FOREWORD

These volumes contain the Acts of the Second Regular Session and the First Extraordinary Session of the 72nd Legislature, 1996.

Second Regular Session, 1996

The Second Regular Session of the 72nd Legislature convened on January 10, 1996. The Constitutional sixty-day limit on the duration of the session was midnight, March 9, 1996. The Governor issued a proclamation on March 6, 1996, extending the session for a period of seven days for the purpose of considering the Budget and supplementary appropriation bills, and the Legislature adjourned sine die on March 15, 1996.

Bills totaling 1,645 were introduced in the two houses during the session (1,039 House, 168 of which were carryover bills from the 1995 Regular Session, and 606 Senate). The Legislature passed 275 bills, 149 House and 126 Senate.

The Governor vetoed eleven bills (H. B. 4484, Restricting municipal powers to limit the rights of persons with respect to firearms and ammunition; H. B. 4535, Authorizing the regional jail and correctional jail authority to assess a penalty against certain courts when such courts fail to remit moneys collected in proceedings; H. B. 4547, Supplemental appropriation to the Board of Investments, Acct. No. Fund 0513 FY 1996 Org 0920; H. B. 4645, Changing the closure date of Colin Anderson Center from December 31, 1996, to March 15, 1997; S. B. 37, Relating to exemptions from excise taxes and compliance generally; S. B. 87, Relating to certificate of title for factory-built homes; automobile auctions; S. B. 94, Relating to public defender services generally; S. B. 257, Permitting professional firefighters to run for office; exceptions; S. B. 412, Requiring sloped roofs on public-funded buildings; S. B. 427, Prohibiting change orders on state contracts exceeding certain percentage of original bid; and S. B. 588, Relating to procedural and administrative matters affecting exercise of judicial authority). The Legislature amended and again passed H. B. 4547, S. B. 37, S. B. 94 and S. B. 588. The Governor again vetoed S. B. 588. Two bills (H. B. 4795 and S. B. 326) were found to be technically deficient and void after having been signed by the Governor, leaving a net total of 265 bills, 145 House and 120 Senate, which became law.

Twenty-one House bills became law without the Governor's signature.

There were 94 Concurrent Resolutions introduced during the session, 55 House and 39 Senate, of which 17 House and 10
Senate were adopted. Twenty-one House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One House Joint Resolution, H. J. R. 22, Safe Roads Amendment of 1996, was adopted by the Legislature. The House introduced 24 House Resolutions and the Senate introduced 45 Senate Resolutions, of which 21 House and 44 Senate were adopted.

The Senate failed to pass 72 House bills passed by the House, and 32 Senate bills failed passage by the House. Two House bills and two Senate bills died in conference: H. B. 4011, Prohibiting passing in a center turn lane; H. B. 4369, Requiring employment of a certified full-time county director of school attendance; S. B. 149, Creating Court-Appointed Special Advocate; and S. B. 360, Removing excise tax on special dyed diesel fuel.

First Extraordinary Session, 1996

The Proclamation calling the Legislature into Extraordinary Session at 12:00 P.M., Noon, July 14, 1996, contained nine items for consideration.

The Governor issued a supplemental proclamation on July 16, 1996, containing an additional item for consideration by the Legislature, concerning enhanced emergency telephone systems.

The Legislature passed 9 bills, 5 House and 4 Senate. The Legislature adopted one Concurrent Resolution. The House adopted 3 House Resolutions and the Senate adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die on July 16, 1996.

* * * * * * * *

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

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

Gregory M. Gray
Clerk of the House and
Keeper of the Rolls.
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**First Extraordinary Session 1996**

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REGULAR SESSION, 1996

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Clerk—Gregory M. Gray, Charleston
Sergeant at Arms—Oce Smith, Fairmont
Doorkeeper—John A. Roberts, Charles Town

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

1Elected Feb. 7, 1996, to fill the vacancy created by the resignation of Don Yoak.  
2Appointed Feb. 1, 1996, to fill the vacancy created by the resignation of Ernest C. Moore.  
3Appointed May 4, 1995, to fill the vacancy created by the death of John F. Bennett and subsequently appointed to the state Senate to fill the vacancy created by the resignation of David E. Miller.  
Samuel A. Morasca appointed April 26, 1996, to fill the vacancy created by the resignation of Edward Kerns.
MEMBERS OF THE SENATE
REGULAR SESSION, 1996

OFFICERS

President—Earl Ray Tomblin, Logan
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Tony DeRaimo, Leewood
Doorkeeper—Andrew J. Trail, Charleston

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<td>Kingwood</td>
<td>(House 69th-70th); Appt. 9/27/93, 71st</td>
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<td></td>
<td>Sarah M. Minear (R)</td>
<td>Parsons</td>
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<tr>
<td>Fifteenth</td>
<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></td>
<td>Mike Ross (D)</td>
<td>Coalton</td>
<td>71st</td>
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<td>Harry E. Dugan (R)</td>
<td>Martinsburg</td>
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<td>John C. Yoder (R)</td>
<td>Harpers Ferry</td>
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<td>Larry Kimble (R)</td>
<td>Charleston</td>
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<td></td>
<td>Martha Yeager Walker (D)</td>
<td>Charleston</td>
<td>(House 70th); 71st</td>
</tr>
</tbody>
</table>

(D) Democrats ........................................................................ 26
(R) Republicans ...................................................................... 8
TOTAL ............................................................................... 34

1 Appointed to fill the vacancy created by the death of Porter Cotton.
2 Edward Kerns appointed on April 1, 1996, to fill the vacancy created by the resignation of David E. Miller.
COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1996

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, Seacrist, Stewart, Thompson, Tillis, Azinger, Clements, Faircloth, Greear, Hall, Nesbitt and Walters.

CONSTITUTIONAL REVISION

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

EDUCATION

Prezioso (Chair), Proudfoot (Vice Chair), Ball, Beach, Collins, Dempsey, Ellis, Ennis, Hubbard, Kallai, Kerns, Kuhn, Leach, McGraw, Stewart, 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, Warner and Walters.

[ xxxvii ]
GOVERNMENT ORGANIZATION

J. Martin (Chair), Varner (Vice Chair), Adkins, Cann, Everson, Fantasia, Fragale, Heck, 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, Givens, Hunt, Hutchins, Jenkins, Johnson, Linch, Manuel, Preece, Ryan, Tillis, Whitman, Faircloth, Greear, Kime, Riggs, Smirl, Thomas and Trump.

POLITICAL SUBDIVISIONS

Manual (Chair), Collins (Vice Chair), Ball, Fantasia, Fragale, Givens, Jenkins, Johnson, Kallai, Kerns, 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, Compton, Ennis, Everson, Hubbard, Kallai, Kerns, 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.
HOUSE OF DELEGATES COMMITTEES

JOINT

ENROLLED BILLS

Seacrist (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.

OVERSIGHT COMMISSION ON
EDUCATION ACCOUNTABILITY

Prezioso (Chair), Browning, Mezzatesta, Proudfoot, Yeager and Anderson.

OVERSIGHT COMMISSION ON
HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

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, 1996

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.
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.
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.

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
HEALTH & HUMAN RESOURCES ACCOUNTABILITY
Walker (Chair), Blatnik, Craigo, Macnaughtan, Sharpe and Scott.

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 chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-c; and to amend article seven, chapter fifty-five of said code by adding thereto a new section, designated section eighteen, all relating to establishing a central abuse registry; defining terms; requiring certain individuals convicted of a felony or misdemeanor offense with respect to a child or incapacitated adult to be placed on registry; requiring prosecuting attorneys to report certain convictions; permitting disclosure of certain information; providing for expungement of listings in certain circumstances; establishing user fees for registry purposes; establishing service provider responsibilities; and providing limited immunity from suit for residential care facilities, day care centers and home care service providers disclosing employment information.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, be amended by add-
ing thereto a new article, designated article two-c; and that article
seven, chapter fifty-five of said code be amended by adding thereto a new section, designated section eighteen, all to read as
follows:

Chapter

15. Public Safety.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

§15-2C-2. Central abuse registry; required information; procedures.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.


§15-2C-5. Expungement of registry listing.

§15-2C-6. Fees.

§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.


§15-2C-1. Definitions.

1 The following words when used in this article have meanings ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

5 (a) "Central abuse registry" or "registry" means the registry created by this article which shall contain the names of individuals who have been convicted of a felony or a misdemeanor offense constituting abuse, neglect or misappropriation of the property of a child or an incapacitated adult.

11 (b) "Child abuse and neglect" or "child abuse or neglect" means those terms as defined in section three, article one, chapter forty-nine of this code, and shall include any act with respect to a child which is a crime against the person pursuant to article two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d
of said chapter sixty-one, and any offense with respect to a child which is enumerated in section three of this article.

(c) "Abuse or neglect of an incapacitated adult" means "abuse" "neglect" and "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall include any act with respect to an incapacitated adult which is a crime against the person pursuant to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated adult which is enumerated in section three of this article.

(d) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

(e) "Residential care facility" means any facility where a child or an incapacitated adult resides which is subject to registration, licensure or certification by the department of health and human resources, and shall include nursing homes, personal care homes, residential board and care homes, adult family care homes, group homes, legally unlicensed service providers, residential child care facilities, family based foster care homes, specialized family care homes and intermediate care facilities for the mentally retarded.

(f) "Misappropriation of property" means any act which is a crime against property under article three, chapter sixty-one of this code with respect to a child in a residential care facility or an incapacitated adult in a residential care facility or a child or an incapacitated adult who is a recipient of home care services.

(g) "Home care" or "home care services" means services provided to children or incapacitated adults in the home through a hospice provider, a community care provider, a home health agency, through the medicaid waiver program, or through any person when that service is reimbursable under the state medicaid program.
(h) "Requester" means any residential care facility, any state licensed day care center, or any provider of home care services providing to the central abuse registry the name of an individual and other information necessary to identify that individual, and either (1) certifying that the individual is being considered for employment by the requester or for a contractual relationship with the requester wherein the individual will provide services to a child or an incapacitated adult for compensation; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been made against the individual.

§15-2C-2. Central abuse registry; required information; procedures.

(a) The criminal identification bureau of the West Virginia state police shall establish a central abuse registry, to contain information relating to criminal convictions following reports of child abuse or neglect, abuse or neglect of an incapacitated adult, and misappropriation of property.

(b) The central abuse registry shall contain, at a minimum, information relating to: (1) Convictions of a misdemeanor or a felony constituting abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual's employment or contract to provide services, in a residential care facility, in a licensed day care center, or in connection with the provision of home care services; (2) information relating to individuals convicted of specific offenses enumerated in subsection (a), section three of this article with respect to a child or an incapacitated adult; and (3) information relating to all individuals required to register with the West Virginia state police as sex offenders pursuant to the provisions of article eight-f, chapter sixty-one of this code. The central abuse registry shall contain the following information with respect to an individual found to have committed an act of abuse, neglect or misappropriation of property, or an individual convicted of a felony offense:
26 (1) The individual's full name;

27 (2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints, if available;

29 (3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult;

30 (4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult in a residential care facility or a day care center, or of a child or an incapacitated adult receiving home care services, sufficient information to identify the location where such documentation of any investigation by the department of health and human resources is on file and the location of pertinent court files; and

34 (5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.

40 (c) Upon conviction in the criminal courts of this state of a misdemeanor or a felony offense constituting child abuse or neglect or abuse or neglect of an incapacitated adult, the individual so convicted shall be placed on the central abuse registry.

§15-2C-3. Reports of certain convictions by prosecuting attorneys.

1 (a) The central abuse registry shall maintain information relating to child abuse or neglect, abuse or neglect of an incapacitated adult, and misappropriation of property with respect to individuals convicted of certain offenses pursuant to this code, when the victim of the crime is a child or an incapacitated adult, to include:

7 (1) First or second degree murder pursuant to section one, article two, chapter sixty-one of this code;

10 (2) Voluntary manslaughter pursuant to section four, article two, chapter sixty-one of this code;
ABUSE REGISTRY

(3) Attempt to kill or injure by poison pursuant to section seven, article two, chapter sixty-one of this code;

(4) Malicious or unlawful assault pursuant to section nine, article two, chapter sixty-one of this code;

(5) Assault during commission of or attempt to commit a felony pursuant to section ten, article two, chapter sixty-one of this code;

(6) Extortion by threats pursuant to section thirteen, article two, chapter sixty-one of this code;

(7) Abduction of a person or kidnapping or concealing a child pursuant to section fourteen, article two, chapter sixty-one of this code;

(8) Enticing away or otherwise kidnapping any person pursuant to section fourteen-a, article two, chapter sixty-one of this code;

(9) A misdemeanor or felony sexual offense pursuant to article eight-b, chapter sixty-one of this code;

(10) Filming of sexually explicit conduct of minors pursuant to article eight-c, chapter sixty-one of this code;

(11) Misdemeanor or felony child abuse pursuant to article eight-d, chapter sixty-one of this code;

(12) A violent crime against the elderly which is an offense under the provisions of section nine or ten, article two, chapter sixty-one of this code which is subject to the sentencing provisions of section ten-a of said article two;

or

(13) A property offense pursuant to article three, chapter sixty-one of this code, with respect to a child in a residential care facility or an incapacitated adult in a residential care facility or a child or an incapacitated adult who is a recipient of home care services, when the individual committing the offense was providing services for compensation in the residential care facility or within the home.
(b) The prosecuting attorneys in each of the fifty-five counties within the state, upon conviction of a misdemeanor, a felony or a lesser included misdemeanor offense for those specific offenses set forth in subsection (a) of this section, shall report the conviction to the central abuse registry, together with such additional information, provided in such form, as may be required by the criminal identification bureau for registry purposes. Reporting procedures shall be developed by the criminal identification bureau in conjunction with the prosecuting attorneys' institute and the office of the administrator of the supreme court of appeals.

(c) Information relating to convictions prior to the effective date of this section of a misdemeanor or a felony constituting child abuse or abuse or neglect of an incapacitated adult shall, to the extent which is feasible and practicable, be placed on the central abuse registry. When any requester requests information related to a named individual, the criminal identification bureau may search and release other information maintained by the bureau to determine whether that individual has been convicted of offenses which are subject to inclusion on the registry.


(a) The information contained in the central abuse registry is confidential, and may not be disclosed except as specifically provided in this section. The criminal identification bureau shall disclose the information described in subdivisions (1) through (3) and subdivision (5), subsection (b), section two of this article to any requester, except that the name of the victim of the act alleged shall not appear on the information disclosed and shall be stricken from any statement filed by an individual. The department of health and human resources shall certify, not later than fifteen days following the effective date of this section, the list of requesters authorized to obtain registry information, and shall inform the criminal identification bureau promptly of subsequent additions and deletions from the list. The information contained in the registry
with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The criminal identification bureau may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the state of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse registry information are specifically authorized.

(b) An active file on requests for information by requesters shall be maintained by the criminal identification bureau for a period of one year from the date of a request. If an individual who is the subject of the request is placed on the registry with respect to any conviction within one year of the date of the request, that information shall promptly be disclosed to the requester.

§15-2C-5. Expungement of registry listing.

Registry listings of abuse, neglect or misappropriation of property with respect to an individual shall promptly be expunged in cases where a conviction is vacated or overturned following appeal by a court having jurisdiction; where the record of a conviction is expunged by a court having jurisdiction; or in cases where the individual so convicted is granted executive clemency with respect to the conviction.

§15-2C-6. Fees.

The criminal identification bureau may charge, and any requester shall pay a user charge of ten dollars for each request for information made by a requester to the central abuse registry. In order to expedite requests by requesters, the criminal identification bureau may establish a procedure permitting service providers to deposit funds
with the bureau in anticipation of requests. Fees pursuant to this section shall be paid into a special account in the state treasury to be expended for registry purposes: Provided, That for and after the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-eight, all expenditures shall be made in accordance with appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for central abuse registry purposes may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

§15-2C-7. Registration of home care agencies required; form of registration; information to be provided.

(a) In order to permit providers of home care services not otherwise required to be licensed, certified or registered with the department of health and human resources by other provision of this code to access information in the central abuse registry, all home care service providers not currently licensed, certified or registered by the department shall register with the office of health facilities licensure and certification. No fee may be charged for registration. Registration information shall be provided on a registration form, but no provision of information shall be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address and telephone number of the service provider;

(2) The geographic area where services are provided to consumers, the number of homes where services are provided and the number of consumers provided service; and

(3) The services, such as nursing care or personal assistance, provided to consumers.

1 All residential care facilities, day care centers and
2 home care service providers authorized to operate in West
3 Virginia shall:

4 (1) Provide notice to current employees of the agency
5 and other persons providing services under a contract with
6 the agency within sixty days of the effective date of this
7 article, and provide notice to any newly hired employee or
8 person at the time an employment or contractual relation-
9 ship is entered into, which notice shall be in the following
10 form: "NOTICE: All service providers in the state of West
11 Virginia are subject to provisions of law creating a central
12 abuse registry. Any person providing services for comp-
13 pensation to children or to incapacitated adults, who is
14 convicted of a misdemeanor or felony offense constituting
15 abuse, neglect or misappropriation of property of a child
16 or an incapacitated adult, is subject to listing on the central
17 abuse registry. The fact that a person is listed on the reg­
18 istry may be disclosed in specific instances provided by
19 law. Listing on the registry may limit future employment
20 opportunities, including opportunities for employment
21 with residential care facilities, day care centers and home
22 care agencies. It is the policy of ________________
23 [name of agency] to promptly report all suspected in-
24 stances of abuse, neglect or misappropriation of property
25 to the proper authorities and to cooperate fully in the
26 prosecution of these offenses."

27 (2) Cooperate fully with law enforcement, prosecuting
28 attorneys and court personnel in criminal prosecutions of
29 acts of child abuse or neglect or abuse or neglect of an
30 incapacitated adult.

31 (3) Respond promptly to all requests by other service
32 providers for references for former or present employees
33 of the agency, which response may include a subjective
34 assessment as to whether the individual for whom the re­
35 ference is sought is suited to provide services to children or
36 incapacitated adults.
CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-18. Limiting liability of home care service providers, day care centers and residential care facilities disclosing certain employment information.

When a residential care facility required to be registered, licensed or certified under the laws of the state, a licensed day care center, or an agency providing services in the home to children or incapacitated adults is asked to provide an employment reference with respect to a named individual who provided services to children or incapacitated adults for compensation, no person shall be liable for disclosing information related to the named individual's employment history, including a subjective assessment of whether the named individual is suited to provide services to children or incapacitated adults, unless it is alleged and proven that the information disclosed was false and disclosed with knowledge that the information was false.

CHAPTER 2

(H. B. 4344—By Delegates Beach and Riggs)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, six and ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to agriculture; inspection of meat and poultry; definitions; inspections; additional prohibitions; and criminal offenses.

Be it enacted by the Legislature of West Virginia:

That sections two, six and ten, 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-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.


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

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

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

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

5. (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;

6. (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;

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

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

9. (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 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 except organotherapeutic substances, meat
juices, meat extract and the like which are only for medici-
nal purposes and are advertised only to the medical pro-
fession; any edible part of the carcass which has been
manufactured, cured, smoked, processed or otherwise
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 pro-
duct, 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
otherwise manufacture, or package any meat product or
poultry product;

(ii) "Denature" means the uniform application of suf-
ficient 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;
(jj) "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;

(kk) "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;

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

(mm) "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;

(nn) "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;

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

(pp) "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 and who stores and dis-
tributes to commercial outlets, processors or individuals
and who conducts no processing;

(qq) "Processor" means a person who engages for
profit in this state in the business of processing carcasses,
meat products or poultry products for human consump-
tion;

(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, pro-
cessing rooms, sanitary facilities, other facilities, and uten-
sils, used by or in connection with the operations of a
processor;

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

(vv) "Related industries" means rendering plants, re-
frigerated meat warehouses, food lockers, meat and poul-
try 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 eat-
ing 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 con-
sumers;

(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;
(eee) "Licensee" means any person licensed under the provisions of this article;
(ff) "Misbranded" applies to any carcass, meat product or poultry product under one or more of the following circumstances:
   (1) If its labeling is false or misleading in any particular;
   (2) If it is offered for sale under the name of another meat product or poultry product;
   (3) If it is an imitation of another meat product or poultry product; unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the meat product or poultry product imitated;
   (4) If its container is made, formed or filled as to be misleading;
   (5) Unless it bears a label showing: (A) The name and place of business of the establishment; and (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count;
   (6) If any word, statement or other information required by or under authority of this article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
   (7) If it purports to be or is represented as a meat product or poultry product for which a definition and standard of identity or composition has been prescribed by rules promulgated by the commissioner unless: (A) It conforms to such definition and standards; and (B) its label bears the name of the meat product or poultry prod-
327 uct specified in the definition and standard of identity and
328 the common names of optional ingredients (other than
329 spices, flavoring and coloring) present in such products;
330 (8) If it is not subject to the provisions of subsection
331 (7), unless its label bears: (A) The common or usual name
332 of the meat product or poultry product, if any there be,
333 and (B) in case it is fabricated from two or more ingredi-
334 ents, the common or usual name of each such ingredient;
335 except that spices, flavorings and colorings may be design-
336 nated as such without naming each;
337 (9) If it purports to be or is represented for special
338 dietary uses, unless its label bears such information con-
339 cerning its vitamin, mineral and other dietary properties as
340 the commissioner determines to be necessary in order
341 fully to inform purchasers as to its value for such uses;
342 (10) If it bears or contains any artificial flavoring,
343 artificial coloring, or chemical preservative, unless it bears
344 labeling stating that fact; or
345 (11) If it fails to bear, directly thereon or on its con-
346 tainer, as the commissioner may by rules prescribe, the
347 inspection legend and, unrestricted by any of the forego-
348 ing, such other information as the commissioner may
349 require in such rules to assure that it will not have false or
350 misleading labeling and that the public will be informed
351 of the manner of handling required to maintain the meat
352 product or poultry product in a wholesome condition.

§19-2B-6. Inspection, marking, labeling, branding, etc.; quar-
antine; segregation; scheduling of operations; dispo-
sition of carcasses, etc.; reinspection; health ex-
amination; rejection tags.

1 (a) The commissioner shall provide antemortem and
2 postmortem inspection of all animals and poultry which
3 are to be sold or offered for sale through a commercial
4 outlet, establishment or distributor.
5 (b) The commissioner shall provide reinspection of
6 carcasses, meat products and poultry products during
7 further processing which have previously been inspected.
(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 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 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, and meat products which have been derived from an animal 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 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.
§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 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 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 establishment subject to state inspection any carcass, meat product and poultry product derived from any animal or poultry 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 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 com-
missoner;

(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 trans-
ported if placed in suitable containers with tight covers, or
watertight tanks so as not to contaminate the public high-
ways 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 indus-
tries during interim transit movement in refrigerated ware-
houses, 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 deliver, a dead or
dying animal or poultry to an establishment in this state;

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

(dd) For any person who forcibly assaults, resists,
opposes, impedes, intimidates, or interferes with the com-
missoner or his or her representative while engaged in or
on account of the performances of his or her official du-
ties;

(ee) For any person to deliver, with intent to deceive,
any graded meat product or poultry product to a state
institution that does not meet the grade specifications for
that grade when a specified grade is required in a contract.
AN ACT to amend and reenact sections one and two, article seven, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to state aid for fairs; increasing the amount of state aid for certain exhibits encouraging agriculture; and increasing the aggregate amount authorized in each county.

Be it enacted by the Legislature of West Virginia:

That sections one and two, article seven, 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 7. STATE AID FOR FAIRS.

§19-7-1. Amount of state aid.

§19-7-2. State aid where more than one fair in county.

§19-7-1. Amount of state aid.

1 For the purpose of encouraging agriculture, any incorporated agricultural association conforming to the requirements of this article shall receive from the state of West Virginia an annual sum equal to the amount paid by the association for exhibits of agriculture, horticulture, flora culture, livestock and home economics at its annual exhibition not to exceed twenty thousand dollars.

§19-7-2. State aid where more than one fair in county.

1 In case there is more than one association holding annual exhibitions in a county and eligible to receive the benefits of this article, the association is entitled to receive from the state a sum, not exceeding in the aggregate fifty thousand dollars, to be apportioned among the associations according to the amount paid for the exhibits as are mentioned in section one of this article, at the annual exhibition of the associations.
AN ACT to amend and reenact sections two and nine, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing licensing requirements and fees for agents of nurserymen or dealers.

Be it enacted by the Legislature of West Virginia:

That sections two and nine, article twelve, 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 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

§19-12-9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.

§19-12-2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article. All words shall be construed to import either the plural or the singular, as the case demands:

(a) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.

(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his or her duly authorized representatives.

(c) "Compliance agreement" means a written agreement between the department and any person engaged in
(d) "Dealer" means any person who buys, receives on consignment or otherwise acquires and has in his or her possession nursery stock which that person has not grown from propagative material such as tissue culture plants, cuttings, liners, seeds or transplanted nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

(e) "Department" means the department of agriculture of the state of West Virginia.

(f) "Genetically modified organism" means any organism altered or produced through genetic modification from a donor, vector or recipient organism using modern molecular techniques.

