisfactory; and

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

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

(8) Notification by the commissioner to the insurer
that the insurer has failed to adhere to its RBC plan or
revised RBC plan, but only if such failure has a substantial
adverse effect on the ability of the insurer to eliminate the
company action level event in accordance with its RBC
plan or revised RBC plan and the commissioner has so
stated in the notification, provided the insurer has not
challenged the determination under section seven of this
article; or

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

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

(1) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC 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 RBC plan or revised RBC plan; and

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

(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 RBC instructions. The RBC plan or revised RBC plan shall be submitted:

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

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

(3) If the insurer challenges a revised RBC plan pursuant to section seven of this article and the challenge is not frivolous in the judgment of the commissioner,
within forty-five days after the notification to the insurer 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 RBC plan or revised RBC 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 affected insurer or such other party as directed by the commissioner.

§33-40-5. Authorized control level event.
(a) "Authorized control level event" means any of the following events:

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

(2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the insurer does not challenge the adjusted RBC report under section seven of this article;

(3) If, pursuant to section seven of this article, the insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the commissioner to the insurer 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 the insurer has not challenged the corrective order) under section seven of this article; or

(5) If the insurer has challenged a corrective order
under section seven of this article and the commissioner
has, after a hearing, rejected the 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 under section
four of this article regarding an insurer with respect to
which 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
under 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 under 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 RBC report, the
insurer shall be entitled to such protections as are afforded
to insurers under the provisions of article ten of this
chapter pertaining to summary proceedings.

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

(a) "Mandatory control level event" means any of the
following events:

(1) The filing of an RBC report which indicates that
the insurer's total adjusted capital is less than its mandatory
control level RBC;

(2) Notification by the commissioner to the insurer of
an adjusted RBC report that indicates the event in
subdivision (1) of this subsection, provided the insurer

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

(b) In the event of a mandatory control level event:

(1) With respect to a life insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under article ten of this chapter. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under said article, and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said article. If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections 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 the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(2) With respect to a property and casualty insurer, the commissioner shall take such actions as are necessary to place the insurer under regulatory control under article ten of this chapter, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under said article and the commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in said article. If the commissioner takes actions
pursuant to an adjusted RBC report, the insurer shall be
entitled to the protections 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 the
commissioner finds there is a reasonable expectation that
the mandatory control level event may be eliminated
within the ninety-day period.


Insurers shall have the right to a confidential
departmental hearing, on a record, at which the insurer
may challenge any determination or action by 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
notification from the commissioner.

(a) Notification to an insurer by the commissioner of
an adjusted RBC report; or

(b) Notification to an insurer by the commissioner
that:

(1) The insurer's RBC plan or revised RBC plan is
unsatisfactory; and

(2) Such notification constitutes a regulatory action
level event with respect to such insurer; or

(c) Notification to any insurer by the commissioner
that the insurer has failed to adhere to its RBC plan or
revised RBC 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 RBC plan or revised RBC plan; or

(d) Notification to an insurer by the commissioner 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, which date
§33-40-8. Confidentiality; prohibition on announcements, prohibition on use in ratemaking.

(a) All RBC reports (to the extent the information therein is not required to be set forth in a publicly available annual statement schedule) and RBC 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 article 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 RBC 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
RBC 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 RBC levels (or any of them) or an inappropriate comparison of any other amount to the insurers RBC 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.

(c) It is the further judgment of the Legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.


(a) 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.

(b) The commissioner may adopt reasonable rules necessary for the implementation of this article.

(c) The commissioner may exempt from the application of this article any domestic property and
casualty insurer which:

(1) Writes direct business only in this state;
(2) Writes direct annual premiums of two million dollars or less; and
(3) Assumes no reinsurance in excess of five percent of direct premium written.

(d) A domestic farmers' mutual fire insurance company is exempt from the provisions of this article when:

(1) It writes direct business only in this state;
(2) It writes direct annual premiums of two million dollars or less; and
(3) It assumes no reinsurance in excess of five percent of direct premium written.

§33-40-10. Foreign insurers.

(a) Any foreign insurer shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:

(1) The date an RBC report would be required to be filed by a domestic insurer under this act; or
(2) Fifteen days after the request is received by the foreign insurer.

Any foreign insurer shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(b) In the event of a company action level event, regulatory action level event or authorized control level event with respect to any foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under the provisions of this article), if the insurance
commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under section three of this article), the commissioner may require the foreign insurer to file an RBC plan with the commissioner. In such event, the failure of the foreign insurer to file an RBC plan with the commissioner shall be grounds to order the insurer to cease and desist from writing new insurance business in this state.

(c) In the event of a mandatory control level event with respect to any 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 under 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.


There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the agency of the insurance commission or its employees or agents for any action taken by them in the performance of their powers and duties under this article.


All notices by the commissioner to an insurer which may result in regulatory action hereunder shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the insurer's receipt of such notice.


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