(g) "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

(h) "Infested area" means any area of uncontrolled growth of insects, plant diseases, noxious weeds or other plant pests.

(i) "Noxious weed" means any living plant, or part thereof, declared by the commissioner, after public hearing, to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy.

(j) "Nursery" means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored or otherwise prepared or offered for sale or movement to other localities.
(k) "Nurseryman" means and includes any person who owns, leases, manages or is in charge of a nursery.

(l) "Nursery stock" means all trees, shrubs and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also means sod, including sod plugs and sod-producing plants, and such herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs as the commissioner declares by rule to be so included whenever he or she considers control of the movement of such plants and bulbs necessary for the control of any destructive plant pest. Florists' or greenhouse plants for inside culture or use, unless declared otherwise by the commissioner, as herein authorized, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as nursery stock.

(m) "Permit" means a document issued or authorized by the commissioner to provide for a movement of regulated articles to restricted destinations for limited handling, utilization or processing.

(n) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, governmental organization or other business entity and each officer, agent or employee thereof.

(o) "Plant and plant products" means trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and lumber and all other parts of plants and plant products; and fruit, vegetables, roots, bulbs, seeds and wood.

(p) "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substances, and any genetically modified organisms
for which there is reason to believe may directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

(q) "Quarantine" means a legal declaration by the commissioner which specifies:

(1) The plant pest or noxious weeds.

(2) The articles to be regulated.

(3) Conditions governing movement.

(4) The area or areas quarantined.

(5) Exemptions.

(r) "Regulated article" means any article of any character, as described in quarantine or other order of the commissioner carrying or capable of carrying a pest.

§19-12-9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.

It shall be unlawful for any nurseryman or dealer to expose or offer for sale, sell, deliver or give away any plants or parts of plants commonly known as nursery stock unless such person shall have first secured from the commissioner a certificate of registration. The commissioner may refuse, suspend or cancel any certificate upon satisfactory evidence that any of the provisions of this article or rules governing the sale of nursery stock within the state have been violated. The commissioner shall for each certificate of registration issued and for each renewal thereof, collect an annual registration fee in the amount of ten dollars for each nurseryman and twenty dollars for each dealer. All certificates or registration shall expire on the thirtieth day of June next after issue.
AN ACT to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the number of days an animal which has bitten a person must be quarantined for rabies observation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS AND CATS.

§19-20-9a. Dogs, cats, etc.; rabies observation.

1 Any person who owns or harbors any dog, cat or other domesticated animal, whether licensed or unlicensed, which bites any person, shall forthwith confine and quarantine the animal for a period of ten days for rabies observation. If such animal is not so confined and quarantined, the humane officer, dog warden or sheriff may cause such animal to be placed in the custody and care of a licensed veterinarian for such purpose at the owner's expense. The penalty for any violation of this section shall be a fine of fifty dollars or confinement in the county jail for a period of no less than two nor more than three days.
AN ACT to amend and reenact section seven, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to soil conservation districts; providing for the appointment of supervisors; payment of expenses; increasing the per diem of supervisors; providing for surety bonds; and removal of supervisors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

The governing body of the district shall consist of the supervisors, appointed or elected, as provided in this article. The two supervisors appointed by the committee shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties under this section and must be legal residents and landowners of the district.

The supervisors shall designate a chairman and may, from time to time, change the designation. The term of office of each supervisor is three years. A supervisor shall hold office until his or her successor has been elected, or appointed. In case a new county or portion of a county is added to a district the committee may appoint a supervisor to represent it until such time as the next regular election of supervisors for the district takes place. In case a
vacancy occurs among the elected supervisors of a district
the committee shall appoint a successor from the same
county to fill the unexpired term. The appointment shall
be made from a name or list of names submitted by local
farm organizations and agencies. When any county or
portion of a county lying within the boundaries of a
district has in effect eight hundred or more signed
agreements of cooperation with occupiers of land located
within the county, then at the next regular election of
supervisors the land occupiers within the county or
portion of the county are entitled to elect two supervisors
to represent the county instead of one for the term and in
the manner prescribed in this section. A majority of the
supervisors constitutes a quorum and the concurrence of a
majority in any matter within their duties shall be required
for its determination. A supervisor is entitled to expenses,
and a per diem not to exceed twenty dollars when engaged
in the performance of his or her duties.

The supervisors may, with the approval of the state
committee, employ a secretary, technical experts, and any
other officers, agents, and employees, permanent and
temporary, as they may require, and shall determine their
qualifications, duties and compensation. The supervisors
may delegate to their chairman, to one or more supervi-
sors or to one or more agents, or employees, those
administrative powers and duties they consider proper.
The supervisors shall furnish to the state soil conservation
committee, upon request, copies of the ordinances, rules,
regulations, orders, contracts, forms, and other documents
they adopt or employ, and any other information
concerning their activities as it may require in the
performance of its duties under this article.

The supervisors shall provide for the execution of
surety bonds for all employees and officers who shall be
entrusted with funds or property; shall provide for the
keeping of a full and accurate record of all proceedings
and of all resolutions, regulations and orders issued or
adopted; and shall provide for an annual audit of the
accounts of receipts and disbursements. Any supervisor
may be removed by the state soil conservation committee
upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county.

CHAPTER 7

(S. B. 585—By Senators Wooton, Anderson, Bowman, Dittmar, Grubb, Oliverio and Ross)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to alcoholic liquors; licenses to private clubs; prohibiting certain acts of licensees; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article seven, 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 7. LICENSES TO PRIVATE CLUBS.

§60-7-12. Certain acts of licensee prohibited; criminal penalties.

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

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

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

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

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

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

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

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

(8) Sell or offer for sale any alcoholic liquor to any
person who is not a duly elected or approved dues paying
member in good standing of said private club or a guest
of such member;

(9) Sell, offer for sale, give away, facilitate the use of
or allow the use of carbon dioxide, cyclopropane, ethyl-
ene, helium or nitrous oxide for purposes of human con-
sumption except as authorized by the commissioner;

(10) (A) Employ any person who is less than eighteen
years of age in a position where the primary responsibility
for such employment is to sell, furnish or give nonintoxicating beer, wine or alcoholic liquors to any person;

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

(11) Violate any reasonable rule of the commissioner.

(b) It is unlawful for any licensee to advertise in any news media or other means, outside of the licensee's premises, the fact that alcoholic liquors may be purchased thereat.

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

CHAPTER 8

(Com. Sub. for S. B. 25—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 15, 1996; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.

Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.

II. Appropriations.

III. Administration.
TITLE I—GENERAL PROVISIONS.

§ 1. General policy.

§ 2. Definitions.

§ 3. Classification of appropriations.


§ 5. Maximum expenditures.

TITLE I—GENERAL PROVISIONS.

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-seven.

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

"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 appropria-
tion 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 sur-
plus 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 appro-
priation 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 indepen-
dent contractors engaged by the spending unit.

Unless otherwise specified, appropriations for "person-
al services" shall include salaries of heads of spending
units.

"Annual increment" shall mean funds appropriated for
"eligible employees" and shall be disbursed only in accor-
dance 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 match-
ing, 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 employ-
ment. 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 bene-
fits" 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 "unclassi-
fied" 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 contribu­
tions, payments or other costs related to coverage and
claims of its employees for unemployment compensation.
Such expenditures shall be considered an employee bene­
fit.

"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 mainte­
nance 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 suf­
cient 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 general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to "personal services" and "employee benefits" to other lines within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

7 Funds of the state of West Virginia not heretofore classified as to purpose and existing within the funds of the treasury shall be determined by the governor and transferred to a special account for the purpose of expenditure as part of the general fund of the state.

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

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<td>Division of Health—Laboratory Services—</td>
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<td>127</td>
</tr>
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<td>Division of Health—Vital Statistics—</td>
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<td>129</td>
</tr>
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<td>Division of Human Services—Health Care Provider Tax—</td>
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<td>129</td>
</tr>
<tr>
<td>Division of Human Services—Medical Services Trust Fund</td>
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<td>130</td>
</tr>
<tr>
<td>Health Care Cost Review Authority—</td>
<td>Fund No. 5375</td>
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</tr>
<tr>
<td>DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>132</td>
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SECTION 2. Appropriations from state road fund.
SECTION 3. Appropriations from other funds.
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SECTION 6. Appropriations from federal block grants.
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SECTION 13. Sinking fund deficiencies.
SECTION 15. Total appropriations.
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-seven.

LEGISLATIVE

1—Senate

Account No.

Fund 0165 FY 1997 Org 2100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</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>1,816,000</td>
</tr>
<tr>
<td>Employee Benefits (R) . . . . . 010</td>
<td>360,000</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td></td>
</tr>
<tr>
<td>Contingent Fund (R) . . . . . 021</td>
<td>560,000</td>
</tr>
<tr>
<td>Repairs and Alterations (R) . . . 064</td>
<td>40,000</td>
</tr>
<tr>
<td>Computer Supplies (R) . . . . 101</td>
<td>15,000</td>
</tr>
<tr>
<td>Computer Systems (R) . . . . 102</td>
<td>80,000</td>
</tr>
<tr>
<td>Printing Blue Book (R) . . . . 103</td>
<td>150,000</td>
</tr>
<tr>
<td>Expenses of Members (R) . . . . 399</td>
<td>445,000</td>
</tr>
<tr>
<td>Total . . . . . . . . . . . . . . . .</td>
<td>$ 4,282,200</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 1995-96 are to remain in full force and effect and are hereby reappropriated to June 30, 1997. Any balances so reappropriated may be transferred and credited to the 1996-97 accounts.
Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the senate, with the approval of the president, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the senate offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.

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

For duties imposed by law and by the senate, the clerk of the senate shall be paid a monthly salary as provided by the senate resolution, unless increased between sessions under the authority of the president, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the senate.
The distribution of the blue book shall be by the office of the clerk of the senate and shall include seventy-five copies for each member of the Legislature and two copies for each classified and approved high school and junior high school and one copy for each elementary school within the state.

**2—House of Delegates**

Account No.

Fund 0170 FY 1997 Org 2200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Compensation of Members (R) . . .</td>
<td>003</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R) . . .</td>
<td>005</td>
<td>521,162</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses and Contingent Fund (R) . . . .</td>
<td>021</td>
<td>2,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Expenses of Members (R) . . .</td>
<td>399</td>
<td>1,120,000</td>
</tr>
<tr>
<td>5</td>
<td>Total . . . . . . . . . . . . . . .</td>
<td></td>
<td>$5,841,162</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 1995-96 are to remain in full force and effect and are hereby reappropriated to June 30, 1997. Any balances so reappropriated may be transferred and credited to the 1996-97 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
accompanies 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)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>0175 FY 1997 Org 2300</td>
<td>Joint Committee on Government and Finance (R)</td>
<td>104</td>
<td>$4,590,155</td>
</tr>
<tr>
<td></td>
<td>Legislative Printing (R)</td>
<td>105</td>
<td>940,000</td>
</tr>
<tr>
<td></td>
<td>Legislative Rule-Making Review Committee (R)</td>
<td>106</td>
<td>232,600</td>
</tr>
<tr>
<td></td>
<td>Work Force Development Council (R)</td>
<td>529</td>
<td>100,000</td>
</tr>
</tbody>
</table>
The appropriations for the joint expenses for the fiscal year 1995-96 are to remain in full force and effect and are hereby reappropriated to June 30, 1997. Any balances so reappropriated may be transferred and credited to the 1996-97 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.

The reappropriation 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 1997 Org 2400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
<td>$27,079,388</td>
</tr>
<tr>
<td>Annual Increment (R)</td>
<td>004</td>
<td>367,365</td>
</tr>
<tr>
<td>Social Security Matching (R)</td>
<td>011</td>
<td>2,088,162</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td>[Ch. 8]</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>4</td>
<td>Public Employees' Insurance Matching (R)</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>012</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>2,790,646</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees' Retirement Matching (R)</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>016</td>
</tr>
<tr>
<td>9</td>
<td>Other Expenses (R)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td>029</td>
</tr>
<tr>
<td>11</td>
<td>Judges' Retirement System (R)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>110</td>
</tr>
<tr>
<td>13</td>
<td>Other Court Costs (R)</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td>111</td>
</tr>
<tr>
<td>15</td>
<td>Judicial Training Program (R)</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td>112</td>
</tr>
<tr>
<td>17</td>
<td>Mental Hygiene Fund (R)</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td>113</td>
</tr>
<tr>
<td>19</td>
<td>Guardianship Attorney Fees (R)</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td>588</td>
</tr>
<tr>
<td>21</td>
<td>Family Law Master Program (R)</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td>190</td>
</tr>
<tr>
<td>23</td>
<td>Total</td>
<td>$ 48,110,694</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 1997 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>002</td>
<td>$80,261</td>
</tr>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,469,111</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$15,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$401,611</td>
</tr>
<tr>
<td>National Governors' Association</td>
<td>123</td>
<td>$63,600</td>
</tr>
<tr>
<td>Southern States Energy Board</td>
<td>124</td>
<td>$28,732</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$584,860</td>
</tr>
<tr>
<td>Publication of Papers and Transition Expenses</td>
<td>465</td>
<td>$150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$2,793,675</td>
</tr>
</tbody>
</table>

#### 6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Account No.

### Fund 0102 FY 1997 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$410,258</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Surplus-Total (fund 0102, activity 098) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

#### 7—Governor's Office—Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Account No.
Fund 0104 FY 1997 Org 0100

Governor's Cabinet on Children
and Families—Total (R) . . . . . . 116 $ 300,000

Any unexpended balance remaining in the appropriation (fund 0104, activity 116) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

8—Governor's Office—

Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1997 Org 0100

Civil Contingent Fund—Total (R) . 114 $ 150,000

Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), and activity 125; Unclassified-Surplus—Total (fund 0105, activity 098) Flood Recovery Assistance for Agriculture (fund 0105, activity 239) Civil Contingent Fund—Infrastructure and Economic Development Projects—(fund 0105, activity 247), Flood Victims Assistance (fund 0105, activity 499) Civil Contingent Fund—Total (fund 0105, activity 114) Civil Contingent Fund—Surplus (fund 0105, activity 263), and Flood Recovery and Mitigation Loans (Disaster Recovery Trust Fund) (fund 0105, activity 289) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

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

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day...
24 operations of the governor's office.

9—Governor's Office—Infrastructure Improvements

(WV Code Chapter 5)

Account No.

Fund 0106 FY 1997 Org 0100

1 Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0106, activity 096) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97 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 1997 Org 1200

1 Salary of Auditor ................. 002 $ 57,446
2 Personal Services ................. 001 1,668,463
3 Annual Increment ................. 004 50,523
4 Employee Benefits ............... 010 561,075
5 Unclassified (R) ................. 099 650,733
6 Office Automation (R) .......... 117 790,000
7 Total ........................... $ 3,778,240

8 Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099), Office Automation (fund 0116, activity 117) and Image Processing and Printer Replacement (fund 0116, activity 240) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.
11—Auditor's Office—
Family Law Masters
Administration Fund

(WV Code Chapter 48A)

Account No.
Fund 0117 FY 1997 Org 1200

1 Unclassified—Total .................. 096 $ 450,000

2 The above appropriation shall be expended for the
3 administrative expenses of the family law masters pro-
4 gram, excluding personal services and employee benefits.

12—Treasurer's Office

(WV Code Chapter 12)

Account No.
Fund 0126 FY 1997 Org 1300

1 Salary of Treasurer .................. 002 $ 57,099

2 Personal Services .................. 001 493,960

3 Annual Increment .................. 004 12,356

4 Employee Benefits .................. 010 169,720

5 Unclassified .................. 099 254,575

6 Abandoned Property Program .... 118 325,877

7 Hardware/Software Upgrade ...... 518 54,000

8 Total .......................... $ 1,367,587

9 Any unexpended balances remaining in the surplus
10 appropriations for Check Encoder (fund 0126, activity
11 441) and Check Encoder (fund 0126, activity 668) at the
12 close of the fiscal year 1995-96 are hereby reappropriated
13 for expenditure during the fiscal year 1996-97 and redes-
14 ignated as Imaging System (fund 0126, activity 006). The
15 redesignation of the line item shall be effective upon the
16 effective date of this bill.
### Appropriations

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

| Fund 0131 FY 1997 Org 1400 |  
|---------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|                            | 1 Salary of Commissioner | 002 | $57,446 |  
|                            | 2 Personal Services | 001 | 2,904,859 |  
|                            | 3 Annual Increment | 004 | 60,945 |  
|                            | 4 Employee Benefits | 010 | 1,037,202 |  
|                            | 5 Unclassified (R) | 099 | 996,531 |  
|                            | 6 Gypsy Moth Program (R) | 119 | 784,383 |  
|                            | 7 Farmers Market-Weston | 421 | 50,000 |  
|                            | 8 Mingo County Surface Mine Project | 296 | 150,000 |  
|                            | 9 Predator Control | 470 | 50,000 |  
|                            | 11 Charleston Farmers Market | 476 | 150,000 |  
|                            | 12 Total |  | $6,241,366 |  

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, activity 119), and the surplus appropriations for Mingo County Surface Mine Development Project-Total (fund 0131, activity 657) and Charleston Capitol Marketplace-Total (fund 0131, activity 671) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

Any unexpended balance remaining in the appropriation for Unclassified (fund 0131, activity 099) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97 for the purpose of funding building improvements for the Moorefield Field Office.

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—
State Soil Conservation Committee

(WV Code Chapter 19)

Account No.

Fund 0132 FY 1997 Org 1400

1 Personal Services ................... 001 $ 394,045
2 Annual Increment .................... 004 10,550
3 Employee Benefits .................. 010 122,290
4 Unclassified (R) ..................... 099 284,758
5 Maintenance of Flood
6 Control Projects (R) ............... 522 1,700,000
7 Soil Conservation Projects (R) .... 120 2,500,000
8 Total .............................. $ 5,011,643

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 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

15—Department of Agriculture—
Meat Inspection

(WV Code Chapter 19)

Account No.

Fund 0135 FY 1997 Org 1400

1 Personal Services ................... 001 $ 350,629
2 Annual Increment .................... 004 8,696
3 Employee Benefits .................. 010 119,714
4 Unclassified ........................ 099 63,103
5 Total ................................... $ 542,142
6 Any part or all of this appropriation may be trans-
7 ferred to a special revenue fund for the purpose of match-
8 ing federal funds for the above-named program.

16—Department of Agriculture—Agricultural Awards

(WV Code Chapter 19)

Account No.

Fund 0136 FY 1997 Org 1400
1 Agricultural Awards ............ 121 $ 66,066
2 Fairs and Festivals ............. 122 381,598
3 Total ................................. $ 447,664

17—Attorney General

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

Account No.

Fund 0150 FY 1997 Org 1500
1 Salary of Attorney General ..... 002 $ 61,689
2 Personal Services (R) .......... 001 1,995,790
3 Annual Increment (R) .......... 004 27,850
4 Employee Benefits (R) ........ 010 561,533
5 Unclassified (R) ................. 099 595,648
6 Total ................................. $ 3,242,510
7 Any unexpended balance remaining in the appropria-
8 tion at the close of the fiscal year 1995-96 is hereby reap-
9 propriated for expenditure during the fiscal year 1996-97.
10 When legal counsel or secretarial help is appointed by
11 the attorney general for any state spending unit, this ac-
count 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 1997 Org 1600

| 1 | Salary of Secretary of State ........ 002 | $ 53,204 |
| 2 | Personal Services .................. 001 | 547,001 |
| 3 | Annual Increment ................... 004 | 10,600 |
| 4 | Employee Benefits .................. 010 | 197,585 |
| 5 | Unclassified (R) .................... 099 | 299,179 |
| 6 | Total ................................ | $ 1,107,569 |

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) Administrative Law Improvements (fund 0155, activity 617) and Imaging and Computerization Upgrade (fund 0155, activity 244) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

19—State Elections Commission

(WV Code Chapter 3)

Account No.

Fund 0160 FY 1997 Org 1601
### DEPARTMENT OF ADMINISTRATION

#### 20—Department of Administration—Office of the Secretary

(WV Code Chapter 5F)

Account No. 0201

<table>
<thead>
<tr>
<th>Description</th>
<th>Account No.</th>
<th>FY 1997</th>
<th>Org 0201</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$12,000</td>
<td></td>
</tr>
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</table>

#### 21—Consolidated Public Retirement Board

(WV Code Chapter 5)

Account No. 0205

<table>
<thead>
<tr>
<th>Description</th>
<th>Account No.</th>
<th>FY 1997</th>
<th>Org 0205</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$238,261</td>
<td></td>
</tr>
</tbody>
</table>

The division of highways, division of motor vehicles, bureau of employment programs, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

#### 22—Division of Finance

(WV Code Chapter 5A)

Account No. 0209

<table>
<thead>
<tr>
<th>Description</th>
<th>Account No.</th>
<th>FY 1997</th>
<th>Org 0209</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$512,554</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>11,090</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>142,770</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>549,176</td>
<td></td>
</tr>
</tbody>
</table>
5  GAAP Project (R) ................ 125  1,251,095
6  Total ........................ $ 2,466,685
7
8  Any unexpended balance remaining in the appropriations for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

23—Division of General Services
(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1997 Org 0211

1  Personal Services ............... 001  $ 452,028
2  Annual Increment ................. 004  20,300
3  Employee Benefits ............... 010  196,238
4  Unclassified .................... 099  706,441
5  Fire Service Fee ................. 126  13,440
6  Capitol Complex Capital Outlay  417  1,000,000
7  Total ........................... $ 2,388,447

8  Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), and for surplus appropriations for Capitol Building Preservation (fund 0230, activity 675), Capital Improvements-Capitol Complex (fund 0230, activity 676) and Capitol Complex Master Plan-Total (fund 0230, activity 606) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

24—Division of Purchasing
(WV Code Chapter 5A)

Account No.

Fund 0210 FY 1997 Org 0213

1  Personal Services ............... 001  $ 549,463
### Ch. 8] APPROPRIATIONS

<table>
<thead>
<tr>
<th>#</th>
<th>Category</th>
<th>Fund</th>
<th>Code</th>
<th>Annual Increment</th>
<th>Employee Benefits</th>
<th>Unclassified</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>13,526</td>
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<td></td>
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</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>161,718</td>
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<td></td>
<td></td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>52,800</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td></td>
<td>777,507</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The division of highways shall reimburse the Unclassified appropriation (fund 2031, activity 099) within the division of purchasing for all actual expenses incurred pursuant to the provisions of section thirteen, article two-a, chapter seventeen of the code.

**25—Commission on Uniform State Laws**

(WV Code Chapter 29)

Account No.

**Fund 0214 FY 1997 Org 0217**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$20,000</td>
</tr>
<tr>
<td>2</td>
<td>To pay expenses of members of the commission on uniform state laws.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**26—Board of Risk and Insurance Management**

(WV Code Chapter 29)

Account No.

**Fund 0217 FY 1997 Org 0218**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Code</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Unclassified</td>
<td>099</td>
<td>10,454,116</td>
</tr>
<tr>
<td>3</td>
<td>Retro Payments</td>
<td>523</td>
<td>4,850,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>15,304,116</td>
</tr>
</tbody>
</table>

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

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

27—Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Account No.

Fund 0220 FY 1997 Org 0219

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$647,970</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>7,683</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>180,505</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>169,678</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,005,836</td>
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</tbody>
</table>

28—Ethics Commission

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1997 Org 0220

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$187,238</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,250</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>48,283</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>125,340</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$362,111</td>
</tr>
</tbody>
</table>
29—Public Defender Services
(WV Code Chapter 29)

Account No.
Fund 0226 FY 1997 Org 0221

1 Personal Services ............... 001 $ 246,747
2 Annual Increment ............... 004 3,950
3 Employee Benefits ............. 010 75,737
4 Unclassified (R) ............... 099 98,455
5 Appointed Counsel Fees and Public Defender
6 Corporations (R) ............ 127 14,210,905
8 Total ......................... $ 14,635,794

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 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

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

Account No.
Fund 0233 FY 1997 Org 0224

1 Unclassified—Total ............ 096 $ 4,656

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

Account No.
Fund 0200 FY 1997 Org 0225

1 The division of highways, division of motor vehicles, bureau of employment programs, public service commis-
sion 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.

32—West Virginia Prosecutor's Institute Association

(WV Code Chapter 7)

Account No.

Fund 0557 FY 1997 Org 0228

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1997</th>
<th>Org</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forensics Examination</td>
<td>002</td>
<td>491</td>
<td></td>
<td>250,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF EDUCATION

33—State Department of Education—School Lunch Program

(WV Code Chapters 18 and 18A)

Account No.

Fund 0303 FY 1997 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account</th>
<th>FY 1997</th>
<th>Org</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>001</td>
<td></td>
<td>158,751</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>004</td>
<td></td>
<td>2,842</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>010</td>
<td></td>
<td>50,097</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>099</td>
<td></td>
<td>1,732,193</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>1,943,883</td>
</tr>
</tbody>
</table>

34—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Account No.

Fund 0306 FY 1997 Org 0402
### Personal Services

1. Personal Services ............... 001 $ 99,511
2. Annual Increment ............... 004 4,035
3. Employee Benefits ............ 010 50,401
4. Unclassified .................. 099 157,484
5. Total ........................ $ 311,431

Any unexpended balance remaining in the surplus appropriation for Cedar Lakes-Total (fund 0306, activity 638) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

#### 35—State Department of Education

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 0313 FY 1997 Org 0402</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............... 001 $ 2,328,274</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment ............... 004 45,411</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits ............ 010 732,947</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified .................. 099 4,000,000</td>
<td></td>
</tr>
<tr>
<td>5 WV Education Information</td>
<td></td>
</tr>
<tr>
<td>6 System (WVEIS) .............. 138 2,658,356</td>
<td></td>
</tr>
<tr>
<td>7 34/1000 Waiver .............. 139 500,000</td>
<td></td>
</tr>
<tr>
<td>8 Increased Enrollment .......... 140 2,000,000</td>
<td></td>
</tr>
<tr>
<td>9 Coordinator—Educational</td>
<td></td>
</tr>
<tr>
<td>10 Medical Services ............ 141 62,823</td>
<td></td>
</tr>
<tr>
<td>11 Governor's Honors Academy ... 478 190,000</td>
<td></td>
</tr>
<tr>
<td>12 County Boards of</td>
<td></td>
</tr>
<tr>
<td>13 Education Lawsuits .......... 128 0</td>
<td></td>
</tr>
<tr>
<td>14 Implementation of Norm</td>
<td></td>
</tr>
<tr>
<td>15 Referenced Testing Program ... 297 1,695,900</td>
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</tr>
<tr>
<td>Item Description</td>
<td>Fund</td>
</tr>
<tr>
<td>---------------------------------------------------------------------</td>
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<tr>
<td>National Science Foundation Match</td>
<td>142</td>
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<tr>
<td>WVGC Writing Project</td>
<td>482</td>
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<tr>
<td>Micro Computer Network</td>
<td>506</td>
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<tr>
<td>Technology and Telecommunications Initiative (R)</td>
<td>596</td>
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<tr>
<td>Professional Certification</td>
<td>615</td>
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<tr>
<td>County Boards of Education-Tax Assessment Error</td>
<td>430</td>
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<tr>
<td>Adult Advisory Council</td>
<td>621</td>
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<tr>
<td>Pickens School Support and Hacker Valley School</td>
<td>622</td>
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<tr>
<td>Principals Mentorship</td>
<td>649</td>
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<tr>
<td>Safe Schools</td>
<td>143</td>
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<tr>
<td>Technology Repair and Modernization</td>
<td>298</td>
</tr>
<tr>
<td>Curriculum Technology Resource Center</td>
<td>300</td>
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<tr>
<td>Employment Programs Rate Relief</td>
<td>471</td>
</tr>
<tr>
<td>Technology Demonstration Project</td>
<td>301</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for Computer Basic Skills (fund 0313, activity 145), Computer Basic Skills-Surplus (fund 0313, activity 674), Technology and Telecommunications Initiative (fund 0313, activity 596) and County Board of Education Lawsuits (fund 0313, activity 128) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure.
48 during the fiscal year 1996-97.

### 36—State Department of Education—

**Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1997 Org 0402

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Education—Counties</td>
<td>159</td>
<td>7,336,561</td>
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<tr>
<td>2</td>
<td>Special Education—Institutions</td>
<td>160</td>
<td>2,680,023</td>
</tr>
<tr>
<td>3</td>
<td>Education of Institutionalized Juveniles</td>
<td>161</td>
<td>0</td>
</tr>
<tr>
<td>4</td>
<td>Education of Institutionalized Juveniles and Adults</td>
<td>472</td>
<td>4,319,049</td>
</tr>
<tr>
<td>5</td>
<td>Education of Juveniles Held in Predispositional Juvenile</td>
<td>302</td>
<td>150,000</td>
</tr>
<tr>
<td>6</td>
<td>Detention Centers</td>
<td></td>
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</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>14,485,633</td>
</tr>
</tbody>
</table>

11 Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles (fund 0314, activity 161) at the close of the fiscal year 1995-96 is hereby appropriated for expenditure during the fiscal year 1996-97 for the purpose of funding the education of youths at Davis-Stuart.

### 37—State Department of Education—

**State Aid to Schools**

(WV Code Chapters 18 and 18A)

Account No.

Fund 0317 FY 1997 Org 0402

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional Educators</td>
<td>151</td>
<td>677,577,454</td>
</tr>
<tr>
<td>2</td>
<td>Service Personnel</td>
<td>152</td>
<td>209,019,083</td>
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<tr>
<td>3</td>
<td>Fixed Charges</td>
<td>153</td>
<td>78,552,457</td>
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<tr>
<td></td>
<td>Appropriations</td>
<td></td>
<td>[Ch. 8</td>
</tr>
<tr>
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<td>----------------------------------------------------</td>
<td>---</td>
<td>--------</td>
</tr>
<tr>
<td>4</td>
<td>Transportation</td>
<td>154</td>
<td>31,295,302</td>
</tr>
<tr>
<td>5</td>
<td>Administration</td>
<td>155</td>
<td>7,547,178</td>
</tr>
<tr>
<td>6</td>
<td>Other Current Expenses</td>
<td>022</td>
<td>99,115,736</td>
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<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>32,520,994</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowances</td>
<td></td>
<td>1,135,628,204</td>
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<tr>
<td>9</td>
<td>Less Local Share</td>
<td>332</td>
<td>(233,945,032)</td>
</tr>
<tr>
<td>10</td>
<td>Total Basic State Aid</td>
<td></td>
<td>901,683,172</td>
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<tr>
<td>11</td>
<td>Public Employees Insurance Match</td>
<td>012</td>
<td>120,210,002</td>
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<tr>
<td>12</td>
<td>Teachers' Retirement System</td>
<td>019</td>
<td>180,103,532</td>
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<tr>
<td>13</td>
<td>School Building Authority</td>
<td>453</td>
<td>23,352,844</td>
</tr>
<tr>
<td>14</td>
<td>Safe Schools</td>
<td>143</td>
<td>-0-</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td></td>
<td>1,225,349,550</td>
</tr>
</tbody>
</table>

38—State Board of Education—
Vocational Division

(WV Code Chapters 18 and 18A)

Account No.

Fund 0390 FY 1997 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th>001</th>
<th>$ 697,839</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,602</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>227,219</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>546,652</td>
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<tr>
<td>5</td>
<td>Wood Products—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Forestry Vocational</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Program (R)</td>
<td>146</td>
<td>63,024</td>
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<tr>
<td>8</td>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>139,300</td>
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<td>9</td>
<td>Vocational Aid</td>
<td>148</td>
<td>11,530,319</td>
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<tr>
<td>10</td>
<td>Adult Basic Education</td>
<td>149</td>
<td>2,360,207</td>
</tr>
</tbody>
</table>
11 Equipment Replacement ........ 150 1,019,750
12 Program Modernization ........ 305 500,000
13 Aquaculture Support Program ... 307 200,000
14 Total .......................... $ 17,298,912

Any unexpended balances remaining in the appropriations for Wood Products—Forestry Vocational Program (fund 0390, activity 146) and the surplus appropriation for Program Modernization—Total (fund 0390, activity 598) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

39—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0320</td>
<td>1997</td>
<td>0403</td>
<td>Personal Services</td>
<td>001</td>
<td>$5,747,304</td>
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<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>3,850</td>
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<tr>
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<td></td>
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<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,943,663</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>1,040,416</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>$8,735,233</td>
</tr>
</tbody>
</table>

DEPARTMENT OF EDUCATION AND THE ARTS

40—Department of Education and the Arts—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>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0294</td>
<td>1997</td>
<td>0431</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$697,151</td>
</tr>
</tbody>
</table>
2 Center for Professional Development (R) ............... 115 2,000,042
3 Center for Professional Development-Principals Academy ................. 415 500,000
4 Technical Preparation Program (R) ..................... 440 832,397
5 Arts Programs ........................................... 500 40,000
6 WV Humanities Council ................................. 168 250,000
7 Community Schools/Mini Grants ......................... 530 300,000
8 Marshall and West Virginia University Faculty and Course Development International Study Projects ................. 549 35,000
9 Child Care Development ................................. 144 -0-
10 Hospitality Training ................................. 600 550,000
11 MA Public Health Program ......................... 623 75,000
12 Hospitality ABE Jobs ................................. 663 -0-
13 Total .................................................. $ 5,279,590

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), except fiscal year 1993-94, Center for Professional Development (fund 0294, activity 115), Technical Preparation Program (fund 0294, activity 440) and Rural Health Initiative Site Support (fund 0294, activity 295) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

41—Office of the Secretary—
Higher Education Efficiency Fund Control Account
(WV Code Chapter 18B)
Fund 0556 FY 1997 Org 0431
1 Strategic Planning and Compliance Institutions ...... 447 $ 9,386,064
2 Strategic Planning and Compliance Central Office and WVNET . . 449 113,936
3 Total . . . . . . . . . . . . . . . . . . . . . . $ 9,500,000

The above appropriations to strategic planning and compliance—institutions, (fund 0556, activity 447) and strategic planning and compliance—central office and WVNET, (fund 0556, activity 449) shall be made in compliance with the provisions of chapter eighteen-b of the code of West Virginia.

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

Account No.
Fund 0293 FY 1997 Org 0432

1 Personal Services ................. 001 $ 1,487,826
2 Annual Increment ................. 004 36,425
3 Employee Benefits ................. 010 489,226
4 Unclassified ...................... 099 546,468
5 Fairs and Festivals ............... 122 1,000,000
6 Capitol Tourism Programs ...... 601 150,000
7 Historical Preservation Grants . . 311 101,889
8 Grants for Competitive Arts Programs .............. 624 1,000,000
9 West Virginia Public Theater .. 312 100,000
10 Theater Arts of West Virginia . . 464 315,000
11 Total . . . . . . . . . . . . . . . . . . . . . . $ 5,226,834

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) and the surplus appropriation for Cap-
ital Outlay, Repairs and Equipment (fund 0293, activity 677) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

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 article three, chapter five-a, and chapter twelve of the code.

All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the arts fund and historical preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

43—Library Commission

(WV Code Chapter 10)

Account No.

Fund 0296 FY 1997 Org 0433

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Org 0433</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$1,029,682</td>
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<td>004</td>
<td>Annual Increment</td>
<td>37,500</td>
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<td>010</td>
<td>Employee Benefits</td>
<td>351,031</td>
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</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>230,984</td>
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</tr>
<tr>
<td>179</td>
<td>Books and Films</td>
<td>150,000</td>
<td></td>
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<tr>
<td>180</td>
<td>Services to State Institutions</td>
<td>156,310</td>
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<tr>
<td>181</td>
<td>Services to Blind and Handicapped</td>
<td>42,729</td>
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<tr>
<td>182</td>
<td>Grants to Public Libraries</td>
<td>6,738,884</td>
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<tr>
<td>625</td>
<td>Libraries—Special Projects</td>
<td>300,000</td>
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<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$9,037,120</td>
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</table>
**44—Educational Broadcasting Authority**

(WV Code Chapter 10)

Account No.

Fund 0300 FY 1997 Org 0439

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>FY 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,123,186</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>70,851</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>913,150</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,230,801</td>
</tr>
</tbody>
</table>
| 5    | Capital Improvements-  
| 6    | 600 Capitol Street | 313    | $597,000 |
| 7    | Total |         | $5,934,988 |

Any unexpended balance remaining in the surplus appropriation for Capital Improvements-Total (fund 0300, activity 672) is hereby reappropriated for expenditure during the fiscal year 1996-97.

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

**45—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)

Account No.

Fund 0333 FY 1997 Org 0452

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>FY 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,252,894</td>
</tr>
</tbody>
</table>
| 2    | Higher Education Grant  
| 3    | Program (R) | 164    | 7,412,050 |
| 4    | Tuition Contract Program (R) | 165    | 703,540 |
5 Minority Doctoral Fellowship .... 166 100,000
6 Underwood-Smith Scholarship Program—Student Awards ... 167 95,000
8 WVNET ................................ 169 2,252,842
9 Governing Boards’
10 System Funds - SB547 ...... 157 -0-
11 Health Sciences - SB547 ....... 158 ___-0-
12 Total .......................... $ 11,816,326

Any unexpended balances remaining in the appropriation for Higher Education Grant Program (fund 0333, activity 164) and Tuition Contract Program (fund 0333, activity 165) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

46—Board of Trustees of the University System of West Virginia
Control Account

(WV Code Chapter 18B)

Fund 0327 FY 1997 Org 0461

1 Unclassified ...................... 099 $153,346,509
2 Marshall University—
3 Southern WV Community
4 and Technical
5 College 2+2 Program (R) ....... 170 250,000
6 Marshall University—
7 Autism Training Center ....... 548 475,000
8 Marshall University—
9 Forensic Lab ...................... 572 450,000
10 Jackson's Mill .................... 461 350,000
11 West Virginia University—
12 West Virginia Institute of Technology Base Transfer
13 from Board of Directors .... 458 .... 9,622,254
15 Total .......................... $164,493,763

16 The above appropriation for West Virginia University—West Virginia Institute of Technology—Base Transfer from Board of Directors, (fund 0327, activity 458) is pursuant to enrolled senate bill no. 591, regular session 1996 and shall be used solely for the purpose of implementing the provisions of section nine, article two, chapter eighteen-b of the code of West Virginia.

23 Any unexpended balances remaining in the appropriations for Marshall University-Southern WV Community and Technical College 2+2 Program (fund 0327, activity 170) and Colin Anderson Center (fund 0327, activity 435) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

47—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 1997 Org 0478

1 Medical Education ............... 178 $ -0-
2 School of Osteopathic Medicine .. 172 5,787,752
3 Marshall Medical School ......... 173 10,419,602
4 WVU-School of Health Sciences .. 174 37,191,097
5 WVU-School of Health Sciences -Charleston Division ............ 175 3,667,636
6 WVU Charleston Division—
7 Poison Control Hot Line ....... 510 290,000
9 Health Sciences Scholarship Fund . 176 148,500
10 Primary Health Education
11 Program Support (R) . . . . . 177 4,460,000
12 Rural Health Initiative
13 Site Support (R) . . . . . . . . 295 2,980,000
14 Vice Chancellor for
15 Health Sciences . . . . . . . 473 246,342
16 Marshall Medical School—Retro
17 Payments for FY 1993-1994
18 and FY 1994-1995 . . . . . . 651 -0-
19 School of Osteopathic Medicine—
20 Retro Payments for FY 1993-
21 1994 and FY 1994-1995 . . 652 -0-
22 WVU—School of Health Sciences—
23 Morgantown Retro Pay-
24 ments for FY 1993-1994
25 and FY 1994-1995 . . . . 653 -0-
26 WVU—Health Career
27 Opportunities . . . . . . . 474 75,000
28 Total . . . . . . . . . . . .  $ 65,265,929
29 Any unexpended balances remaining in the appropri-
30 ations for Primary Health Education Program Support
31 (fund 0323, activity 177) and Rural Health Initiative Site
32 Support (fund 0323, activity 295) at the close of the fiscal
33 year 1995-96 are hereby reappropriated for expenditure
34 during the fiscal year 1996-97.

48—Board of Directors of the
State College System
Control Account
(WV Code Chapter 18B)
Account No.
Fund 0330 FY 1997 Org 0481
1 Unclassified .................. 099 $ 73,642,136
2 West Virginia University Institute of
   Technology Transfer to Board of
3 Trustees-West Virginia University
4 Institute of Technology Resource
5 Allocation Policy Adjustment . 454 284,526
6 Total .......................... $ 73,926,662

The above appropriation for West Virginia University
Institute of Technology Transfer to Board of Trustees-
West Virginia University Institute of Technology Resource
Allocation Policy Adjustment, (fund 0330, activity 454) is
pursuant to enrolled senate bill no. 591 and shall be used
solely for the purpose of implementing the provisions of
section nine, article two, chapter eighteen-b of the code of
West Virginia.

49—State Board of Rehabilitation—
Division of Rehabilitation Services

(WV Code Chapter 18)

Account No.

Fund 0310  FY 1997  Org 0932

1 Personal Services ............... 001 $ 4,087,653
2 Annual Increment ............... 004  124,961
3 Employee Benefits .............. 010  1,392,449
4 Case Services .................. 162  2,826,365
5 Workshop Development ......... 163  1,449,000
6 Total .......................... $ 9,880,428

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Department of Health and Human Resources—
Office of the Secretary

(WV Code Chapter 5F)
## APPROPRIATIONS

**Account No.**

Fund **0400** FY **1997** Org **0501**

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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</tbody>
</table>

*51—Division of Health—Central Office*  

(WV Code Chapter 16)

**Account No.**

Fund **0407** FY **1997** Org **0506**

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<th>Account</th>
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<tbody>
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<td>Personal Services</td>
</tr>
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<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Corporate Nonprofit Community Health Centers—F.M.H.A.</td>
</tr>
<tr>
<td>6</td>
<td>Mortgage Finance</td>
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<td>7</td>
<td>State Aid to Local Agencies</td>
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<tr>
<td>8</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees</td>
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<tr>
<td>9</td>
<td>Pediatric Dental Services</td>
</tr>
<tr>
<td>10</td>
<td>Appalachian State Low Level Radioactive Waste Commission</td>
</tr>
<tr>
<td>11</td>
<td>Safe Drinking Water Program</td>
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<tr>
<td>12</td>
<td>Women, Infants and Children</td>
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<tr>
<td>13</td>
<td>Vaccine for Children</td>
</tr>
<tr>
<td>14</td>
<td>Adult Influenza Vaccine</td>
</tr>
<tr>
<td>15</td>
<td>Cancer Registry</td>
</tr>
<tr>
<td>16</td>
<td>Revolving Loan Fund Assistance Technology</td>
</tr>
</tbody>
</table>
22 Tuberculosis Control .......... 553 248,534
23 Epidemiology Support .......... 626 438,914
24 EMS Area Entity ............... 554 756,320
25 Rural EMS Equipment .......... 627 610,000
26 and Training ................. 557 630,000
27 Regional EMS Entities .......... 557 630,000
28 Early Intervention ............. 223 2,018,357
29 Primary Care Support .......... 628 6,862,084
30 Black Lung Clinics ............. 467 200,000
31 Total ........................ $ 38,489,637

52—Consolidated Medical Service Fund
(WV Code Chapter 16)

Account No.

Fund 0525 FY 1997 Org 0506

|   | Description                        | Code | FY 1997 Org 0506 | 1996 Budget
<table>
<thead>
<tr>
<th></th>
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<td>Annual Increment</td>
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<td>19,779</td>
<td>19,779</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>14,046,991</td>
<td>14,046,991</td>
</tr>
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<td>4</td>
<td>Special Olympics</td>
<td>208</td>
<td>26,074</td>
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</tr>
<tr>
<td>5</td>
<td>Behavioral Health Program—</td>
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<td>Unclassified</td>
<td>219</td>
<td>11,457,975</td>
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<td>7</td>
<td>Family Support Act</td>
<td>221</td>
<td>1,088,605</td>
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<tr>
<td>8</td>
<td>Institutional Facilities Operations</td>
<td>335</td>
<td>32,499,687</td>
<td>32,499,687</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$ 60,343,500</td>
<td></td>
</tr>
</tbody>
</table>

10 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 preced-
ing six-month period.

Additional funds have been appropriated in fund
5156, fiscal year 1997, organization 0506, for the opera-
tion 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 Institu-
tional Facilities Operations line item to facilitate cost effec-
tive and cost saving services at the community level.

From the above appropriation to Institutional Facilities
Operations, together with available funds from the division
of health—hospital services revenue account (fund 5156,
activity 335), on July 1, 1996, 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 pur-
chases shall not be required until such credits have been
completely expended.

53—Commission on Aging
(WV Code Chapter 29)

Account No.

Fund 0420 FY 1997 Org 0508

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>2,833</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>437,600</td>
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<td>Local Programs Service</td>
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</tr>
<tr>
<td>Delivery Costs</td>
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<td>2,475,250</td>
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<tr>
<td>Senior Citizens Centers—Land</td>
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<td></td>
</tr>
<tr>
<td>Acquisition, Construction and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations (R)</td>
<td>201</td>
<td>-0-</td>
</tr>
</tbody>
</table>
10 Silver Haired Legislature ........ 202 14,400
11 Area Agencies Administration ... 203 87,429
12 Foster Grandparents
  Stipends and Travel ............ 205 57,734
14 In-Home Services for
  Senior Citizens .............. 224 700,000
16 Total ........................ $ 3,941,449

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 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

54—Human Rights Commission
(WV Code Chapter 5)

Account No.

Fund 0416 FY 1997 Org 0510

1 Personal Services .............. 001 $ 520,739
2 Annual Increment ............... 004 10,350
3 Employee Benefits ............. 010 159,294
4 Unclassified .................. 099 147,971
5 Total ........................ $ 838,354

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

Account No.

Fund 0403 FY 1997 Org 0511

1 Personal Services .............. 001 $ 16,839,565
2 Annual Increment ............... 004 461,616
3 Employee Benefits ............. 010 5,772,579
<table>
<thead>
<tr>
<th>No.</th>
<th>Appropriation Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>1,501,363</td>
</tr>
<tr>
<td>5</td>
<td>Medicaid Management</td>
<td>400,000</td>
</tr>
<tr>
<td>6</td>
<td>Medicaid Management Information Technology</td>
<td>12,766,753</td>
</tr>
<tr>
<td>7</td>
<td>Unclassified</td>
<td>3,165,201</td>
</tr>
<tr>
<td>8</td>
<td>Medical Services</td>
<td>162,045,670</td>
</tr>
<tr>
<td>9</td>
<td>In-Home Services for Senior Citizens</td>
<td>80,351</td>
</tr>
<tr>
<td>10</td>
<td>Women's Commission</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td>Grants for Domestic Violence Shelters</td>
<td>280,000</td>
</tr>
<tr>
<td>12</td>
<td>Commission on Hearing Impaired</td>
<td>150,702</td>
</tr>
<tr>
<td>13</td>
<td>Public Assistance</td>
<td>27,601,731</td>
</tr>
<tr>
<td>14</td>
<td>Emergency Assistance</td>
<td>1,510,216</td>
</tr>
<tr>
<td>15</td>
<td>Social Services</td>
<td>19,901,180</td>
</tr>
<tr>
<td>16</td>
<td>Family Preservation Program</td>
<td>1,565,000</td>
</tr>
<tr>
<td>17</td>
<td>JOBS Program</td>
<td>3,730,069</td>
</tr>
<tr>
<td>18</td>
<td>Child Advocate</td>
<td>657,867</td>
</tr>
<tr>
<td>19</td>
<td>Child Welfare System</td>
<td>2,533,695</td>
</tr>
<tr>
<td>20</td>
<td>Child Protective Services and Medicaid Auditing</td>
<td>609,177</td>
</tr>
<tr>
<td>21</td>
<td>Child Care Development</td>
<td>1,300,000</td>
</tr>
<tr>
<td>22</td>
<td>Family Foster Care Payments</td>
<td>4,799,168</td>
</tr>
<tr>
<td>23</td>
<td>Case Workers</td>
<td>4,583,307</td>
</tr>
<tr>
<td>24</td>
<td>Total</td>
<td>$272,255,210</td>
</tr>
</tbody>
</table>

Notwithstanding the provisions of Title I, 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 item may be transferred to other line items: Provided, however, That no funds from other line items shall be transferred to the personal services line item.*

### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 56—Department of Military Affairs and Public Safety—Office of the Secretary

<table>
<thead>
<tr>
<th>(WV Code Chapter 5F)</th>
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</thead>
</table>

Account No.

<table>
<thead>
<tr>
<th>Fund 0430 FY 1997 Org 0601</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Unclassified—Total ..............</th>
<th>096</th>
<th>$ 141,702</th>
</tr>
</thead>
</table>

#### 57—Adjutant General—State Militia

<table>
<thead>
<tr>
<th>(WV Code Chapter 15)</th>
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</table>

Account No.

<table>
<thead>
<tr>
<th>Fund 0433 FY 1997 Org 0603</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services ..............</th>
<th>001</th>
<th>$ 324,477</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment ...............</td>
<td>004</td>
<td>9,150</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits .............</td>
<td>010</td>
<td>108,360</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified ..................</td>
<td>099</td>
<td>3,416,324</td>
</tr>
<tr>
<td>5</td>
<td>College Education Fund .......</td>
<td>232</td>
<td>1,798,400</td>
</tr>
<tr>
<td>6</td>
<td>Armory Capital Improvements ...</td>
<td>325</td>
<td>300,000</td>
</tr>
<tr>
<td>7</td>
<td>Total ..........................</td>
<td></td>
<td>$ 5,956,711</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the surplus appropriation for Armory Construction-Capital Outlay-Total (fund 0433, activity 669) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.
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.

58—West Virginia Parole Board

(WV Code Chapter 62)

Account No.

Fund 0440 FY 1997 Org 0605

| 1 | Personal Services ............... 001 | $ 48,348 |
| 2 | Annual Increment ............... 004 | 1,400 |
| 3 | Employee Benefits ............... 010 | 72,122 |
| 4 | Unclassified ............... 099 | 52,375 |
| 5 | Salaries of Members of West Virginia Parole Board ............... 227 | 200,000 |
| 7 | Total ................. | $ 374,245 |

59—Office of Emergency Services

(WV Code Chapter 15)

Account No.

Fund 0443 FY 1997 Org 0606

| 1 | Personal Services ............... 001 | $ 154,522 |
| 2 | Annual Increment ............... 004 | 4,750 |
| 3 | Employee Benefits ............... 010 | 58,403 |
| 4 | Unclassified ............... 099 | 10,952 |
| 5 | Federal Emergency Management Agency Match ............... 188 | 237,610 |
| 7 | Total ................. | $ 466,237 |
### 60—Division of Corrections—Central Office

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

Account No.

<table>
<thead>
<tr>
<th>Fund 0446 FY 1997 Org 0608</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $349,734</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment 004 $8,260</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits 010 $107,458</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified 099 $111,004</td>
<td></td>
</tr>
<tr>
<td>5 Total $576,456</td>
<td></td>
</tr>
</tbody>
</table>

### 61—Division of Corrections—Correctional Units

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

Account No.

<table>
<thead>
<tr>
<th>Fund 0450 FY 1997 Org 0608</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $12,130,887</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment 004 $229,088</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits 010 $4,618,727</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified 099 $6,320,228</td>
<td></td>
</tr>
<tr>
<td>5 Payment to Counties and/or Regional Jails 229 $1,666,250</td>
<td></td>
</tr>
<tr>
<td>6 Denmar Facility 448 $2,402,991</td>
<td></td>
</tr>
<tr>
<td>7 Mt. Olive Correctional Complex 533 $15,442,911</td>
<td></td>
</tr>
<tr>
<td>8 Northern Correctional Facility 534 $5,154,519</td>
<td></td>
</tr>
<tr>
<td>9 Inmate Medical Expense 535 $3,679,100</td>
<td></td>
</tr>
<tr>
<td>10 Capital Improvements (R) 338 $0</td>
<td></td>
</tr>
<tr>
<td>11 Total $51,644,701</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Capital Improvements (fund 0450, activity 338) and the surplus appropriation for Capital Improvements (fund 0450, activity 661) are hereby reappropriated for expenditure during the fiscal year 1996-97.

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, 1996, 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.

62—West Virginia State Police
(WV Code Chapter 15)

Account No.

Fund 0453 FY 1997 Org 0612

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Org</th>
<th>FY 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$20,967,426</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>140,944</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,402,086</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,175,817</td>
</tr>
<tr>
<td>5</td>
<td>Barracks Maintenance and Construction (R)</td>
<td>494</td>
<td>113,947</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Account No.</td>
<td>FY 1997</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>-------------</td>
<td>---------</td>
</tr>
<tr>
<td>7</td>
<td>Communications and Other Equipment</td>
<td>558</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Overtime and Wage Court Awards</td>
<td>568</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Vehicle Purchase</td>
<td>451</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>COPS Program-Federal Match</td>
<td>327</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>DNA Laboratory</td>
<td>479</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Barracks Maintenance and Construction (fund 0453, activity 494) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

### 63—Division of Veterans' Affairs
(WV Code Chapter 9A)

Account No.

Fund 0456 FY 1997 Org 0613

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account No.</th>
<th>FY 1997</th>
<th>Org 0613</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td></td>
<td>$ 671,639</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td></td>
<td>20,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td></td>
<td>285,341</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td></td>
<td>15,919</td>
</tr>
<tr>
<td>5</td>
<td>Veterans' Field Offices</td>
<td>228</td>
<td></td>
<td></td>
<td>129,692</td>
</tr>
<tr>
<td>6</td>
<td>Veterans' Toll Free Assistance</td>
<td>328</td>
<td></td>
<td></td>
<td>25,000</td>
</tr>
<tr>
<td>7</td>
<td>Line (R)</td>
<td>328</td>
<td></td>
<td></td>
<td>25,000</td>
</tr>
<tr>
<td>8</td>
<td>Veterans' Reeducation Assistance (R)</td>
<td>329</td>
<td></td>
<td></td>
<td>270,000</td>
</tr>
<tr>
<td>9</td>
<td>Veterans' Field Office Improvements (R)</td>
<td>331</td>
<td></td>
<td></td>
<td>105,000</td>
</tr>
<tr>
<td>10</td>
<td>Veterans' Grant Program (R)</td>
<td>342</td>
<td></td>
<td></td>
<td>150,000</td>
</tr>
</tbody>
</table>
Barboursville Veterans' Home

Improvements (R) ............. 466 450,000

Total ......................... $ 2,122,691

Any unexpended balances remaining in the appropriations for Veterans' Toll Free Assistance Line (fund 0456, activity 328), Veterans' Reeducation Assistance (fund 0456, activity 329), Veterans' Field Office Improvements (fund 0456, activity 331) and Barboursville Veterans' Home Improvements (fund 0456, activity 466), Veterans' Grant Program (fund 0456, activity 342) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

64—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Account No.

Fund 0536 FY 1997 Org 0615

Regional Jail—Capital Outlay—

Total (R) ..................... 577 $ 10,000,000

Any unexpended balance remaining in the appropriation (fund 0536, activity 577) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

65—Division of Veterans' Affairs—Veterans' Home

(WV Code Chapter 9A)

Account No.

Fund 0460 FY 1997 Org 0618

Personal Services .............. 001 $ 635,879
Annual Increment ............... 004 16,050
Employee Benefits ............. 010 288,555
Unclassified ................... 099 160,234

Total ......................... $ 1,100,718
### 66—Fire Commission
(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 0436 FY 1997</th>
<th>Org 0619</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001</td>
<td>$ 533,000</td>
</tr>
<tr>
<td>2 Annual Increment 004</td>
<td>$ 11,800</td>
</tr>
<tr>
<td>3 Employee Benefits 010</td>
<td>$ 160,799</td>
</tr>
<tr>
<td>4 Unclassified 099</td>
<td>$ 140,601</td>
</tr>
<tr>
<td>5 Office Relocation Expense 428</td>
<td>$ 65,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 911,200</td>
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</table>

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

Account No.

<table>
<thead>
<tr>
<th>Fund 0546 FY 1997</th>
<th>Org 0620</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services 001</td>
<td>$ 92,002</td>
</tr>
<tr>
<td>2 Annual Increment 004</td>
<td>$ 2,425</td>
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<tr>
<td>3 Employee Benefits 010</td>
<td>$ 28,029</td>
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<td>4 Unclassified 099</td>
<td>$ 110,068</td>
</tr>
<tr>
<td>5 Statistical Analysis Program 597</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 282,524</td>
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</tbody>
</table>

### DEPARTMENT OF TAX AND REVENUE

#### 68—Department of Tax and Revenue—Office of the Secretary
(WV Code Chapter 5F)

Account No.

<table>
<thead>
<tr>
<th>Fund 0465 FY 1997</th>
<th>Org 0701</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total 096</td>
<td>$ 163,017</td>
</tr>
</tbody>
</table>
### 69—Tax Division
(WV Code Chapter 11)

Account No.

<table>
<thead>
<tr>
<th>Fund 0470 FY 1997 Org 0702</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified ............. 099</td>
</tr>
<tr>
<td>5 Automation Project (R) .... 442</td>
</tr>
<tr>
<td>6 Total ......................</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442) and the surplus appropriation for Automation Project—Total (fund 0470, activity 673) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

### 70—Division of Professional and Occupational Licenses—State Athletic Commission
(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 0523 FY 1997 Org 0933</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096</td>
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</table>

### DEPARTMENT OF TRANSPORTATION

### 71—Department of Transportation—Office of the Secretary
(WV Code Chapter 5F)

Account No.

<p>| Fund 0500 FY 1997 Org 0801 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$155,272</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>523,725</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>120,000</td>
</tr>
<tr>
<td>6</td>
<td>Coal Heritage Trail</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Interpretive Center</td>
<td>475</td>
<td>105,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$990,949</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Port Authority (fund 0500, activity 443) and Aeronautics Commission (fund 0500, activity 450) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

The above appropriation for Port Authority includes two hundred fifty-five thousand five hundred twenty-five dollars which may be used to match federal or other funds for port authority feasibility studies.

72—State Rail Authority

(WV Code Chapter 29)

 Account No.

Fund 0506 FY 1997 Org 0804

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>
| 2 | Any unexpended balances remaining in the appropriations for Capital Improvement and Equipment (fund 0506, activity 632), Capital Outlay-Railroad Maintenance Authority (fund 0506, activity 309), Hampshire County Railroad Siding (fund 0506, activity 497) and Duffield Station (fund 0506, activity 559) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

73—Division of Public Transit

(WV Code Chapter 17)
### BUREAU OF COMMERCE

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

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th>Q.ill</th>
<th>FY</th>
<th>Org</th>
<th>102 Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0510</td>
<td>1997</td>
<td>0805</td>
<td>096</td>
<td>$872,680</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**BUREAU OF COMMERCE**

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

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,308,956</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0250</td>
<td>1997</td>
<td>0305</td>
<td>004</td>
<td>29,800</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>010</td>
<td>463,413</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>502</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>099</td>
<td>404,243</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$2,206,412</td>
<td></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.

Any unexpended balance remaining in the appropriation for Communications Equipment (fund 0250, activity 502) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

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

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Personal Services</th>
<th>001</th>
<th>$1,158,066</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>0253</td>
<td>1997</td>
<td>0306</td>
<td>004</td>
<td>29,866</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>010</td>
<td>352,934</td>
<td></td>
</tr>
</tbody>
</table>
Appropriations

| 4 | Unclassified | 099 | 151,859 |
| 5 | Mineral Mapping System (R) | 207 | 697,517 |
| 6 | Geographic Information System (R) | 214 | 500,000 |
| 8 | Computer Upgrade | 349 | 57,000 |
| 9 | Total | | $2,947,242 |

Any unexpended balances remaining in the surplus appropriations for Mineral Mapping System (fund 0253, activity 610), Geographic Information System (fund 0253, activity 611), and Capital Outlay and Equipment (fund 0253, activity 679) at the close of the fiscal year 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

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.

76—West Virginia Development Office
(WV Code Chapter 5B)

Account No.
Fund 0256 FY 1997 Org 0307

| 1 | Personal Services | 001 | $1,935,486 |
| 2 | Annual Increment | 004 | 30,800 |
| 3 | Employee Benefits | 010 | 523,490 |
| 4 | Unclassified | 099 | 2,475,624 |
| 5 | Partnership Grants (R) | 131 | 4,300,000 |
| 6 | National Youth Science Camp | 132 | 200,000 |
| 7 | Local Economic Development Partnerships (R) | 133 | 1,000,000 |
| 9 | ARC Assessment | 136 | 167,308 |
10 Guaranteed Work Force Grant (R) . . . 242 1,080,000
11 Leverage Technology and Small
12 Business Development Program . . 525 800,000
13 WV Film Development Office ........ 498 100,351
14 Empowerment Zone/Enterprise
15 Community (R) .................. 218 -0-
16 Tourism Development
17 Representatives ................... 351 140,660
18 Guaranteed Work Force
19 Grant/Small Business Programs . . 354 370,000
20 Small Business Financial Assistance . . 360 300,000
21 Industrial Park Assistance ........... 480 800,000
22 Robert C. Byrd Institute for
23 Advanced Flexible Manufactur-
24 ing—Manufacturing Technology
25 Outreach and Programs for
26 Environmental and
27 Advanced Technologies .......... 367 700,000
28 Total ......................... $ 14,923,719
29 Any unexpended balances remaining in the appropri-
30 ations for Partnership Grants (fund 0256, activity 131),
31 Competitive Grants (fund 0256, activity 130), Guaranteed
32 Work Force Grant (fund 0256, activity 242), Local Eco-
33 nomic Development Partnerships (fund 0256, activity
34 133) and Empowerment Zone/Enterprise Community
35 (fund 0256, activity 218) at the close of the fiscal year
36 1995-96 are hereby reappropriated for expenditure dur-
37 ing the fiscal year 1996-97.
38 The above appropriation to Local Economic Develop-
39 ment Partnerships shall be used by the West Virginia de-
40 velopment office for the award of funding assistance to
41 county and regional economic development corporations
42 or authorities created under the plan developed by the
43 council for community and economic development under
44 the provisions of section three, article two, chapter five-b
of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon criteria developed under the provisions of section three, article two, chapter five-b of the code and based upon a formula whereby funding assistance may not exceed twenty-five thousand dollars per county served by a regional economic development corporation or authority.

77—Division of Labor

(WV Code Chapters 21 and 47)

Account No.

Fund 0260 FY 1997 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>12/31/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 1,012,273</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>19,277</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>380,356</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>604,019</td>
<td></td>
</tr>
<tr>
<td>5 Weights and Measures Program</td>
<td>483</td>
<td>450,000</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$ 2,465,925</td>
<td></td>
</tr>
</tbody>
</table>

78—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 0265 FY 1997 Org 0310

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>12/31/97</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 7,914,521</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>253,244</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>3,237,954</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>207,883</td>
<td></td>
</tr>
<tr>
<td>5 Nongame Wildlife</td>
<td>527</td>
<td>550,000</td>
<td></td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$ 12,163,602</td>
<td></td>
</tr>
<tr>
<td>7 Any revenue derived from mineral extraction at any</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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.

79—Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Account No.

Fund 0277 FY 1997 Org 0314

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$3,101,583</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>49,600</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>1,049,367</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>266,810</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,467,360</strong></td>
</tr>
</tbody>
</table>

80—Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Account No.

Fund 0280 FY 1997 Org 0319

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$94,600</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>1,200</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>25,102</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>17,480</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$138,382</strong></td>
</tr>
</tbody>
</table>

81—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Account No.
### APPROPRIATIONS

**Fund 0285** FY 1997 Org 0320

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1997</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$71,303</td>
<td></td>
</tr>
</tbody>
</table>

**BUREAU OF ENVIRONMENT**

82—*Environmental Quality Board*

*(WV Code Chapter 20)*

Account No.

**Fund 0270** FY 1997 Org 0311

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1997</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$62,331</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$200</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$19,062</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>$32,786</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$114,379</td>
<td></td>
</tr>
</tbody>
</table>

83—*Interstate Commission on Potomac River Basin*

*(WV Code Chapter 29)*

Account No.

**Fund 0263** FY 1997 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1997</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia's Contribution</td>
<td></td>
<td>$39,675</td>
</tr>
<tr>
<td>to the Interstate Commission</td>
<td></td>
<td></td>
</tr>
<tr>
<td>on Potomac River Basin—Total</td>
<td></td>
<td>$39,675</td>
</tr>
</tbody>
</table>

84—*Ohio River Valley Water Sanitation Commission*

*(WV Code Chapter 29)*

Account No.

**Fund 0264** FY 1997 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 1997</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia's Contribution</td>
<td></td>
<td>$112,600</td>
</tr>
<tr>
<td>to the Ohio River Valley Water Sanitation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission—Total</td>
<td></td>
<td>$112,600</td>
</tr>
</tbody>
</table>
85—Division of Environmental Protection  
(WV Code Chapter 22)  
Account No.  
Fund 0273 FY 1997 Org 0313  
<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>$4,065,513</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>78,608</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,266,424</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>675,372</td>
</tr>
<tr>
<td>5</td>
<td>Black Fly Control</td>
<td>137</td>
<td>240,148</td>
</tr>
<tr>
<td>6</td>
<td>Dam Safety</td>
<td>607</td>
<td>123,351</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$6,449,416</td>
</tr>
</tbody>
</table>

86—Air Quality Board  
(WV Code Chapter 16)  
Account No.  
Fund 0550 FY 1997 Org 0325  
<table>
<thead>
<tr>
<th></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>$75,786</td>
</tr>
</tbody>
</table>

MISCELLANEOUS BOARDS AND COMMISSIONS  

87—Board of Investments  
(WV Code Chapter 12)  
Account No.  
Fund 0513 FY 1997 Org 0920  
<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>$1,041,964</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>22,500</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>330,493</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,215,995</td>
</tr>
<tr>
<td>5</td>
<td>Debt Payment on Morris Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Workers' Compensation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Building</td>
<td>290</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$4,610,952</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

#### 88—Board of Investments—
**School Building Sinking Fund**

(WV Code Chapter 12)

Account No.

**Fund 0526 FY 1997 Org 0920**

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service—Total (R)</td>
<td>$10,242,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Board of Investments—School Building Sinking Fund—Debt Service—Total (fund 0526, activity 310) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

Total TITLE II, Section 1—

| General Revenue | $2,353,601,907 |

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-seven.

### DEPARTMENT OF TRANSPORTATION

#### 89—Division of Motor Vehicles

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

Account No.

**Fund 0007 FY 1997 Org 0802**

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,721,776</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$80,501</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$1,697,009</td>
</tr>
<tr>
<td>Item</td>
<td>Account No.</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 International Fuel Tax Agreement</td>
<td>536</td>
</tr>
<tr>
<td>6 Capital Outlay-Building</td>
<td>222</td>
</tr>
<tr>
<td>7 Total</td>
<td></td>
</tr>
</tbody>
</table>

### 90—Division of Highways

(WV Code Chapters 17 and 17C)

Account No.

**Fund 9017 FY 1997 Org 0803**

<table>
<thead>
<tr>
<th>Item</th>
<th>Account No.</th>
<th>Description</th>
<th>Fiscal Year</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>040</td>
<td></td>
<td></td>
<td>$ 39,300,000</td>
</tr>
<tr>
<td>2 ARC Assessment</td>
<td>136</td>
<td></td>
<td></td>
<td>794,000</td>
</tr>
<tr>
<td>3 Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
<td></td>
<td></td>
<td>82,823,000</td>
</tr>
<tr>
<td>4 Maintenance, State Local Services</td>
<td>271</td>
<td></td>
<td></td>
<td>122,433,000</td>
</tr>
<tr>
<td>5 Maintenance, Contract Paving and Secondary Road</td>
<td>272</td>
<td></td>
<td></td>
<td>52,000,000</td>
</tr>
<tr>
<td>6 Bridge Repair and Replacement</td>
<td>273</td>
<td></td>
<td></td>
<td>30,000,000</td>
</tr>
<tr>
<td>7 Inventory Revolving</td>
<td>275</td>
<td></td>
<td></td>
<td>1,250,000</td>
</tr>
<tr>
<td>8 Equipment Revolving</td>
<td>276</td>
<td></td>
<td></td>
<td>15,000,000</td>
</tr>
<tr>
<td>9 General Operations</td>
<td>277</td>
<td></td>
<td></td>
<td>35,619,614</td>
</tr>
<tr>
<td>10 Interstate Construction</td>
<td>278</td>
<td></td>
<td></td>
<td>20,000,000</td>
</tr>
<tr>
<td>11 Other Federal Aid Programs</td>
<td>279</td>
<td></td>
<td></td>
<td>100,000,000</td>
</tr>
<tr>
<td>12 Appalachian Programs</td>
<td>280</td>
<td></td>
<td></td>
<td>100,000,000</td>
</tr>
<tr>
<td>13 Nonfederal Aid Construction</td>
<td>281</td>
<td></td>
<td></td>
<td>30,000,000</td>
</tr>
<tr>
<td>14 Highway Litter Control</td>
<td>282</td>
<td></td>
<td></td>
<td>1,504,000</td>
</tr>
<tr>
<td>15 Total</td>
<td></td>
<td></td>
<td></td>
<td>$630,723,614</td>
</tr>
</tbody>
</table>

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

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

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

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.

91—Division of Highways—
Federal Aid Highway Matching Fund
(WV Code Chapters 17 and 17C)

Account No.

Fund 9018 FY 1997 Org 0803

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Account</th>
<th>FY 1997 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interstate Construction</td>
<td>278</td>
<td>$20,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Appalachian Program</td>
<td>280</td>
<td>100,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>200,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$320,000,000</td>
</tr>
<tr>
<td>1</td>
<td>Total TITLE II, Section 2—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>State Road Fund</td>
<td></td>
<td>$974,403,300</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-seven.

LEGISLATIVE

92—Crime Victims Compensation Fund
(WV Code Chapter 14)

Account No.

Fund 1731 FY 1997 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$145,096</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>1,625</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>48,400</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>32,000</td>
</tr>
<tr>
<td>5 Economic Loss Claim Payment Fund (R)</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>7 Total</td>
<td>$2,227,121</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 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

93—Tax Reduction and Federal Funding
Increased Compliance Transfer Account—Division of Human Services

Account No.

Fund 1732 FY 1997 Org 2300
1 Transfer to Division of Human Services Medical Services Trust Fund (5185)—
4 Total .......................... 487 $ 10,000,000

EXECUTIVE

94—Auditor's Office—Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Account No.

<table>
<thead>
<tr>
<th>Fund 1206 FY 1997 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 32,748</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004 3,000</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010 14,591</td>
</tr>
<tr>
<td>4 Unclassified ............. 099 98,994</td>
</tr>
<tr>
<td>5 Total ...................... $ 149,333</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.

95—Auditor's Office—Securities Regulation Fund

(WV Code Chapter 32)

Account No.

<table>
<thead>
<tr>
<th>Fund 1225 FY 1997 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001 $ 218,700</td>
</tr>
<tr>
<td>2 Annual Increment .......... 004 4,722</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010 62,116</td>
</tr>
<tr>
<td>4 Unclassified ............. 099 168,943</td>
</tr>
<tr>
<td>5 Total ...................... $ 454,481</td>
</tr>
</tbody>
</table>
96—Department of Agriculture
(WV Code Chapter 19)
Account No.

Fund 1401  FY 1997  Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$346,491</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,243</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>110,227</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>816,851</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,276,812</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

97—Department of Agriculture—
West Virginia Rural Rehabilitation Program
(WV Code Chapter 19)
Account No.

Fund 1408  FY 1997  Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Student and Farm Loans</td>
<td>235</td>
<td>$535,984</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

98—Department of Agriculture—
General John McCausland Memorial Farm
(WV Code Chapter 19)
Account No.

Fund 1409  FY 1997  Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$20,684</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,400</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>11,215</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>51,493</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$84,792</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.
### 99—Department of Agriculture—Farm Operating Fund

(WV Code Chapter 19)

<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>1412</td>
<td>1997</td>
<td>1400</td>
<td>Unclassified—Total</td>
<td>$950,000</td>
</tr>
</tbody>
</table>

### 100—Attorney General—Anti-Trust Enforcement

(WV Code Chapter 47)

<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>1507</td>
<td>1997</td>
<td>1500</td>
<td>Personal Services</td>
<td>$210,400</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>$935</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>$60,892</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>$177,882</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$450,109</td>
</tr>
</tbody>
</table>

### 101—Attorney General—Preneed Funeral Regulation Fund

(WV Code Chapter 47)

<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>1513</td>
<td>1997</td>
<td>1500</td>
<td>Unclassified—Total</td>
<td>$138,019</td>
</tr>
</tbody>
</table>

### 102—Attorney General—Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

<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>1514</td>
<td>1997</td>
<td>1500</td>
<td>Unclassified—Total</td>
<td>$290,000</td>
</tr>
</tbody>
</table>
DEPARTMENT OF ADMINISTRATION

103—Division of Information Services and Communications

(WV Code Chapter 5A)

Account No.

Fund 2220 FY 1997 Org 0210

| 1  | Personal Services ............... | 001 | $4,120,418 |
| 2  | Annual Increment ............... | 004 | 84,385 |
| 3  | Employee Benefits ............. | 010 | 1,265,538 |
| 4  | Unclassified .................. | 099 | 1,613,547 |
| 5  | Total ........................ |     | $7,083,888 |

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.

104—Division of Purchasing—Revolving Fund

(WV Code Chapter 5A)

Account No.
**Ch. 8**

**APPROPRIATIONS**

**Fund 2320 FY 1997 Org 0216**

1. Personal Services ................. 001 $ 706,686
2. Annual Increment .................. 004 33,802
3. Employee Benefits ................. 010 269,039
4. Unclassified ...................... 099 746,223
5. Total .............................. $ 1,755,750

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.

105—Division of Personnel

(WV Code Chapter 29)

**Account No.**

**Fund 2440 FY 1997 Org 0222**

1. Personal Services ................. 001 $ 2,060,908
2. Annual Increment .................. 004 60,100
3. Employee Benefits ................. 010 589,942
4. Unclassified ...................... 099 762,121
5. Total .............................. $ 3,473,071

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.
**106—WV Prosecuting Attorneys Institute**
(WV Code Chapter 7)

Account No.

Fund 2521 FY 1997 Org 0228

| 1 | Unclassified—Total | 096 | $150,814 |

**DEPARTMENT OF EDUCATION**

**107—State Department of Education—School Building Authority**
(WV Code Chapter 18)

Account No.

Fund 3959 FY 1997 Org 0402

| 1 | Personal Services | 001 | $394,395 |
| 2 | Annual Increment | 004 | 5,200 |
| 3 | Employee Benefits | 010 | 107,896 |
| 4 | Unclassified | 099 | 284,210 |
| 5 | Total | | $791,701 |

6 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.

**108—State Department of Education—FFA-FHA Camp and Conference Center**
(WV Code Chapter 18)

Account No.

Fund 3960 FY 1997 Org 0402

| 1 | Personal Services | 001 | $694,039 |
| 2 | Annual Increment | 004 | 13,817 |
| 3 | Employee Benefits | 010 | 280,678 |
DEPARTMENT OF EDUCATION AND THE ARTS

109—State College and University Systems—
State Systems Registration Fee—
Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Account No.

Fund 4033 FY 1997 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and the 1995-96 appropriations are hereby reap-
3 propriated for expenditure during the fiscal year 1996-97.

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

111—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Account No.

Fund 4041 FY 1997 Org 0453

1 Any unexpended balances remaining in the prior
2 years' and the 1995-96 appropriations are hereby reap-
3 propriated for expenditure during the fiscal year 1996-97.

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

112—State University System—
State System Registration Fee—
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
### Appropriations

**Control Account**

(WV Code Chapters 18 and 18B)

**Account No.**

Fund 4007 FY 1997 Org 0461

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Account No.</th>
<th>FY 1997 Org 0461</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$3,879,386</td>
</tr>
<tr>
<td>Capital Repairs and Alterations (R)</td>
<td>251</td>
<td>2,740,356</td>
</tr>
<tr>
<td>Miscellaneous Projects (R)</td>
<td>252</td>
<td>400,000</td>
</tr>
<tr>
<td>Computer and Telecommunications Technology (R)</td>
<td>438</td>
<td>736,427</td>
</tr>
<tr>
<td>West Virginia Institute of Technology Base</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer from Board of Directors</td>
<td>458</td>
<td>$305,500</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$8,061,669</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years' and the 1995-96 appropriations (except fiscal year 1994-95, activity 251 and activity 438) are hereby appropriated for expenditure during the fiscal year 1996-97.

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.

Pursuant to the provisions of enrolled senate bill 591, regular session 1996, section nine, article two, chapter eighteen-b of the code of West Virginia, the amount of one hundred eleven thousand eight hundred eighty-nine dollars shall be transferred from the West Virginia university institute of technology base transfer from board of directors line (fund 4007, activity 458) to the state college system—state system registration fee—special capital im-
31 provision fund (capital improvement and bond retirement fund) control account, fund 4289, fiscal year 1996-97, organization 0481 for the purpose of bonded indebtedness liability attributable to West Virginia university institute of technology.

### 113—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 1997 Org 0461

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Account No.</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$5,078,144</td>
</tr>
<tr>
<td>Building and Campus Renewal (R)</td>
<td>258</td>
<td>$10,874,640</td>
</tr>
<tr>
<td>Facilities Planning and Administration (R)</td>
<td>386</td>
<td>$190,000</td>
</tr>
<tr>
<td>Computer and Telecommunications</td>
<td>438</td>
<td>$736,427</td>
</tr>
<tr>
<td>West Virginia University Institute of Technology Base</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer from Board</td>
<td></td>
<td></td>
</tr>
<tr>
<td>of Directors</td>
<td>458</td>
<td>$712,800</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$17,592,011</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years' and the 1995-96 appropriations (except fiscal year 1994-95, activity 258 and fiscal year 1994-95, activity 438) are hereby reappropriated for expenditure during the fiscal year 1996-97.

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.

Pursuant to the provisions of enrolled senate bill 591, regular session 1996, section nine, article two, chapter eighteen-b of the code of West Virginia, the amount of two hundred sixty-one thousand two hundred dollars shall be transferred from the West Virginia university institute of technology base transfer from board of directors line activity 458, to the state college system—state system tuition fee—special capital improvement fund (capital improvement and bond retirement fund) control account, fund 4290, fiscal year 1996-97, organization 0481, for the purpose of bonded indebtedness liability attributable to West Virginia university institute of technology.

114—State University System—
West Virginia University Health Sciences Center
Spending Authority

(WV Code Chapters 18 and 18B)

Account No.

Fund 4179 FY 1997 Org 0463

1 Unclassified—Total (R) ......... 096 $ 14,974,000

Any unexpended balance remaining in the fiscal year 1995-96 appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 1996-97.

115—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 1997 Org 0481
Any unexpended balances remaining in the prior years’ and 1995-96 appropriations are hereby reappropriated for expenditure during the fiscal year 1996-97.

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.

Pursuant to the provisions of enrolled senate bill no. 591, regular session 1996, section nine, article two, chapter eighteen-b of the code of West Virginia, the above appropriation in the amount of one hundred eleven thousand eight hundred eighty-nine dollars in the West Virginia university institute of technology debt service transfer from board of trustees line, activity 459, shall be used solely for the purpose of the bonded indebtedness liability attributable to West Virginia university institute of technology.

116—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)
### Appropriations

<table>
<thead>
<tr>
<th>Fund 4290 FY 1997 Org 0481</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service (R)</td>
<td>040</td>
<td>$2,240,592</td>
<td></td>
</tr>
<tr>
<td>2 Capital Improvements (New) (R)</td>
<td>259</td>
<td>1,052,040</td>
<td></td>
</tr>
<tr>
<td>3 Building and Campus Renewal and Facilities Planning</td>
<td>538</td>
<td>2,404,700</td>
<td></td>
</tr>
<tr>
<td>4 and Administration (R)</td>
<td>222,900</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Capital Contingencies and Emergencies (R)</td>
<td>537</td>
<td>222,900</td>
<td></td>
</tr>
<tr>
<td>6 West Virginia University Institute of Technology Debt Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Transfer from Board of Trustees</td>
<td>459</td>
<td>261,200</td>
<td></td>
</tr>
<tr>
<td>8 Total</td>
<td>6,181,432</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the prior years' and 1995-96 appropriations are hereby reappropriated for expenditure during the fiscal year 1996-97.

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.

Pursuant to the provisions of enrolled senate bill no. 591, regular session 1996, section nine, article two, chapter eighteen-b of the code of West Virginia, the amount of two hundred sixty-one thousand two hundred dollars in the West Virginia institute of technology debt service transfer from the board of trustees line, activity 459, shall be used solely for the purpose of the bonded indebtedness liability attributable to West Virginia university institute of technology.

**117—State Board of Rehabilitation—**

**Division of Rehabilitation Services—**
### West Virginia Rehabilitation Center
**Special Account**
(WV Code Chapter 18)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8664</td>
<td></td>
<td>0932</td>
<td></td>
<td>Personal Services</td>
<td>$350,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Workshop Development</td>
<td>$450,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Medical Services Trust</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Fund-Transfer</td>
<td>$2,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Workshop-Supported Employment</td>
<td>$50,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$2,850,000</td>
</tr>
</tbody>
</table>

#### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5425</td>
<td></td>
<td>0505</td>
<td></td>
<td>Personal Services</td>
<td>$181,520</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>$4,661</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>$57,705</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>$103,550</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$347,436</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.

**119—Division of Health—Vital Statistics**
(WV Code Chapter 16)

Account No.
126

APPROPRIATIONS

Fund 5144 FY 1997 Org 0506
1 Personal Services ............... 001 $ 205,300
2 Annual Increment ............... 004 8,203
3 Employee Benefits ............. 010 99,871
4 Unclassified .................. 099 82,650
5 Total ........................ $ 396,024

120—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)

Account No.

Fund 5156 FY 1997 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 37,171,693
5 Medical Services Trust
6 Fund—Transfer (R) ........... 512 23,300,000
7 Total ........................ $ 65,961,693

8 Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of
9 the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97, except for fund
10 5156, activity 261 (fiscal year 1992-93), fund 5156, activity 335 (fiscal year 1993-94), and fund 5156, activity 040,
11 activity 512 and activity 566 (fiscal year 1994-95), which shall expire on June 30, 1996.
12
13 The total amount of this appropriation shall be paid from the hospital services revenue account special fund
14 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 above appropriation for Institutional Facilities Operations line 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 line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 1997, 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, 1996, 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.

121—Division of Health—Laboratory Services
(WV Code Chapter 16)

Account No.

Fund 5163 FY 1997 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$424,568</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>9,450</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>141,586</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>450,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$1,025,604</td>
</tr>
</tbody>
</table>

122—Division of Health—Health Facility Licensing
### 128 APPROPRIATIONS

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
<th>4 Unclassified</th>
<th>5 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5172</td>
<td></td>
<td>0506</td>
<td>001 $ 162,952</td>
<td>004 2,250</td>
<td>010 57,791</td>
<td>099 102,904</td>
<td>$ 325,897</td>
</tr>
</tbody>
</table>

#### 123—Division of Health—Hepatitis B Vaccine

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
<th>4 Unclassified</th>
<th>5 Vaccine for Volunteer Squads</th>
<th>6 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5183</td>
<td></td>
<td>0506</td>
<td>001 $ 49,300</td>
<td>004 900</td>
<td>010 15,751</td>
<td>099 1,600,000</td>
<td>565 50,000</td>
<td>$ 1,715,951</td>
</tr>
</tbody>
</table>

#### 124—Health Care Cost Review Authority

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
<th>4 Unclassified</th>
<th>5 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5375</td>
<td></td>
<td>0507</td>
<td>001 $ 1,151,577</td>
<td>004 11,328</td>
<td>010 386,119</td>
<td>099 1,871,972</td>
<td>$ 3,420,996</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.

125—Division of Human Services—
Health Care Provider Tax

(WV Code Chapter 11)

Account No.

Fund 5090 FY 1997 Org 0511

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total ............... 096</td>
<td>$127,250,459</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Office Code Enhancements ........... 389</td>
<td>750,000</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Total ................................</td>
<td>$128,000,459</td>
<td></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.

126—Division of Human Services—
Child Support Enforcement

(WV Code Chapter 48A)

Account No.

Fund 5094 FY 1997 Org 0511

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services ................. 001</td>
<td>$-0-</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment ................... 004</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits .................. 010</td>
<td>-0-</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Unclassified ....................... 096</td>
<td>21,181,935</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total ................................ $21,181,935</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
127—Division of Human Services—Medical Services Trust Fund

(WV Code Chapter 9)

Account No.

Fund 5185 FY 1997 Org 0511

| 1 | Eligibility Expansion | 582 | $5,420,911 |
| 2 | State Institutions DPSH Payments | 583 | 4,466,156 |
| 3 | Hospice Services | 584 | 340,115 |
| 4 | Match Drop | 585 | 5,400,000 |
| 5 | Total | | $15,627,182 |

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

128—State Armory Board—General Armory Fund

(WV Code Chapter 15)

Account No.

Fund 6102 FY 1997 Org 0604

| 1 | Unclassified—Total | 096 | $325,000 |

129—West Virginia Division of Corrections—Parolee Supervision Fees

(WV Code Chapter 62)

Account No.

Fund 6362 FY 1997 Org 0608

<p>| 1 | Personal Services | 001 | $82,928 |
| 2 | Employee Benefits | 010 | 35,664 |</p>
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>020</td>
<td>115,408</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>234,000</td>
</tr>
</tbody>
</table>

### 130—West Virginia State Police—Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

**Account No.**

Fund 6501 FY 1997 Org 0612

<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>626,191</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,750</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>177,755</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>866,221</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,672,917</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.

### 131—West Virginia State Police—Drunk Driving Prevention Fund

(WV Code Chapter 15)

**Account No.**

Fund 6513 FY 1997 Org 0612

<table>
<thead>
<tr>
<th></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>1,034,000</td>
</tr>
</tbody>
</table>

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

### 132—West Virginia State Police—Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

**Account No.**
Fund 6516 FY 1997 Org 0612

1 Unclassified—Total 096 $ 500,000

133—West Virginia State Police—Surplus Transfer Account

(WV Code Chapter 15)

Account No.

Fund 6519 FY 1997 Org 0612

1 Unclassified—Total 096 $ 214,500

134—Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Account No.

Fund 6675 FY 1997 Org 0615

1 Personal Services 001 $ 434,213
2 Annual Increment 004 6,750
3 Employee Benefits 010 147,172
4 Debt Service 040 10,000,000
5 Unclassified 099 277,095
6 Total $ 10,865,230

135—Division of Veterans' Affairs—Veterans' Home

(WV Code Chapter 19A)

Account No.

Fund 6754 FY 1997 Org 0618

1 Unclassified—Total 096 $ 240,000

136—Fire Commission—Fire Marshal Fees

(WV Code Chapter 29)
### APPROPRIATIONS

#### CH. 8

**Fund 6152 FY 1997 Org 0619**

<table>
<thead>
<tr>
<th>Account</th>
<th>Number</th>
<th>Description</th>
<th>Office</th>
<th>Pn.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 391,785</td>
<td></td>
<td></td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>5,200</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>116,075</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>296,080</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$ 809,140</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1995-96 is hereby available for expenditure as part of the fiscal year 1996-97 appropriation.

#### DEPARTMENT OF TAX AND REVENUE

**137—Division of Banking—Lending and Credit Rate Board**

(WV Code Chapter 47A)

**Fund 3040 FY 1997 Org 0303**

<table>
<thead>
<tr>
<th>Account</th>
<th>Number</th>
<th>Description</th>
<th>Office</th>
<th>Pn.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 10,586</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Employee Benefits</td>
<td>010</td>
<td>4,411</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Unclassified</td>
<td>099</td>
<td>10,648</td>
<td></td>
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</tr>
<tr>
<td>4 Total</td>
<td></td>
<td>$ 25,645</td>
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</table>

**138—Division of Banking**

(WV Code Chapter 31A)

**Fund 3041 FY 1997 Org 0303**

<table>
<thead>
<tr>
<th>Account</th>
<th>Number</th>
<th>Description</th>
<th>Office</th>
<th>Pn.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$ 1,110,253</td>
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</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>11,800</td>
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<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>331,828</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td>Fund</td>
<td>FY</td>
<td>Org</td>
<td>1</td>
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<tr>
<td>------------</td>
<td>------</td>
<td>----</td>
<td>-----</td>
<td>---</td>
</tr>
<tr>
<td>139—Tax Division— Office of chief Inspector</td>
<td>7067</td>
<td>1997</td>
<td>0702</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>7071</td>
<td>1997</td>
<td>0702</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>7073</td>
<td>1997</td>
<td>0702</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>7073</td>
<td>1997</td>
<td>0702</td>
<td>5</td>
</tr>
<tr>
<td>140—Tax Division— Cemetery Company Account</td>
<td>7071</td>
<td>1997</td>
<td>0702</td>
<td>1</td>
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<tr>
<td></td>
<td>7071</td>
<td>1997</td>
<td>0702</td>
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<td>1997</td>
<td>0702</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>7071</td>
<td>1997</td>
<td>0702</td>
<td>4</td>
</tr>
<tr>
<td>141—Tax Division— Special Audit and Investigative Unit</td>
<td>7073</td>
<td>1997</td>
<td>0702</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Account No.</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,000</td>
<td></td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>216,503</td>
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<tr>
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<td>Unclassified</td>
<td>099</td>
<td>346,021</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,211,370</td>
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</tbody>
</table>

142—Insurance Commissioner—
   Examination Revolving Fund
   (WV Code Chapter 33)

Account No.

Fund 7150 FY 1997 Org 0704

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account No.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>409,390</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>300</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>100,930</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>313,500</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>824,120</td>
</tr>
</tbody>
</table>

143—Insurance Commissioner—
   Consumer Advocate
   (WV Code Chapter 33)

Account No.

Fund 7151 FY 1997 Org 0704

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Account No.</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>73,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>450</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>29,226</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>117,521</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>220,697</td>
</tr>
</tbody>
</table>

144—Insurance Commissioner
   (WV Code Chapter 33)

Account No.
### Appropriations

**Fund 7152 FY 1997 Org 0704**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,581,988</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$28,150</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$573,216</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$852,900</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,036,254</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.

#### 145—Racing Commission—Relief Fund

(WV Code Chapter 19)

Account No.

**Fund 7300 FY 1997 Org 0707**

<table>
<thead>
<tr>
<th>Item</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.

#### 146—Racing Commission—Administration and Promotion

(WV Code Chapter 19)

Account No.

**Fund 7304 FY 1997 Org 0707**

<table>
<thead>
<tr>
<th>Item</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>$850</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$22,947</td>
</tr>
</tbody>
</table>
4 Unclassified .......................... 099 47,408
5 Total ................................. $ 124,905

147—Racing Commission—
General Administration
(WV Code Chapter 19)

Account No.

Fund 7305 FY 1997 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>$1,016,300</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>14,900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>291,353</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>130,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,452,553</td>
</tr>
</tbody>
</table>

148—Racing Commission—
Administration, Promotion and Education Fund
(WV Code Chapter 19)

Account No.

Fund 7307 FY 1997 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>

149—Alcohol Beverage Control Administration—
Wine License Special Fund
(WV Code Chapter 60)

Account No.

Fund 7351 FY 1997 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>$200,408</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,450</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>47,328</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>183,477</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$433,663</td>
</tr>
</tbody>
</table>
### 150—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Account No.

<table>
<thead>
<tr>
<th>Fund 7352 FY 1997 Org 0708</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
</tr>
<tr>
<td>4 Unclassified</td>
</tr>
<tr>
<td>5 Total</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of 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

151—Division of Motor Vehicles—Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Account No.

<table>
<thead>
<tr>
<th>Fund 8213 FY 1997 Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Annual Increment</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
</tr>
<tr>
<td>4 Unclassified</td>
</tr>
<tr>
<td>5 Total</td>
</tr>
</tbody>
</table>
152—Division of Motor Vehicles—Driver Rehabilitation
(WV Code Chapter 17C)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8214 FY 1997 Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

153—Division of Motor Vehicles—Insurance Certificate Fees
(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8215 FY 1997 Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

154—Division of Motor Vehicles—Motorboat Licenses
(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 8216 FY 1997 Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

3 Employee Benefits ................. 010 -0-
4 Unclassified ....................... 099 145,938
5 Total ............................ $ 145,938

155—Division of Motor Vehicles—
Returned Check Fees
(WV Code Chapter 17)

Account No.

Fund 8217 FY 1997 Org 0802

1 Personal Services ................. 001 $ -0-
2 Annual Increment ................. 004 -0-
3 Employee Benefits ................. 010 -0-
4 Unclassified ....................... 099 28,919
5 Total ............................ $ 28,919

BUREAU OF COMMERCE

156—Division of Forestry
(WV Code Chapter 19)

Account No.

Fund 3081 FY 1997 Org 0305

1 Personal Services ................. 001 $ 272,688
2 Annual Increment ................. 004 3,650
3 Employee Benefits ................. 010 71,948
4 Unclassified ....................... 099 353,789
5 Total ............................ $ 702,075

157—Division of Forestry—
Timberland Enforcement Operations
(WV Code Chapter 19)

Account No.
### APPROPRIATIONS

**Fund 3082 FY 1997 Org 0305**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$250,000</td>
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**158—Division of Forestry—Severance Tax Operations**

(WV Code Chapter 11)

Account No.

**Fund 3084 FY 1997 Org 0305**

<table>
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<th>Item</th>
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<tr>
<td>Unclassified—Total</td>
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<td>$2,524,352</td>
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**159—Geological and Economic Survey**

(WV Code Chapter 29)

Account No.

**Fund 3100 FY 1997 Org 0306**

<table>
<thead>
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<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
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<td>508</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>177,983</td>
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<td>226,035</td>
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</table>

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

**160—West Virginia Development Office—Energy Assistance**

(WV Code Chapter 5B)

Account No.

**Fund 3144 FY 1997 Org 0307**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any unexpended balances remaining in the appropriations for Unclassified (fund 3144, activity 099), and Energy Assistance-Total (fund 3144, activity 647) at the close of the fiscal year 1995-96 are hereby reappropriated</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
5 for expenditure during the fiscal year 1996-97.

161—Division of Labor—
Contractor Licensing Board Fund

(WV Code Chapter 21)

Account No.

Fund 3187 FY 1997 Org 0308

1 Personal Services .................. 001 $ 723,969
2 Annual Increment .................. 004 9,928
3 Employee Benefits ................. 010 282,828
4 Unclassified ....................... 099 780,063
5 Total ............................. $ 1,796,788

162—Division of Labor—
Elevator Safety Act

(WV Code Chapter 21)

Account No.

Fund 3188 FY 1997 Org 0308

1 Personal Services .................. 001 $ 185,205
2 Annual Increment .................. 004 2,249
3 Employee Benefits ................. 010 66,438
4 Unclassified ....................... 099 289,328
5 Total ............................. $ 543,220

163—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 3200 FY 1997 Org 0310

1 Personal Services .................. 001 $ 5,966,736
2 Annual Increment .................. 004 141,632
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,306,718</td>
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<td>4</td>
<td>Unclassified</td>
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<td>3,522,244</td>
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<tr>
<td>5</td>
<td>Capital Improvements and</td>
<td></td>
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<tr>
<td></td>
<td>Land Purchase (R)</td>
<td>248</td>
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<td>7</td>
<td>Total</td>
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<td>13,086,773</td>
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</table>

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

Any unexpended balances remaining in the 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 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

### 164—Division of Natural Resources—
**Game, Fish and Aquatic Life Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 3202 FY 1997 Org 0310</td>
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</tbody>
</table>

<table>
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<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$6,000</td>
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### 165—Division of Natural Resources—
**Nongame Fund**

(WV Code Chapter 20)

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<tbody>
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<table>
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<tr>
<td>1</td>
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<td>001</td>
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<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>27,571</td>
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<td>4</td>
<td>Unclassified</td>
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<td>31,603</td>
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<td>Total</td>
<td></td>
<td>$143,696</td>
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</table>


### Appendix A.4.2

**166—Division of Natural Resources—Planning and Development Division**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
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<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3205</td>
<td>1997</td>
<td>0310</td>
<td>Personal Services</td>
<td>001</td>
<td>203,148</td>
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<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>3,250</td>
</tr>
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<td></td>
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<td>Employee Benefits</td>
<td>010</td>
<td>78,792</td>
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<td>Unclassified</td>
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</table>

**167—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>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>3253</td>
<td>1997</td>
<td>0310</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>95,000</td>
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**168—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>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3254</td>
<td>1997</td>
<td>0310</td>
<td>Personal Services</td>
<td>001</td>
<td>110,268</td>
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<td>Annual Increment</td>
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<td>2,300</td>
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<td>Employee Benefits</td>
<td>010</td>
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<td></td>
<td></td>
<td></td>
<td>Unclassified (R)</td>
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<td>2,639,914</td>
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<td></td>
<td></td>
<td>Total</td>
<td></td>
<td>2,800,254</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close
of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

169—Division of Natural Resources—Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Account No.

Fund 3256 FY 1997 Org 0310

1 Unclassified—Total ............ 096 $ 20,000

BUREAU OF EMPLOYMENT PROGRAMS

170—Bureau of Employment Programs—Workers' Compensation Fund

(WV Code Chapter 23)

Account No.

Fund 3440 FY 1997 Org 0322

1 Personal Services ............... 001 $ 15,114,407
2 Annual Increment ................ 004 337,253
3 Employee Benefits ............... 010 5,511,946
4 Unclassified (R) ............... 099 29,176,878
5 Employer Excess Liability Fund . 226 112,798
6 Total .......................... $ 50,253,282

Any unexpended balance remaining in the appropriation for Unclassified (fund 3440, activity 099) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

There is hereby authorized to be paid out of the above appropriation the amount necessary for the premiums on bonds given by the treasurer as bond custodian for the protection of the workers' compensation fund. This sum shall be transferred to the board of risk and insurance management.
### BUREAU OF ENVIRONMENT

**171—Solid Waste Management Board**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund 3288</th>
<th>FY 1997</th>
<th>Org 0312</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Landfill Assistance</td>
<td>488</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
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</table>

#### 172—Division of Environmental Protection—Special Reclamation Fund

(WV Code Chapter 22A)

Account No.

<table>
<thead>
<tr>
<th>Fund 3321</th>
<th>FY 1997</th>
<th>Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
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</table>

#### 173—Division of Environmental Protection—Oil and Gas Reclamation Trust

(WV Code Chapter 22B)

Account No.

<table>
<thead>
<tr>
<th>Fund 3322</th>
<th>FY 1997</th>
<th>Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>
### 174—Division of Environmental Protection—
**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 3323 FY 1997 Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services .............. 001 $ 206,500</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment .............. 004 3,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits ............ 010 66,187</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified .................. 099 487,466</td>
</tr>
<tr>
<td>5</td>
<td>Total ......................... $ 763,353</td>
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</table>

### 175—Division of Environmental Protection—
**Mines and Minerals Operations Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 3324 FY 1997 Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services .............. 001 $ 2,250,951</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment .............. 004 36,582</td>
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<td>3</td>
<td>Employee Benefits ............ 010 678,237</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified .................. 099 954,929</td>
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<tr>
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<td>Total ......................... $ 3,920,699</td>
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</table>

### 176—Division of Environmental Protection—
**Underground Storage Tanks**
**Administrative Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund 3325 FY 1997 Org 0313</th>
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<tr>
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<td>Personal Services .............. 001 $ 312,050</td>
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<td>2</td>
<td>Annual Increment .............. 004 4,675</td>
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<tr>
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<td>Description</td>
</tr>
<tr>
<td>----</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
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</table>

**177—Division of Environmental Protection—Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>3333</td>
<td>FY 1997</td>
<td>0313</td>
<td>344,028</td>
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<td>2</td>
<td>Annual Increment</td>
<td></td>
<td></td>
<td></td>
<td>6,125</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td></td>
<td>109,343</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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<td>1,008,331</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
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<td></td>
<td>1,467,827</td>
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</tbody>
</table>

**178—Division of Environmental Protection—Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>3332</td>
<td>FY 1997</td>
<td>0313</td>
<td>155,584</td>
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<td>2</td>
<td>Annual Increment</td>
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<td></td>
<td></td>
<td>1,900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td></td>
<td>47,278</td>
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<td>4</td>
<td>Landfill Assistance</td>
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<td></td>
<td></td>
<td>1,000,000</td>
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<tr>
<td>5</td>
<td>Sludge Study</td>
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<td></td>
<td></td>
<td>45,025</td>
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<td>6</td>
<td>Unclassified</td>
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<td></td>
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### 179—Division of Environmental Protection—Solid Waste Enforcement Fund

(WV Code Chapter 20)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>3333</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td>Litter Control-Conservation Officers</td>
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### 180—Division of Environmental Protection—Fees and Operating Expenses

(WV Code Chapter 16)

Account No.

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<th>Org</th>
<th>Description</th>
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<th>Amount</th>
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<td>Employee Benefits</td>
<td>010</td>
<td>746,421</td>
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### 181—Division of Environmental Protection—Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Account No.

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<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
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<td>3343</td>
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### APPROPRIATIONS

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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$27,588</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$34,188</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$150,350</td>
</tr>
</tbody>
</table>

### 182—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>3371</td>
<td>1997</td>
<td>0315</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>$149,335</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$26,833</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$49,074</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$226,442</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

### 183—Hospital Finance Authority

(WV Code Chapter 16)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>5475</td>
<td>1997</td>
<td>0509</td>
</tr>
</tbody>
</table>

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$50,219</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$15,228</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$67,116</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$132,763</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.
### 184—Municipal Bond Commission

(WV Code Chapter 13)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7253</td>
<td>FY 1997</td>
<td>0706</td>
<td>Personal Services</td>
<td>001</td>
<td>$107,470</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>$2,700</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Employee Benefits</td>
<td>010</td>
<td>$37,424</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>$54,550</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td>$202,144</td>
</tr>
</tbody>
</table>

### 185—WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8517</td>
<td>FY 1997</td>
<td>0906</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$330,118</td>
</tr>
</tbody>
</table>

### 186—WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8520</td>
<td>FY 1997</td>
<td>0907</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$805,823</td>
</tr>
</tbody>
</table>

### 187—West Virginia Cable Television Advisory Board

(WV Code Chapter 5)

Account No.

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8609</td>
<td>FY 1997</td>
<td>0924</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<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>$151,640</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>42,370</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>60,268</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$258,278</td>
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</tbody>
</table>

**188—Public Service Commission**  
(WV Code Chapter 24)

Account No.

Fund 8623 FY 1997 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$6,178,316</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>90,279</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,904,176</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,452,000</td>
</tr>
<tr>
<td>5</td>
<td>750 KV Transmission Line Study</td>
<td>608</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Sewage Plant Assistance</td>
<td>400</td>
<td>175,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$10,799,771</td>
</tr>
</tbody>
</table>

8 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.

**189—Public Service Commission—Gas Pipeline Division**

(WV Code Chapter 24B)

Account No.

Fund 8624 FY 1997 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$133,750</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,556</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>40,232</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

190—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)

Account No.
Fund 8625 FY 1997 Org 0926

<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>$1,337,796</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,723</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>405,827</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>670,500</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,448,846</td>
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</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

191—Public Service Commission—
Consumer Advocate
(WV Code Chapter 24)

Account No.
Fund 8627 FY 1997 Org 0926

<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>$368,595</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,350</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>106,740</td>
</tr>
</tbody>
</table>
4 Unclassified .......................... 099 336,784
5 Total ................................. $ 815,469

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

**192—Real Estate Commission**
(WV Code Chapter 47)

Account No.

Fund 8635 FY 1997 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>$289,132</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,600</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>91,906</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>269,400</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$654,038</td>
</tr>
</tbody>
</table>

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

**193—WV Board of Respiratory Care**
(WV Code Chapter 30)

Account No.

Fund 8676 FY 1997 Org 0935

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$190,000</td>
</tr>
</tbody>
</table>

**194—Dietitians' Licensure Board**

Account No.

Fund 8680 FY 1997 Org 0936

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$105,000</td>
</tr>
<tr>
<td>Total TITLE II, Section 3—</td>
<td></td>
<td>$484,379,840</td>
</tr>
</tbody>
</table>

Sec. 4. Appropriations from lottery net profits.—Net
profits of the lottery, not to exceed fifty-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 numbers 1020, 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 eight accounts.

195—Governor’s Office

(WV Code Chapter 5)

Account No.

Fund 1020 FY 1997 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Center for Arts, Sciences and Education-Total</td>
<td>230 $ -0-</td>
</tr>
</tbody>
</table>

196—West Virginia Development Office—Tourism Commission

(WV Code Chapter 5B)

Account No.

Fund 3067 FY 1997 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Tourism Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Unclassified (R)</td>
<td>662 $ 2,906,092</td>
</tr>
<tr>
<td>Tourism—Advertising (R)</td>
<td>618 2,240,000</td>
</tr>
<tr>
<td>Tourism—Telemarketing Center</td>
<td>463 100,000</td>
</tr>
<tr>
<td>State Parks and Recreation Advertising (R)</td>
<td>619 560,000</td>
</tr>
<tr>
<td>Total</td>
<td>$ 5,806,092</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3067, activity 099), Tourism-Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism-Unclassified (fund 3067, activity 662) and
Advertising-Total (fund 3073, activity 541) are hereby reappropriated for expenditure during the fiscal year 1996-97.

197—Division of Natural Resources

(WV Code Chapter 20)

Account No.

Fund 3267 FY 1997 Org 0310

1 Capital Outlay—Parks (R) .......... 288 $  -0-
2 Coopers Rock—Land
3 Acquisition (R) ................. 439 .200,000
4 Parks Operations—Unclassified .. 645 1,473,908
5 Total ............................. $ 1,673,908

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 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.

198—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.

Fund 3951 FY 1997 Org 0402

1 Computer Basic Skills—Total (R) . 567 $ 7,500,000

Any unexpended balances remaining in the appropriation for Elementary Computer Education—Total (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 1995-96 are hereby reappropriated for expenditure during the fiscal year 1996-97.
199—State Department of Education—
School Building Authority
(WV Code Chapter 18)
Account No.
Fund 3963 FY 1997 Org 0402
1 Debt Service—Total ............... 310 $ 18,000,000

200—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 1997 Org 0453
1 Unclassified—Total ............... 096 $ 3,520,000

201—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)
Account No.
Fund 3505 FY 1997 Org 0431
1 Strategic Planning and Compliance—
2 Health Sciences ............... 489 $ 200,000

202—Commission on Aging
(WV Code Chapter 29)
Account No.
Fund 5405 FY 1997 Org 0508
1 In-Home Services for
2 Senior Citizens—Total ......... 286 $ -0-
3 Direct Services ............... 481 $ 2,800,000
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Fiscal Year</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens</td>
<td>539</td>
<td></td>
<td></td>
<td>8,500,000</td>
</tr>
<tr>
<td>8</td>
<td>Senior Citizen Centers and Programs</td>
<td>462</td>
<td></td>
<td></td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>12,300,000</td>
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</tbody>
</table>

The above appropriation for Health Care and Title XIX Waiver for Senior Citizens shall be used to expand the Title XIX waiver program statewide but not to increase the rate of reimbursement for services provided by Title XIX providers.

### 203—Division of Human Services—Health Care and Title XIX Waiver for Senior Citizens

(WV Code Chapters 9, 48 and 49)

Account No.

Fund 5063 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Fiscal Year</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Health Care and Title XIX Waiver for Senior Citizens—Total</td>
<td>434</td>
<td></td>
<td></td>
<td>-0-</td>
</tr>
</tbody>
</table>

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

### 204—Education, Arts, Sciences and Tourism Debt Service Fund

(WV Code Chapter 5)

Account No.

Fund 2252 FY 1997 Org 0211

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Fiscal Year</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service—Total</td>
<td>310</td>
<td></td>
<td></td>
<td>10,500,000</td>
</tr>
</tbody>
</table>

Total TITLE II, Section 4—Lottery Funds $ 59,500,000
Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred ninety-seven.

**LEGISLATIVE**

205—*Crime Victims Compensation Fund*

(WV Code Chapter 14)

Account No.

Fund 8738 FY 1997 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096 $ 920,000</td>
<td></td>
</tr>
</tbody>
</table>

**JUDICIAL**

206—*Supreme Court—General Judicial*

Account No.

Fund 8805 FY 1997 Org 2400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096 $ 123,584</td>
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</tbody>
</table>

**EXECUTIVE**

207—*Governor's Office—Governor's Cabinet on Children and Families*

(WV Code Chapter 5)

Account No.

Fund 8792 FY 1997 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total 096 $ 528,000</td>
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</tbody>
</table>
208—Governor's Office—
Governor's Cabinet on Children and Families—
Office of Economic Opportunity

(WV Code Chapter 5)

Account No.

Fund 8797 FY 1997 Org 0100

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

209—Governor's Office—
Commission for National and Community Service

(WV Code Chapter 5)

Account No.

Fund 8800 FY 1997 Org 0100

1 Unclassified—Total ............... 096 $ 892,000

210—Auditor's Office

(WV Code Chapter 12)

Account No.

Fund 8807 FY 1997 Org 1200

1 Unclassified—Total ............... 096 $ 3,900,000

211—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8735 FY 1997 Org 1400

1 Unclassified—Total ............... 096 $ 20,000

212—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 8736 FY 1997 Org 1400
## Appropriations

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$2,813,085</td>
<td>8737</td>
<td></td>
<td>1400</td>
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<tr>
<td>213—Department of Agriculture—Meat Inspection</td>
<td>(WV Code Chapter 19)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td>Fund 8737 FY 1997 Org 1400</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Unclassified—Total</td>
<td>$610,311</td>
<td>8783</td>
<td></td>
<td>1400</td>
</tr>
<tr>
<td>214—Department of Agriculture—State Soil Conservation Committee</td>
<td>(WV Code Chapter 19)</td>
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<td></td>
<td></td>
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<tr>
<td>Account No.</td>
<td>Fund 8783 FY 1997 Org 1400</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1 Unclassified—Total</td>
<td>$94,000</td>
<td>8712</td>
<td></td>
<td>0402</td>
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<tr>
<td>DEPARTMENT OF EDUCATION</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>215—State Department of Education</td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td></td>
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</tr>
<tr>
<td>Account No.</td>
<td>Fund 8712 FY 1997 Org 0402</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 Unclassified—Total</td>
<td>$9,150,000</td>
<td>8713</td>
<td></td>
<td>0402</td>
</tr>
<tr>
<td>216—State Department of Education—School Lunch Program</td>
<td>(WV Code Chapters 18 and 18A)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Account No.</td>
<td>Fund 8713 FY 1997 Org 0402</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1 Unclassified—Total</td>
<td>$58,483,000</td>
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</table>
217—State Board of Education—
Vocational Division
(WV Code Chapters 18 and 18A)
Account No.
Fund 8714 FY 1997 Org 0402
1 Unclassified—Total 096 $ 12,635,000

218—State Department of Education—
Aid for Exceptional Children
(WV Code Chapters 18 and 18A)
Account No.
Fund 8715 FY 1997 Org 0402
1 Unclassified—Total 096 $ 25,000,000

DEPARTMENT OF EDUCATION AND THE ARTS
219—Division of Culture and History
(WV Code Chapter 29)
Account No.
Fund 8718 FY 1997 Org 0432
1 Unclassified—Total 096 $ 2,048,255

220—Library Commission
(WV Code Chapter 10)
Account No.
Fund 8720 FY 1997 Org 0433
1 Unclassified—Total 096 $ 1,992,560

221—Educational Broadcasting Authority
(WV Code Chapter 10)
Account No.
Fund 8721 FY 1997 Org 0439
1 Unclassified—Total ............... 096 $ 425,250

222—State Board of Rehabilitation—Division of Rehabilitation Services
(WV Code Chapter 18)
Account No.
Fund 8734 FY 1997 Org 0932
1 Unclassified—Total ............... 096 $ 39,577,969

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

223—Consolidated Medical Service Fund
(WV Code Chapter 16)
Account No.
Fund 8723 FY 1997 Org 0506
1 Unclassified—Total ............... 096 $ 3,300,000

224—Division of Health—Central Office
(WV Code Chapter 16)
Account No.
Fund 8802 FY 1997 Org 0506
1 Unclassified—Total ............... 096 $ 51,180,033

225—Commission on Aging
(WV Code Chapter 29)
Account No.
Fund 8724 FY 1997 Org 0508
1 Unclassified—Total ............... 096 $ 11,585,000

226—Human Rights Commission
(WV Code Chapter 5)
Account No.
### Appropriations

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

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 8722</td>
<td>8722</td>
<td>FY 1997</td>
<td>0511</td>
<td>$164 APPROPRIATIONS</td>
<td>[Ch. 8</td>
</tr>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>$151,352</td>
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</tbody>
</table>

#### Medical Services

- **Account No.** Fund 8722 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Medical Services</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Medical Services</td>
<td>189</td>
<td>$869,123,506</td>
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</tbody>
</table>

#### Behavioral Health

- **Account No.** Fund 8722 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Behavioral Health</th>
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<tbody>
<tr>
<td>3</td>
<td>Behavioral Health</td>
<td>664</td>
<td>$145,021,240</td>
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</table>

#### Public Assistance

- **Account No.** Fund 8722 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Public Assistance</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Public Assistance</td>
<td>193</td>
<td>$107,100,000</td>
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<td></td>
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</tbody>
</table>

#### JOBS Program

- **Account No.** Fund 8722 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>JOBS Program</th>
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<tr>
<td>6</td>
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<td>$15,106,000</td>
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#### Total

- **Account No.** Fund 8722 FY 1997 Org 0511

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
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<tr>
<td>7</td>
<td>Total</td>
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<td></td>
<td>$1,245,464,569</td>
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</table>

### Department of Military Affairs and Public Safety

#### 228—Adjutant General—State Militia

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 8726</td>
<td>8726</td>
<td>FY 1997</td>
<td>0603</td>
<td>$168 APPROPRIATIONS</td>
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<tr>
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<td>$16,704,646</td>
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</table>

### Office of Emergency Services

(WV Code Chapter 15)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 1997</th>
<th>Org</th>
<th>Unclassified—Total</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 8727</td>
<td>8727</td>
<td>FY 1997</td>
<td>0606</td>
<td>$1,400,000</td>
<td>[Ch. 8</td>
</tr>
</tbody>
</table>
230—West Virginia State Police
(WV Code Chapter 15)
Account No.
Fund 8741 FY 1997 Org 0612
1 Unclassified—Total ............... 096 $ 4,879,531

231—Division of Veterans' Affairs—Veterans' Home
(WV Code Chapter 9A)
Account No.
Fund 8728 FY 1997 Org 0618
1 Unclassified—Total ............... 096 $ 496,000

232—Division of Criminal Justice and Highway Safety
(Executive Order)
Account No.
Fund 8803 FY 1997 Org 0620
1 Unclassified—Total ............... 096 $ 12,300,000

DEPARTMENT OF TAX AND REVENUE
233—Tax Division
(WV Code Chapter 11)
Account No.
Fund 7069 FY 1997 Org 0702
1 Unclassified—Total ............... 096 $ 75,000

DEPARTMENT OF TRANSPORTATION
234—Department of Transportation—Office of the Secretary
(WV Code Chapter 5F)
### Appropriations

**Account No.**

**Fund 8782 FY 1997 Org 0801**

<table>
<thead>
<tr>
<th>Account</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $ 405,000</td>
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</table>

**235—State Rail Authority**

(WV Code Chapter 29)

**Account No.**

**Fund 8733 FY 1997 Org 0804**

<table>
<thead>
<tr>
<th>Account</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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</table>

**236—Division of Public Transit**

(WV Code Chapter 17)

**Account No.**

**Fund 8745 FY 1997 Org 0805**

<table>
<thead>
<tr>
<th>Account</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $ 6,171,045</td>
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</tbody>
</table>

### Bureau of Commerce

**237—Division of Forestry**

(WV Code Chapter 19)

**Account No.**

**Fund 8703 FY 1997 Org 0305**

<table>
<thead>
<tr>
<th>Account</th>
<th>Total</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $ 1,073,500</td>
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</tbody>
</table>

**238—Geological and Economic Survey**

(WV Code Chapter 29)

**Account No.**

**Fund 8704 FY 1997 Org 0306**

<table>
<thead>
<tr>
<th>Account</th>
<th>Total</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096 $ 542,221</td>
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</tbody>
</table>

**239—West Virginia Development Office**

(WV Code Chapter 5B)

**Account No.**
Fund 8705 FY 1997 Org 0307
1 Unclassified—Total ............... 096 $ 10,623,512

240—Division of Labor
(WV Code Chapters 21 and 47)
Account No.

Fund 8706 FY 1997 Org 0308
1 Unclassified—Total ............... 096 $ 319,000

241—Division of Natural Resources
(WV Code Chapter 20)
Account No.

Fund 8707 FY 1997 Org 0310
1 Unclassified—Total ............... 096 $ 8,261,711

242—Division of Miners' Health,
Safety and Training
(WV Code Chapter 22)
Account No.

Fund 8709 FY 1997 Org 0314
1 Unclassified—Total ............... 096 $ 530,332

BUREAU OF ENVIRONMENT

243—Division of Environmental Protection
(WV Code Chapter 22)
Account No.

Fund 8708 FY 1997 Org 0313
1 Unclassified—Total ............... 096 $ 112,901,239

MISCELLANEOUS BOARDS AND COMMISSIONS

244—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)

Account No.

Fund 8743 FY 1997 Org 0926

1 Unclassified—Total ............... 096 $ 890,388

245—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Account No.

Fund 8744 FY 1997 Org 0926

1 Unclassified—Total ............... 096 $ 255,764

1 Total TITLE II, Section 5—

2 Federal Funds ............ $ 1,654,047,533

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 1996-97.

246—Governor's Office—
Governor's Cabinet on Children and Families

Account No.

Fund 8799 FY 1997 Org 0100

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

247—West Virginia Development Office—
Community Development

Account No.

Fund 8746 FY 1997 Org 0307

1 Unclassified—Total ............... 096 $ 21,000,000

248—Bureau of Employment Programs—
Job Training Partnership Act

Account No.
Fund 8749 FY 1997 Org 0323
1 Unclassified—Total ............ 096 $ 46,500,000

249—State Department of Education—
Education Grant

Account No.

Fund 8748 FY 1997 Org 0402
1 Unclassified—Total ............ 096 $ 74,470,000

250—Division of Health—
Maternal and Child Health

Account No.

Fund 8750 FY 1997 Org 0506
1 Unclassified—Total ............ 096 $ 7,500,000

251—Division of Health—
Preventive Health

Account No.

Fund 8753 FY 1997 Org 0506
1 Unclassified—Total ............ 096 $ 1,650,000

252—Division of Health—
Substance Abuse Prevention and Treatment

Account No.

Fund 8793 FY 1997 Org 0506
1 Unclassified—Total ............ 096 $ 9,000,000

253—Division of Health—
Community Mental Health Services

Account No.

Fund 8794 FY 1997 Org 0506
1 Unclassified—Total ............ 096 $ 2,800,000
254—Division of Human Services—
   Energy Assistance

Account No.

Fund 8755 FY 1997 Org 0511

1 Unclassified—Total .................. 096 $ 11,400,000

255—Division of Human Services—
   Child Care and Development

Account No.

Fund 8756 FY 1997 Org 0511

1 Unclassified—Total .................. 096 $ 6,900,000

256—Division of Human Services—
   Social Services

Account No.

Fund 8757 FY 1997 Org 0511

1 Unclassified—Total .................. 096 $ 20,000,000

257—Division of Human Services—
   Empowerment Zone and Enterprise Community Program

Account No.

Fund 8806 FY 1997 Org 0511

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

1 Total TITLE II, Section 6—
2 Federal Block Grants ............... $ 210,356,077

1 Sec. 7. Awards for claims against the state.—There
2 are hereby appropriated for the remainder of the fiscal
3 year 1995-96 and to remain in effect until the thirtieth
4 day of June, one thousand nine hundred ninety-seven,
5 from the funds as designated, in the amounts as specified
6 and for the claimants named in enrolled house bill no.
7 4660, regular session, one thousand nine hundred
8 ninety-six, crime victims compensation funds of $86,500
9 for payment of claims against the state.
There are hereby appropriated for the fiscal year 1996-97 from the funds as designated in the amounts as specified and for the claimants as named in enrolled senate bill no. 567, regular session, one thousand nine hundred ninety-six, and enrolled house bill no. 4661, regular session, one thousand nine hundred ninety-six, general revenue funds in the amount of $911,929.52. The total of general revenue funds do not include payment for claims in the amount of $3,950 from the supreme court-general judicial account no. fund 0180, FY 1996, org 2400, specifically made payable from the appropriation for fiscal year 1995-96.

There are hereby appropriated for the fiscal year 1996-97 from the funds as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 567, regular session, one thousand nine hundred ninety-six, special revenue funds in the amount of $50,488.43; state road funds in the amount of $223,790.54.

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 1996-97 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-six. In the event that surplus revenues available on the thirty-first day of July, one thousand nine hundred ninety-six, 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.
258—West Virginia State Police
(WV Code Chapter 15)
Account No.
Fund 0453 FY 1997 Org 0612
1 Capital Outlay
2 and Equipment-Surplus-Total . . . 231 $ -0-

259—Division of Natural Resources
(WV Code Chapter 20)
Account No.
Fund 0265 FY 1997 Org 0310
1 Capital Outlay-Parks-Surplus . . . . . . 233 $ -0-

260—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)
Account No.
Fund 0294 FY 1997 Org 0431
1 Capital Outlay-Library Construction-
2 Surplus-Total . . . . . . . . . . . . . . . 236 $ -0-

261—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Account No.
Fund 0403 FY 1997 Org 0511
1 Child Care Development—Surplus . . 505 $ 700,000

262—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)
Account No.
Fund 0333 FY 1997 Org 0452

1 Higher Education Technology
2 Initiative—Surplus (R) ....... 508 $ 1,000,000

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

Account No.
Fund 0217 FY 1997 Org 0218

1 County Boards of Education
2 Retro Payments—Surplus ....... 509 $ 1,000,000

264—Division of General Services
(WV Code Chapter 5A)

Account No.
Fund 0230 FY 1997 Org 0211

1 Capitol Complex Capital
2 Outlay—Surplus ............... 526 $ 2,000,000

265—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)

Account No.
Fund 0333 FY 1997 Org 0452

1 Higher Education Technology
2 Initiative—Surplus (R) ....... 508 $ 1,000,000

266—West Virginia Development Office
(WV Code Chapter 5B)

Account No.
Fund 0256 FY 1997 Org 0307
<table>
<thead>
<tr>
<th>Account No.</th>
<th>Fund</th>
<th>FY 21 Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Schools/Mini</td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td>Total TITLE II, Section 7</td>
<td>Total Appropriations</td>
<td>$7,200,000</td>
</tr>
</tbody>
</table>

**Sec. 9. Special revenue appropriations.**—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety-seven 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. 10. 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-seven, for the purpose
of making studies and recommendations relative to improve-
mements of the administration and management of
spending units in the executive branch of state govern-
ment, shall be deposited in the state treasury in a separate
account therein designated state improvement fund.

There are hereby appropriated all moneys so deposit-
ed during the fiscal year one thousand nine hundred
ninety-seven to be expended as authorized by the gover-
nor, 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 eco-
nomic, social, educational, health and general welfare of
the state or its citizens.

Sec. 11. 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 ac-
count and shall be expended according to the provisions
of article three, chapter twelve of the code.

Sec. 12. 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
or she shall issue his or her requisition upon the auditor
for the refunding of the proper amount. The auditor shall
issue his or her warrant to the treasurer and the treasurer
shall pay the warrant out of the fund into which the
amount was originally paid.

Sec. 13. 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,
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.

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. 15. 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 I
—GENERAL PROVISIONS, Sec. 3.

Sec. 16. 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.

TITLE III—ADMINISTRATION.

Section 1. Appropriations conditional.—The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter five-a of the code.

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

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

CHAPTER 9

(H. B. 4742—By Delegates Burke, Frederick, Talbott, Border, Evans, Facemyer and Leggett)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of agriculture, account no. fund 0131, fiscal year 1996, organization 1400.
WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of agriculture, account no. fund 0131, fiscal year 1996, organization 1400, be supplemented and amended by increasing the total appropriation by four hundred ten thousand dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>13—Department of Agriculture</td>
</tr>
<tr>
<td>(WV Code Chapter 19)</td>
</tr>
<tr>
<td>Fund 0131 FY 1996 Org 1400</td>
</tr>
<tr>
<td>General</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>Revenue</td>
</tr>
<tr>
<td>Funds</td>
</tr>
<tr>
<td>Unclassified ................. 099</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding four hundred ten thousand dollars to the existing appropriation for the department of agriculture, account no. fund 0131, fiscal year 1996, organization 1400, to be used for capital outlay, equipment and related costs for the Moorefield laboratory building and office.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to legislative, joint expenses, account no. fund 0175, fiscal year 1996, organization 2300, and governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", and expiring the sum of ten million dollars from joint expenses, account no. fund 0175, fiscal year 1996, organization 2300, to the unappropriated balance in the state fund, general revenue, and making a supplemental appropriation in the amount of ten million dollars from the unappropriated balance in the state fund, general revenue.

Be it enacted by the Legislature of West Virginia:

That the amount of ten million dollars be reduced from legislative, joint expenses, account no. fund 0175, fiscal year 1996, organization 2300.

1 TITLE II — APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 Joint Expenses

(WV Code Chapter 4)

Account No.
And, that the items of total appropriation from the general revenue, fund account no. fund 0105, fiscal year 1996, organization 0100, be amended and increased in the line item as follows:

8—Governor's Office —

Civil Contingent Fund

(WV Code Chapter 5)

Account No.

Fund 0105 FY 1996 Org 0100

The purpose of this bill is to reduce the total appropriation to the item designated "tax reduction and federal funding increased compliance" in joint expenses, account no. fund 0175, fiscal year 1996, organization 2300, by ten million dollars. The further purpose of the bill is to appropriate ten million dollars to the governor's office, civil contingent fund, account no. fund 0101, fiscal year 1996, organization 0100 to a new line item, designated "flood victims' assistance" to be used to provide funding assistance to flood victims. The bill also provides for the transfer of ten million dollars from the tax reduction and federal funding increased compliance appropriation to a special fund, account no. fund 1732. The transfer of funds authorized by this bill shall be completed on or before the fifteenth day of June, one thousand nine hundred ninety-six. All transferred funds shall be available for expenditure immediately upon the effective date of this bill.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from other funds to the department of administration, division of purchasing—revolving fund, account no. fund 2320, fiscal year 1996, organization 0216, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from other funds to account no. fund 2320, fiscal year 1996, organization 0216, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF ADMINISTRATION

4 100—Division of Purchasing—

5 Revolving Fund

6 (WV Code Chapter 5A)

7 Account No.

8 Fund 2320 FY 1996 Org 0216

ACTIVITY

11 4 Unclassified ...................... 099 $ 111,110

12 And, that the items of the total appropriations from other funds to account no. fund 2320, fiscal year 1996,
organization 0216, be amended and increased in the line items as follows:

**TITLE II—APPROPRIATIONS.**

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

100—Division of Purchasing—

Revolving Fund

(WV Code Chapter 5A)

Account No.

Fund 2320  FY 1996  Org 0216

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001  $91,179</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010  19,931</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by one hundred eleven thousand one hundred ten dollars. The item for personal services is increased by ninety-one thousand one hundred seventy-nine dollars. The item for employee benefits is increased by nineteen thousand nine hundred thirty-one dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the general revenue fund to the department of administration, ethics commission, account no. fund 0223, fiscal year 1996, organization 0220, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the general revenue fund to account no. fund 0223, fiscal year 1996, organization 0220, be amended and reduced in the line item as follows:

<table>
<thead>
<tr>
<th>Activity Fund</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$19,485</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriations from the general revenue fund to account no. fund 0223, fiscal year 1996, organization 0220, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue fund.

DEPARTMENT OF ADMINISTRATION

28—Ethics Commission

(WV Code Chapter 6B)

Account No.

Fund 0223 FY 1996 Org 0220

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001 Personal Services</td>
<td>$ 14,500</td>
</tr>
<tr>
<td>010 Employee Benefits</td>
<td>4,985</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by nineteen thousand four hundred eighty-five dollars. The item for personal services is increased by fourteen thousand five hundred dollars. The item for employee benefits is increased by four thousand nine hundred eighty-five dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, public defender services, account no. fund 0226, fiscal year 1996, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The Governor submitted to the Legislature the executive budget document, dated January 10, 1996, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1995, and further included the estimate of revenues for fiscal year 1995-96, less net appropriation balances forwarded and regular appropriations for fiscal year 1995-96; and

WHEREAS, It thus appearing from the Governor's executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0226, fiscal year 1996, organization 0221, be supplemented and amended by increasing the total appropriation by three million five hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 29—Public Defender Services

5 (WV Code Chapter 29)
Account No.

Fund 0226  FY 1996  Org 0221

General Activity Revenue Fund

5 Appointed Counsel Fees and
6 Public Defender Corporations (R) - 127 $ 3,500,000

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees and Public Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding three million five hundred thousand dollars to the existing appropriation for the payment of appointed counsel fees and public defender corporations.

CHAPTER 14

(H. B. 4743—By Delegates Burke, Compton, Frederick, Kelley, Warner, Clements and Facemyer)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the division of forestry, account no. fund 0250, fiscal year 1996, organization 0305.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-six, to the division of forestry, account no. fund 0250, fiscal year 1996, organization 0305, be supplemented and amended by increasing the total appropriation by three hundred seventy-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 73—Division of Forestry
4 (WV Code Chapter 19)
5 Fund 0250 FY 1996 Org 0305
6
7 General
8 Activity
9 Revenue
10 Funds

9 4a Communications Equipment . . . . 502 $ 375,000

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding three hundred seventy-five thousand dollars to the existing appropriation for the division of forestry, account no. fund 0250, fiscal year 1996, organization 0305, to be used for communications equipment.

CHAPTER 15

(H. B. 4848—By Delegates Kiss, Mezzatesta, Talbott, Warner, Evans, Miller and Wallace)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public mon­eys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, geological and economic survey, account no. fund 0253, fiscal year 1996, organization 0306.
WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, geological and economic survey, account no. fund 0253, fiscal year 1996, organization 0306, be supplemented and amended by increasing the total appropriation by seven hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 74—Geological and Economic Survey

4 (WV Code Chapter 29)

5 Account No.

6 Fund 0253 FY 1996 Org 0306

7 General

8 Activity

9 Revenue Funds

10 4a Mineral Mapping System ....... 207 $750,000

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding seven hundred fifty thousand dollars to the existing appropriation for the bureau of commerce, geological and economic survey, account no. fund 0253, fiscal year 1996, organization 0306, to be used for the mineral mapping system.
CHAPTER 16
(H. B. 4847—By Delegates Talbott, Seacrist, Burke, Frederick, Tomblin, Clements and Facemyer)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1 TITe II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 75—West Virginia Development Office—
4 (WV Code Chapter 5B)
5 Account No.
6 Fund 0256 FY 1996 Org 0307
7
8 Activity General Revenue Funds
9 19a Empowerment Zone/Enterprise
10 19b Community ................. 218 $1,000,000
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding one million dollars to the existing appropriation for the West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307, to be used for the empowerment zone/enterprise community.

CHAPTER 17
(S. B. 593—Originating in the Committee on Finance)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two hundred fifty thousand dollars from the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, tourism section, account no. fund 0555, fiscal year 1996, organization 0304.

WHEREAS, The Legislature finds that the account balance in the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine
hundred ninety-six to the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, be amended and decreased by expiring the amount of two hundred fifty thousand dollars to the unappropriated balance of the state fund, general revenue and a new appropriation be added for the fiscal year ending the thirtieth of June, one thousand nine hundred ninety-six, for the West Virginia development office—tourism section, account no. fund 0555, fiscal year 1996, organization 0304, in the amount of two hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2
3 Section 1. Appropriations from general revenue.
4
5 Bureau of Commerce.
6
7 75a—West Virginia Development Office—
8
9 Tourism Section
10
11 (WV Code Chapter 5B)
12
13 Account No.
14
15 Fund 0555 FY 1996 Org 0304
16
17
18
19 1 Telemarketing Center—Total . . . . . 255 $ 250,000
20
21 The purpose of this bill is to expire the sum of two hundred fifty thousand dollars from the department of education and the arts, office of the secretary, account no. fund 0294, fiscal year 1996, organization 0431, activity 663, and supplement account no. fund 0555, fiscal year 1996, organization 0304, in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding two hundred fifty thousand dollars for a telemarketing center.
AN ACT supplementing, amending, reducing and transferring amounts between appropriations from surplus accrued deposited in existing accounts of the department of education, account no. fund 3968, organization 0402, and account no. fund 3967, organization 0402 and transferring the total balances to the school building authority, school construction fund, account no. fund 3965, fiscal year 1996, organization 0402, and making an appropriation of public moneys in the amount of thirty-three million two hundred ninety thousand forty-two dollars to the school construction fund, account no. fund 3965, organization 0402, supplementing chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the total balance from surplus accrued be transferred from the 1996 construction account, fund 3968, to the unappropriated balance in the school construction fund, fund 3965, and that the total balance be transferred from the 1995 construction account, fund 3967, to the unappropriated balance in the school construction fund, fund 3965, and making an appropriation of public moneys in the amount of thirty-three million two hundred ninety thousand forty-two dollars to the school construction fund, account no. fund 3965, organization 0402.

TITLE II—APPROPRIATIONS.

Sec. 8. Appropriations from surplus accrued.

245—State Department of Education

(WV Code Chapters 18 and 18A)

Account No.
Title II—Appropriations.

Sec. 3. Appropriations from other funds.

102a—School Building Authority—

School Construction Fund

(WV Code Chapter 18)

Account No.

Fund 3965 FY 1996 Org 0402

1 Hampshire County School Construction . . $4,000,000
2 Jefferson County School Construction . . 10,600,000
3 Mason County School Construction . . . . 14,439,600
4 Monroe County School Construction . . . . 4,250,442
5 Total . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . $33,290,042

The purpose of this supplementary appropriation bill is to create a new account in the state budget and make an appropriation to the school building authority in the amount of thirty-three million two hundred ninety thousand forty-two dollars in the line items as designated herein for the construction of schools. The further purpose of the bill is to amend the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by striking out language in the state department of education, account no. fund 0313, fiscal year 1996, organization 0402.
CHAPTER 19
(H. B. 4744—By Delegates Browning, Compton, Farris, Frederick, Pettit, Leggett and Miller)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education, account no. fund 0313, fiscal year 1996, organization 0402.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education, account no. fund 0313, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by seven hundred thirteen thousand three hundred seven dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 34—State Department of Education
4 (WV Code Chapters 18 and 18A)
5 Fund 0313 FY 1996 Org 0402

6 Activity General Revenue Funds
7
8 24a County Boards of Education
9 Lawsuits ................. 655 $ 713,307
The purpose of this bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding seven hundred thirteen thousand three hundred seven dollars to the existing appropriation for the department of agriculture, account no. fund 0313, fiscal year 1996, organization 0402, to be used for payment of county boards of education lawsuits.

CHAPTER 20

(H. B. 4635—By Delegates Kiss, Mezzatesta, Talbott, Burke, Facemyer, Evans and Wallace)

[Passed March 8, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of education, West Virginia schools for the deaf and blind, account no. fund 0320, fiscal year 1996, organization 0403.

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education, West Virginia schools for the deaf and blind, account no. fund 0320, fiscal year 1996, organization 0403, be supplemented and amended by increasing the total appropriation by two hundred fifty thousand dollars as follows:
APPROPRIATIONS

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

38—West Virginia Schools for the
    Deaf and Blind
(WV Code Chapters 18 and 18A)

Account No.
Fund 0320 FY 1996 Org 0403

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a Roof repair and replacement</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding two hundred fifty thousand dollars to the existing appropriation for the department of education, West Virginia schools for the deaf and blind, account no. fund 0320, fiscal year 1996, organization 0403, to be used for the repair and replacement of roofs.

CHAPTER 21
(H. B. 4864—By Delegates Kiss, Browning, Gallagher, Petersen, Facemyer, Miller and Wallace)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the general revenue fund to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1996, organization 0511, as originally appropriated by chapter eight, acts of the Legislature, regular
session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the general revenue fund to account no. fund 0403, fiscal year 1996, organization 0511, be amended and reduced in the line items as follows:

TITLE II—APPROPRIATIONS

Sec. 1. Appropriations from general revenue fund.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

Account No.

Fund 0403 FY 1996 Org 0511

<table>
<thead>
<tr>
<th>General Activity Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Assistance</td>
</tr>
<tr>
<td>14</td>
</tr>
<tr>
<td>193</td>
</tr>
<tr>
<td>$4,626,586</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from general revenue fund to account no. fund 0403, fiscal year 1996, organization 0511, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue fund.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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

Account no.

Fund 0403 FY 1996 Org 0511
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for public assistance is reduced by four million six hundred twenty-six thousand five hundred eighty-six dollars. The item for social services is increased by four million six hundred twenty-six thousand five hundred eighty-six dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 22

(S. B. 602—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble, Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; 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, general revenue to the department of health and human resources, division of health, central office, account no. fund 0407, fiscal year 1996, organization 0506, and department of health and human resources, consolidated medical service fund, account no. fund 0525, fiscal year 1996, organization 0506, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue to account no. fund 0407, fiscal year 1996,
organization 0506, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Appropriations From General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Title II—Appropriations</strong></td>
</tr>
<tr>
<td>2</td>
<td><strong>Section 1. Appropriations from General Revenue</strong></td>
</tr>
<tr>
<td>3</td>
<td><strong>Department of Health and Human Resources</strong></td>
</tr>
<tr>
<td>4</td>
<td><strong>49—Division of Health—</strong></td>
</tr>
<tr>
<td>5</td>
<td><strong>Central Office</strong></td>
</tr>
<tr>
<td>6</td>
<td><em>(WV Code Chapter 16)</em></td>
</tr>
<tr>
<td>7</td>
<td>Account No.</td>
</tr>
<tr>
<td>8</td>
<td><strong>Fund 0407 FY 1996 Org 0506</strong></td>
</tr>
<tr>
<td>9</td>
<td><strong>General Activity Fund</strong></td>
</tr>
<tr>
<td>10</td>
<td><strong>Unclassified</strong></td>
</tr>
<tr>
<td>11</td>
<td><strong>099</strong></td>
</tr>
<tr>
<td>12</td>
<td><strong>55,804</strong></td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state fund, general revenue to account no. 0525, fiscal year 1996, organization 0506, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Title</th>
<th>Appropriations From General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Title II—Appropriations</strong></td>
</tr>
<tr>
<td>2</td>
<td><strong>Section 1. Appropriations from General Revenue</strong></td>
</tr>
<tr>
<td>3</td>
<td><strong>Department of Health and Human Resources</strong></td>
</tr>
<tr>
<td>4</td>
<td><strong>50—Consolidated Medical Service Fund</strong></td>
</tr>
<tr>
<td>5</td>
<td>Account No.</td>
</tr>
<tr>
<td>6</td>
<td><strong>Fund 0525 FY 1996 Org 0506</strong></td>
</tr>
<tr>
<td>7</td>
<td><strong>General Activity Fund</strong></td>
</tr>
<tr>
<td>8</td>
<td><strong>Institutional Facilities</strong></td>
</tr>
<tr>
<td>9</td>
<td><strong>Operations</strong></td>
</tr>
<tr>
<td>10</td>
<td><strong>335</strong></td>
</tr>
<tr>
<td>11</td>
<td><strong>83,996</strong></td>
</tr>
</tbody>
</table>
And, that the items of the total appropriations from the state fund, general revenue to account no. fund 0407, fiscal year 1996, organization 0506, be amended and increased in the line items as follows:

### TITLE II—APPROPRIATIONS.

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*49—Division of Health—*

*Central Office*

*(WV Code Chapter 16)*

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>0506</td>
<td>001</td>
<td>$108,000</td>
</tr>
<tr>
<td>0506</td>
<td>010</td>
<td>31,800</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 item for unclassified (fund 0407) is reduced by fifty-five thousand eight hundred four dollars. The item for institutional facilities operations (fund 0525) is decreased by eighty-three thousand nine hundred ninety-six dollars. The item for personal services (fund 0407) is increased by one hundred eight thousand dollars. The item for employee benefits (fund 0407) is increased by thirty-one thousand eight hundred dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 23

(H. B. 4849—By Delegates Kelley, Seacrist, Frederick, Tomblin, Facemyer, Talbott and Leggett)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of tax and revenue, tax division, account no. fund 0407, fiscal year 1996, organization 0702.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of tax and revenue, tax division, account no. fund 0407, fiscal year 1996, organization 0702, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a Automation Project</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

68—Tax Division—

(WV Code Chapter 11)

Account No.

Fund 0407 FY 1996 Org 0702
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding one million dollars to the existing appropriation for the department of tax and revenue, tax division, account no. fund 0407, fiscal year 1996, organization 0702, to be used for the automation project.

CHAPTER 24

(H. B. 4836—By Delegates Kiss, Seacrist, Tomblin, Evans, Facemyer, Miller and Wallace)

[Passed March 8, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608, as originally appropriated by chapter eight, acts of the Legislature, first regular session, one thousand nine hundred ninety-five, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608, be amended and reduced in the line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

4 60—Division of Corrections—

5 Correctional Units

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

6 Fund 0450 FY 1996 Org 0608
9
10
11
12 4 Unclassified 099 $50,000
13 12 Mt. Olive Correctional Complex 533 $400,000

And, that the items of the total appropriations from the state fund, general revenue, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608, be amended and increased in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

60—Division of Corrections—

Correctional Units

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

Fund 0450 FY 1996 Org 0608

8 Payments to Counties and/or
9 Regional Jails 229 $450,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for unclassified is reduced by fifty thousand dollars. The item for Mt. Olive correctional complex is reduced by four hundred thousand dollars. The item for payments to counties and/or regional jails is increased by four hundred fifty thousand dollars. The amounts as itemized for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.
CHAPTER 25
(H. B. 4843—By Delegates Kiss, Browning, Burke, Leach, Warner, Border and Wallace)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of one million dollars from the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1996, organization 0608.

WHEREAS, The Legislature finds that the account balance in the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, be amended and decreased by expiring the amount of one
million dollars to the unappropriated balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0450, fiscal year 1996, organization 0608, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

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>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Payments to Counties and/or Regional Jails</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of one million dollars from the department of military affairs and public safety, division of corrections, correctional units, account no. fund 0450, fiscal year 1995, organization 0608, activity 338, and supplement account no. fund 0450, fiscal year 1996, organization 0608, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding one million dollars to the existing appropriation for payments to counties and/or regional jails.
AN ACT making a supplementary appropriation of public mon­eys out of the treasury from the balance of moneys remain­ing as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, division of criminal justice and highway safety, ac­count no. fund 0546, fiscal year 1996, organization 0620.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1996, organization 0620, be supplemented and amended by increasing the total appropriation by forty-four thousand four hundred seventy-five dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY
5 65—Division of Criminal Justice and Highway Safety
6 (Executive Order)
7 Account No.
8 Fund 0546 FY 1996 Org 0620
The purpose of this bill is to supplement the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1996, organization 0620, by adding thereto the sum of forty-four thousand four hundred seventy-five dollars to be used for the purpose of drawing down federal funds. These sums shall be available for immediate expenditure upon passage.

### CHAPTER 27

(H. B. 4549—By Delegates Browning, Clements, Farris, Pettit, Warner, Kelley and Miller)

[Passed February 29, 1996; 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 moneys remaining unappropriated in the state fund, general revenue, in the amount of five hundred sixty-four thousand eight hundred fifty-four dollars and seventy-one cents, and transferring a like amount to the bureau of employment programs, workers' compensation fund, account no. fund 0554, fiscal year 1996, organization 0322, as originally appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred ninety-five, known as the "Budget Bill".
WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 0554, fiscal year 1996, organization 0322, be supplemented and amended by increasing the total appropriation by five hundred sixty-four thousand eight hundred fifty-four dollars and seventeen cents as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 BUREAU OF EMPLOYMENT PROGRAMS

4 87a—Bureau of Employment Programs

5 Workers' Compensation Fund

(WV Code Chapter 23)

6 Account No.

7 Fund 0554 FY 1996 Org 0322

8 Activity

9 General

10 Revenue

11 Fund

12 1 Transfer to Workers'

13 2 Compensation Fund—Total . 253 $564,854.17

14 The purpose of this bill is to transfer the moneys collected in the civil action against former governor Arch A. Moore, Jr., and others, to the workers' compensation administrative claims fund, as it has been determined that this account was harmed by the wrongful actions giving rise to the civil action.
AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of motor vehicles, account no. fund 9007, fiscal year 1996, organization 0802, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, 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 account no. fund 9007, fiscal year 1996, organization 0802, be amended and reduced in the line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

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</th>
<th>Act</th>
<th>Road</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optic Scan System</td>
<td>$500,000</td>
<td>283</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9007, fiscal year 1996, organization 0802, be amended and increased in the line items as follows:
TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

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>001</th>
<th>010</th>
<th>099</th>
<th>511</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital Outlay</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The appropriation for capital outlay (fund 9007, activity 511) shall not be reappropriated into fiscal year 1996-97, but shall expire the thirtieth day of June, one thousand nine hundred ninety-six.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for the optic scan system is reduced by five hundred thousand dollars. The item for personal services is increased by four hundred sixty-nine thousand dollars. The item for employee benefits is increased by one hundred ninety-eight thousand eight hundred fifty-two dollars. The item for unclassified is increased by seven hundred seven thousand two hundred fifty dollars. A new item for capital outlay is added for one million ninety-eight thousand dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of five million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the balance of funds available in the revenue shortfall reserve fund exceeds the funds needed for the purposes for which the fund was created, therefore pursuant to section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the amount of this supplementary appropriation is being redesignated for the purposes set forth herein; and

WHEREAS, The Legislature finds that the account balance in the revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, be decreased by expiring the amount of five million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the
total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by five million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—

4 Civil Contingent Fund

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0105 FY 1996 Org 0100

8 Activity

9 General Revenue Fund

10

11 5 Flood Recovery and Mitigation

12 6 Loans (Disaster Recovery

13 7 Trust Fund) ................. 289 $5,000,000

14 The purpose of this bill is to expire the sum of five million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding five million dollars to a new activity for flood recovery and mitigation loans (disaster recovery trust fund).
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of administration, division of personnel, account no. fund 2440, fiscal year 1996, organization 0222, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of administration, division of personnel, account no. fund 2440, fiscal year 1996, organization 0222, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 2440, fiscal year 1996, organization 0222, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF ADMINISTRATION

4 101—Division of Personnel

5 (WV Code Chapter 29)

6 Account No.

7 Fund 2440 FY 1996 Org 0222
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding four hundred fifty thousand dollars to the existing appropriation for the development of a human resource information system (HRIS).

**CHAPTER 31**

(Com. Sub. for H. B. 4168—By Mr. Speaker, Mr. Chambers, and Delegates Kiss, J. Martin, Mezzatesta, Michael, Rowe and Ashley)

[Passed January 26, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and four million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, and making a supplementary appropriation of public monies out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office—civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds that which is necessary for the purposes for which the account was established; and

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$450,000</td>
</tr>
</tbody>
</table>
WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of three million five hundred thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999, be decreased by expiring the amount of four million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by seven million five hundred thousand dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>8—Governor's Office</td>
</tr>
<tr>
<td>Civil Contingent Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 5A)</td>
</tr>
<tr>
<td>&quot;WVFIMS&quot; Account Number</td>
</tr>
<tr>
<td>Fund 0105 FY 1996 Org 0100</td>
</tr>
<tr>
<td>Act-</td>
</tr>
<tr>
<td>ivity</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>11</td>
</tr>
</tbody>
</table>
The purpose of this bill is to expire the sum of three million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and four million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding seven million five hundred thousand dollars to the existing appropriation to be expended for infrastructure projects and assistance to areas of the state adversely affected by excessive snowfall and flooding.

CHAPTER 32

(H. B. 4187—By Delegates Burke, Compton, Gallagher, Pettit, Clements, Evans and Wallace)

[Passed February 20, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of agriculture, soil conservation committee, "WVFIMS" account no. fund 0132, fiscal year 1996, organization 1400.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds the amount which is necessary for the purposes for which the account was established; and
WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore,

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

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of two million five hundred thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to "WVFIMS" account no. fund 0132, fiscal year 1996, organization 1400, be supplemented and amended by increasing the total appropriation by two million five hundred thousand dollars as follows:

1. **TITLE II—APPROPRIATIONS.**
2. **14—Department of Agriculture**
3. **Soil Conservation Committee**
4. (WV Code Chapter 19)
5. Account No.
6. Fund 0132 FY 1996 Org 1400
7. Activity | General Revenue Fund
8. | $2,500,000
9. 6 Soil Conservation Projects (R) . . 120

The purpose of this bill is to expire the sum of two million five hundred thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and supplement the department of agriculture, soil conservation committee, "WVFIMS" account no. fund 0132, fiscal year 1996, organization 1400, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding two million five hundred thousand dollars for soil conservation projects.
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of eight million two hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and the sum of one million four hundred thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, and creating a new line item therefor, entitled the civil contingent fund—infrastructure projects and economic development projects.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds that which is necessary for the purposes for which that fund was established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund number 3384, be decreased
by expiring the amount of eight million two hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of one million four hundred thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by twelve million two hundred fifty thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

8—Governor's Office

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 1996 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 1</td>
<td>Civil Contingent Fund - Infrastructure and Economic Development Projects</td>
</tr>
<tr>
<td>A 3</td>
<td>Civil Contingent Fund-Infrastructure- and Economic Development Projects-surplus</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of one million four hundred thousand dollars from the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, and to expire the sum of eight million two hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service, fund no. 3384, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, by adding thereto the sum of twelve million two hundred fifty thousand dollars to be used only for infrastructure projects and economic development projects.
CHAPTER 34

(S. B. 383—By Senators Craigo, Manchin, Blatnik, Boley, Dugan, Helmick, Jackson, Kimble, Love, Macnaughtan, Minear, Plymale, Sharpe, Walker and Whitlow)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of seven hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the governor's office—civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balance in the West Virginia infrastructure general obligation debt service fund exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the West Virginia infrastructure general obligation debt service fund, fund no. 3384, be decreased by expiring the amount of seven hundred fifty thousand dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred
ninety-six, to "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the appropriation by seven hundred fifty thousand dollars to read as follows:

### TITLE II—APPROPRIATIONS.

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a Flood Recovery Assistance</td>
<td>for Agriculture 239 $750,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for flood recovery assistance (fund 0105, activity 239) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

The purpose of this bill is to expire the sum of seven hundred fifty thousand dollars from the West Virginia infrastructure general obligation debt service fund, fund no. 3384, and to supplement the governor's office civil contingent fund, "WVFIMS" account no. fund 0105, fiscal year 1996, organization 0100, by adding seven hundred fifty thousand dollars for flood recovery assistance in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.
CHAPTER 35

(H. B. 4741—By Delegates Browning, Mezzatesta, Warner, Evans, Facemyer, Leggett and Miller)

[Passed March 14, 1996; in effect from passage. Became law without the signature of Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the lottery net profits fund, to the department of education, state department of education, account no. fund 3951, fiscal year 1996, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the tenth day of January, one thousand nine hundred ninety-six, which included a statement of the lottery net profits fund, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-five, and further included the estimate of revenues for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, less net appropriation balances forwarded and regular appropriations for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 3951, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by eight million eight hundred thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

189—State Department of Education
(WV Code Chapters 18 and 18A)
Fund 3951 FY 1996 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Computer Basic Skills—</td>
<td></td>
</tr>
<tr>
<td>2 Total (R)</td>
<td>567 $8,800,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation (fund 3951, activity 567) at the close of the fiscal year 1995-96 is hereby reappropriated for expenditure during the fiscal year 1996-97.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding eight million eight hundred thousand dollars to the existing appropriation for computer technology in middle schools and high schools.

CHAPTER 36

(H. B. 4740—By Delegates Browning, Doyle, Kelley, Evans, Leggett, Miller and Walters)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]
4055, fiscal year 1996, organization 0452, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated the tenth day of January, one thousand nine hundred ninety-six, which included a statement of the lottery net profits fund, setting forth therein the cash balance and investments as of the first day of July, one thousand nine hundred ninety-five, and further included the estimate of revenues for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, less net appropriation balances forwarded and regular appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; and

WHEREAS, It thus appearing from the governor's executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to title two, section four thereof, as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 4. Appropriations from lottery net profits.
3 191a—Board of Trustees of the University System
4 Of West Virginia and Board of Directors of the
5 State College System
6 Central Office
7 (WV Code Chapter 18B)
8 "WVFIMS" Account no.
9 Fund 4055 FY 1996 Org 0452
10
11
12  1 Higher Education Grant
13  Program (R)  ................. 164  $3,000,000

14  Any unexpended balance remaining in the
15  appropriation (fund 4055, activity 164) at the close of the
16  fiscal year ending the thirtieth day of June, one thousand
17  nine hundred ninety-six, is hereby reappropriated for
18  expenditure during the fiscal year ending the thirtieth day
19  of June, one thousand nine hundred ninety-seven.

20  The purpose of this bill is to supplement the budget
21  act for the fiscal year ending the thirtieth day of June, one
22  thousand nine hundred ninety-six, by providing for a new
23  item of appropriation to be established therein to
24  appropriate lottery net profit funds available in the fiscal
25  year ending the thirtieth day of June, one thousand nine
26  hundred ninety-six, to provide funding in the amount of
27  three million dollars for the higher education grant
28  program.

CHAPTER 37

(H. B. 4863—By Delegates Kiss, Farris, Gallagher,
Petersen, Pettit, Warner and Border)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the
balance of moneys remaining unappropriated for the fiscal
year ending the thirtieth day of June, one thousand nine
hundred ninety-six, in the department of health and human
resources, division of health, hospital services revenue
account (special fund) (capital improvement, renovation and
operations), account no. fund 5156, fiscal year 1996,
organization 0506, all supplementing and amending the
appropriation for the fiscal year ending the thirtieth day of
June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now
remains an unappropriated balance in the department of health
and human resources, division of health, hospital services revenue account (special fund), (capital improvement, renovation and operations), account no. fund 5156, fiscal year 1996, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, account no. fund 5156, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by nine million four hundred sixty-eight thousand one hundred forty-one dollars in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Foster Care-Transfer</td>
<td>256</td>
<td>$4,965,939</td>
</tr>
<tr>
<td>b WV Works Pilot Project-Transfer</td>
<td>260</td>
<td>3,810,064</td>
</tr>
<tr>
<td>c Child Support Enforcement-Transfer</td>
<td>262</td>
<td>692,138</td>
</tr>
</tbody>
</table>

From the above appropriations for foster care-transfer, WV works pilot project-transfer, and child support enforcement-transfer, funds may be transferred to appropriate special revenue accounts within the department of health and human resources to provide services to recipients as required.
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding nine million four hundred sixty-eight thousand one hundred forty-one dollars to the existing appropriation for foster care, WV Works pilot project and child support enforcement.

CHAPTER 38
(S. B. 603—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble, Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources, division of health—laboratory services, account no. fund 5163, fiscal year 1996, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of health—laboratory services, account no. fund 5163, fiscal year 1996, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 5163, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred sixty thousand dollars in the line items as follows:
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

116—Division of Health—Laboratory Services

(WV Code Chapter 16)

Account No.

Fund 5163 FY 1996 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,000</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$150,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this amount in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding one hundred sixty thousand dollars to the existing appropriation for back wage payments and increased testing levels.

CHAPTER 39

(H.B. 4665—By Delegates Doyle, Leach, Warner, Border, Facemyer, Miller and Walters)

[Passed March 6, 1996; in effect from passage. Approved by the Governor.]
the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, There remains an unappropriated balance in the division of human services, medical services trust fund, account no. fund 5185, fiscal year 1996, organization 0511, which may be used for medicaid disproportionate share matching payment; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation to the division of human services, medical services trust fund, account no. fund 5185, fiscal year 1996, organization 0511, be supplemented and amended by increasing the total appropriation in the amount of seven million eight hundred eighty-six thousand one hundred seventy-five dollars in the line items as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>13—Division of Human Services—</td>
</tr>
<tr>
<td>Medical Services Trust Fund</td>
</tr>
<tr>
<td>(WV Code Chapter 9)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 5185 FY 1996 Org 0511</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>2a Payment to Nonstate Hospitals</td>
</tr>
<tr>
<td>2b DSH Match</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement the division of human services, medical services trust fund, account no. fund 5185, fiscal year 1996, organization 0511, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding seven million eight hundred eighty-six thousand one hundred seventy-five dollars to a new line item entitled "Payments to nonstate hospitals DSH Match" to make disproportionate share payments to nonstate hospitals.
CHAPTER 40

(H. B. 4869—By Delegates Leach, Seacrist, Tomblin, Border,
Clements, Leggett and Miller)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three million five hundred thousand dollars from the department of health and human resources, health care cost review authority, account no. fund 5375, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1996, organization 0461.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, account no. fund 5375, exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, be decreased by expiring the amount of three million five hundred thousand dollars to the state fund, general revenue, and
that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the board of trustees of the university system of West Virginia control account, account no. fund 0327, fiscal year 1996, organization 0461, be supplemented and amended by increasing the total appropriation by three million five hundred thousand dollars as follows:

1  TITLE II—APPROPRIATIONS.
2  Sec. 1. Appropriations from general revenue.
3  DEPARTMENT OF EDUCATION AND THE ARTS
4  44—Board of Trustees of the
5  University System of West Virginia
6  Control Account
7  (WV Code Chapter 18B)
8  Account No.
9  Fund 0327 FY 1996 Org 0461

10  General
11  Activity Revenue
12
13  10a Colin Anderson
14  Childrens Center ............. 435 $3,500,000

15  The purpose of this bill is to expire the sum of three
16  million five hundred thousand dollars from the
17  department of health and human resources, health care
18  cost review authority, account no. fund 5375, and to
19  supplement the department of education and the arts,
20  board of trustees of the university system of West Virginia,
21  account no. fund 0327, fiscal year 1996, organization
22  0461, by adding three million five hundred thousand
23  dollars to be used to convert Colin Anderson Center to a
24  juvenile facility.
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two hundred thousand dollars from the department of health and human resources, health care cost review authority, account fund no. 5375, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education and the arts, board of directors of the state college system control, account no. fund 0330, fiscal year 1996, organization 0481.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, account no. fund 5375, exceeds the amount which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, be decreased by expiring the amount of two hundred thousand dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of education and the arts, board of directors of the state college system control account, account no. fund 0330, fiscal year 1996, organization 0481, be supplemented and amended by increasing the total appropriation by two hundred thousand dollars as follows:
### TITLE II—APPROPRIATIONS.

**Sec. 1. Appropriations from general revenue.**

46—Board of Directors of the State College System

(WV Code Chapter 18B)

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of two hundred thousand dollars from the department of health and human resources, health care cost review authority, account no. fund 5375, and to supplement the department of education and the arts, board of directors of the state college system control account, account no. fund 0330, fiscal year 1996, organization 0481, by adding two hundred thousand dollars to be used for science equipment at Shepherd College.

### CHAPTER 42

(S. B. 605—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble, Love, Minear, Sharpe and Whitlow)

[Passed March 14, 1996; in effect from passage. Approved by the Governor.]
fiscal year 1996, organization 0507, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance to the department of health and human resources, commission on aging, account no. fund 0420, fiscal year 1996, organization 0508.

WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be decreased by expiring the amount of one hundred fifty thousand dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, commission on aging, account no. fund 0420, fiscal year 1996, organization 0508, be supplemented and amended by increasing the total appropriation by one hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
4 51—Commission on Aging
5 (WV Code Chapter 29)
6 Account No.
7 Fund 0420 FY 1996 Org 0508
The purpose of this bill is to expire the amount of one hundred fifty thousand dollars from the health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, and to supplement the department of health and human resources, commission on aging, account no. fund 0420, fiscal year 1996, organization 0508, by adding the amount of one hundred fifty thousand dollars for the Berkeley County commission on aging.

CHAPTER 43

(H. B. 4870—By Delegates Kiss, Browning, Burke, Doyle, Mezzatesta, Petersen and Wallace)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]
expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

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

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be supplemented and amended by increasing the total appropriation by one million eight hundred thousand dollars in the line items as follows:

<table>
<thead>
<tr>
<th>Title II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 3. Appropriations from other funds.</td>
</tr>
<tr>
<td>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</td>
</tr>
<tr>
<td>119—Health Care Cost Review Authority</td>
</tr>
<tr>
<td>(WV Code Chapter 16)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 5375 FY 1996 Org 0507</td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>4 Unclassified</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding one million seven hundred eighty-eight thousand two hundred dollars to the existing appropriation for personal services and unclassified for assisting in the transition of rural health systems.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of health and human resources—board of barbers and cosmetologists, account no. fund 5425, fiscal year 1996, organization 0505, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources—board of barbers and cosmetologists, account no. fund 5425, fiscal year 1996, organization 0505, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 5425, fiscal year 1996, organization 0505, be supplemented and amended by increasing the total appropriation by fifteen thousand dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 3. Appropriations from other funds.
3 DEPARTMENT OF HEALTH AND
4 HUMAN RESOURCES
5 113—Board of Barbers and Cosmetologists
6 (WV Code Chapters 16 and 30)
7 Account No.
8 Fund 5425  FY 1996  Org 0505
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding fifteen thousand dollars to the existing appropriation for the payment of per diem for board members.

CHAPTER 45

(H. B. 4545—By Delegates Kiss, Browning, Doyle, Farris, Warner, Miller and Wallace)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of four hundred fifty thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the state department of education, aid for exceptional children, account no. fund 0314, fiscal year 1996, organization 0402.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore
Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of four hundred fifty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the state department of education, aid for exceptional children, account no. fund 0314, fiscal year 1996, organization 0402, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Sec. 1. Appropriations from general revenue.

35—State Department of Education

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Account No.

Fund 0314 FY 1996 Org 0402

Activity General Revenue Fund

| 3 Education of Institutionalized | 161 | $450,000 |
| 4 Juveniles | | |

The purpose of this bill is to expire the sum of four hundred fifty thousand dollars from the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, and to supplement the state department of education, aid for exceptional children, account no. fund 0314, fiscal year 1996, organization 0402, by adding thereto the four hundred fifty thousand dollars to be used to educate youths in state custody at Davis-Stuart, a residential child care facility in Lewisburg and to develop a model alternative education program for chronically disruptive students.
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of six hundred eighty-five thousand seven hundred ninety-eight dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the auditor's office, general administration, account no. fund 0116, fiscal year 1996, organization 1200.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of six hundred eighty-five thousand seven hundred ninety-eight dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the auditor's office, general administration, account no. fund 0116, fiscal year 1996, organization 1200, be supplemented and amended by increasing the total appropriation by six hundred eighty-five thousand seven hundred ninety-eight dollars as follows:
Title II—Appropriations.

Section 1. Appropriations from general revenue.

10—Auditor's Office
General Administration

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1996 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a Image Processing and Printer Replacement</td>
<td>240</td>
</tr>
</tbody>
</table>

The purpose of this bill is to expire the sum of six hundred eighty-five thousand seven hundred ninety-eight dollars from the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, and to supplement the auditor's office, general administration, account no. fund 0116, fiscal year 1996, organization 1200, by adding thereto six hundred eighty-five thousand seven hundred ninety-eight dollars to be used by the auditor's office for printer replacement and image processing.

**CHAPTER 47**

(H. B. 4547—By Delegates Kiss, Compton, Doyle, Browning, Gallagher, Leach and Wallace)

[Passed March 14, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of four hundred fifty thousand dollars from the department of tax and revenue, racing
commission, the general administration fund, account no. fund 7305, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to miscellaneous boards and commissions, board of investments, account no. fund 0513, fiscal year 1996, organization 0920.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of four hundred fifty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to miscellaneous boards and commissions, board of investments, account no. fund 0513, fiscal year 1996, organization 0920, be supplemented and amended by increasing the total appropriation by four hundred fifty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 85—Board of Investments

5 (WV Code Chapter 12)

6 Account No.

7 Fund 0513 FY 1996 Org 0920
The purpose of this bill is to expire the sum of four hundred fifty thousand dollars from the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, and to supplement miscellaneous boards and commissions, board of investments, account no. fund 0513, fiscal year 1996, organization 0920, by adding thereto the sum of four hundred fifty thousand dollars to be used by the board of investments to pay for contract investment advisors hired to oversee the state's investment portfolio.

CHAPTER 48

(H. B. 4548—By Delegates Kiss, Browning, Farris, Mezzatesta, Miller, Wallace and Walters)

[Passed February 28, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of eighty thousand dollars from the department of tax and revenue, racing commission, the general administration fund, account no. fund 7305, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the secretary of state, account no. fund 0155, fiscal year 1996, organization 1600.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and
WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of eighty thousand dollars, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the secretary of state, account no. fund 0155, fiscal year 1996, organization 1600, be supplemented and amended by increasing the total appropriation by eighty thousand dollars as follows:

```
1 TITLE II—APPROPRIATIONS.
2
3 Sec. 1. Appropriations from general revenue.
4
5 18—Secretary of State
6 (WV Code Chapters 3, 5 and 59)
7 Account No.
8 Fund 0155 FY 1996 Org 1600
9
10 Activity       General Revenue Fund
11 4a Imaging and Computerization Upgrade ..................... 244       $80,000
12
13 The purpose of this bill is to expire the sum of eighty thousand dollars from the department of tax and revenue,
14 racing commission, general administration fund, account
15 no. fund 7305, and to supplement the secretary of state,
16 account no. fund 0155, fiscal year 1996, organization
17 1600, by adding thereto eighty thousand dollars to be
18 used by the secretary of state for imaging processing and
19 computerization upgrades.
```
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the department of tax and revenue, racing commission—general administration, account no. fund 7305, fiscal year 1996, organization 0707, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of tax and revenue, racing commission—general administration, account no. fund 7305, fiscal year 1996, organization 0707, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 7305, fiscal year 1996, organization 0707, be supplemented and amended by increasing the total appropriation by fifty-three thousand fifteen dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF TAX AND REVENUE

4 141—Racing Commission—

5 General Administration

6 (WV Code Chapter 19)

7 Account No.
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Fund 7305</th>
<th>FY 1996</th>
<th>Org 0707</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Activity</td>
<td>Other Funds</td>
</tr>
<tr>
<td>10</td>
<td>4 Unclassified</td>
<td>099 $53,015</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding fifty-three thousand fifteen dollars to the existing appropriation for the payment of additional current expenses.

---

### CHAPTER 50

(H. B. 4223—By Delegates Kiss, Browning, Burke, Doyle, Miller, Wallace and Walters)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of three hundred ten thousand five hundred ninety dollars from the department of tax and revenue, racing commission, general administration fund, fund no. 7305, and in the amount of one hundred fourteen thousand four hundred ten dollars from the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, and making a supplementary appropriation of public monies out of the treasury from the unappropriated surplus balance to the department of transportation, office of the secretary, account no. fund 0500, fiscal year 1996, organization 0801.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, racing commission, exceeds that which is necessary for the purposes for which the account was established; and
WHEREAS, The Legislature finds that the account balance in the department of health and human resources, health care cost review authority, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available in the department of tax and revenue, racing commission, general administration fund, account no. fund 7305, be decreased by expiring the amount of three hundred ten thousand five hundred ninety dollars and that the balance of funds available in the department of health and human resources, health care cost review authority, account no. fund 5375, fiscal year 1996, organization 0507, be decreased by expiring the amount of one hundred fourteen thousand four hundred ten dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of transportation, office of the secretary, account no. fund 0500, fiscal year 1996, organization 0801, be supplemented and amended by increasing the total appropriation by four hundred twenty-five thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a Aeronautics commission</td>
<td>$425,000</td>
</tr>
</tbody>
</table>
12 The purpose of this bill is to expire the amount of
13 three hundred ten thousand five hundred ninety dollars
14 from the department of tax and revenue, racing
15 commission, general administration fund, fund no. 7305,
16 and the amount of one hundred fourteen thousand four
17 hundred ten dollars from the department of health and
18 human services, health care cost review authority, account
19 no. fund 5375, fiscal year 1996, organization 0507, and to
20 supplement the department of transportation, office of the
21 secretary, account no. fund 0500, fiscal year 1996,
22 organization 0801, by adding the amount of four hundred
23 twenty-five thousand dollars in a new line for the
24 aeronautics commission.

AN ACT making a supplementary appropriation from the bal-
ance of moneys remaining unappropriated for the fiscal year
ending the thirtieth day of June, one thousand nine hundred
ninety-six, in the department of transportation, division of
motor vehicles—driver rehabilitation, account no. fund 8214,
fiscal year 1996, organization 0802, all supplementing and
amending the appropriation for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now re-
mains an unappropriated balance in the department of transpor-
tation, division of motor vehicles—driver rehabilitation, account
no. fund 8214, fiscal year 1996, organization 0802, available for
expenditure during the fiscal year ending the thirtieth day of
June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirti-
eeth day of June, one thousand nine hundred ninety-six, to ac-
count no. fund 8214, fiscal year 1996, organization 0802, be
supplemented and amended by increasing the total appropriation
by fifty-two thousand dollars in the line items as follows:
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

146—Division of Motor Vehicles—

Driver Rehabilitation

(WV Code Chapter 17C)

Account No.

Fund 8214 FY 1996 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 40,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>12,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six by adding fifty-two thousand dollars to the existing appropriation for a program coordinator and temporary help.

CHAPTER 52

(H. B. 4842—By Delegates Kiss, Burke, Farris, Petersen, Pettit, Clements and Wallace)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of one million dollars from the board of investments, investment legal loss account, account no. fund 8563, and in the amount of one million dollars from the board of investments, securities lending, account no. fund 8565, and making a supplementary appropriation
of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss account, and board of investments, securities lending, exceed the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, investment legal loss account, account no. fund 8563, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, securities lending, account no. fund 8565, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the bureau of commerce, West Virginia development office, account no. fund 0256, fiscal year 1996, organization 0307, be supplemented and amended by increasing the total appropriation by two million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 75—West Virginia Development Office—

4 (WV Code Chapter 5B)

5 "WVFIMS" Account No.

6 Fund 0256 FY 1996 Org 0307
CHAPTER 53

(H. B. 4846—By Delegates Kiss, Compton, Frederick, Kelley, Leggett, Wallace and Walters)

[Passed March 9, 1996; in effect from passage. Became law without signature of Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the amount of two hundred fifty thousand dollars from the board of investments, investment legal loss account, account no. fund 8563, and the sum of two hundred fifty thousand dollars from the board of investments, securities lending, account no. fund 8565, and making a supplementary appropriation in the amount of one million
two hundred fifty thousand dollars of public moneys out of the treasury from the unappropriated balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, and from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss account, and board of investments, securities lending, exceed the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the board of investments, investment legal loss account, account no. fund 8563, be decreased by expiring the amount of two hundred fifty thousand dollars to the state fund, general revenue, and that the board of investments, securities lending, account no. fund 8565, be decreased by expiring the amount of two hundred fifty thousand dollars to the state fund, general revenue; that a supplementary appropriation in the amount of one million two hundred fifty thousand dollars from the unappropriated balance in the state fund, general revenue, be made to the account as provided herein; and that the civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by one million seven hundred fifty thousand dollars as follows:

1 Title II—Appropriations.

2 Sec. 1. Appropriations from general revenue.

3 8—Governor's Office—
The purpose of this bill is to expire the sum of two hundred fifty thousand dollars from the board of investments, investment legal loss account, account no. fund 8563, and to expire the sum of two hundred fifty thousand dollars from the board of investments, securities lending, account no. fund 8565, and to make a supplementary appropriation of public moneys in the amount of one million two hundred fifty thousand dollars out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, by adding thereto the one million seven hundred fifty thousand dollars.

CHAPTER 54

(H. B. 4868—By Delegates Kiss, Compton, Seacrist, Warner, Kelley, Leggett and Walters)

[Passed March 15, 1996; in effect from passage. Became law without signature of Governor.]
account no. fund 8569, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of administration, division of general services, account no. fund 0230, fiscal year 1996, organization 0211.

WHEREAS, The Legislature finds that the account balance in the board of investments, federal cash management/interest fund, exceeds the amount which is necessary for the purposes for which the accounts were established; and

WHEREAS, There now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the board of investments, federal cash management/interest fund, account no. fund 8569, be decreased by expiring the amount of one million dollars to the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of administration, division of general services, account no. fund 0230, fiscal year 1996, organization 0211, be supplemented and amended by increasing the total appropriation by one million dollars as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Appropriations from general revenue.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>TITLE II—APPROPRIATIONS.</strong></td>
</tr>
<tr>
<td>2</td>
<td><strong>Sec. 1. Appropriations from general revenue.</strong></td>
</tr>
<tr>
<td>3</td>
<td><strong>23—Division of General Services—</strong></td>
</tr>
<tr>
<td>4</td>
<td>(WV Code Chapter 5A)</td>
</tr>
<tr>
<td>5</td>
<td>Account No.</td>
</tr>
<tr>
<td>6</td>
<td>Fund 0230 FY 1996 Org 0211</td>
</tr>
<tr>
<td>7</td>
<td>General Revenue</td>
</tr>
<tr>
<td>8</td>
<td>Act-activity Fund</td>
</tr>
</tbody>
</table>


CHAPTER 55

(S. B. 574—Originating in the Committee on Finance)

[Passed March 5, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, in the public service commission, account no. fund 8623, fiscal year 1996, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established that there now remains an unappropriated balance in the public service commission, account no. fund 8623, fiscal year 1996, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8623, fiscal year 1996, organization 0926, be supplemented and amended by increasing the total appropriation by two hundred eighty thousand dollars in the line item as follows:
TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

180—Public Service Commission

(WV Code Chapter 24)

Account No.

Fund 8623  FY 1996  Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td></td>
<td>$280,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding two hundred eighty thousand dollars to the existing appropriation to replace existing heating and cooling control boxes throughout the building and replace a chiller in the HVAC system.

CHAPTER 56

(S. B. 575—Originating in the Committee on Finance)

[Passed March 5, 1996; 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 bureau of commerce, division of labor, account no. fund 8706, fiscal year 1996, organization 0308, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8706, fiscal year 1996, organization 0308, be supplemented and amended by increasing the total appropriation by sixty-eight thousand four hundred sixty-eight dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$68,468</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding sixty-eight thousand four hundred sixty-eight dollars to the existing appropriation for safety and statistical survey grant. These moneys shall be available for expenditure upon passage of this bill.
CHAPTER 57

(S. B. 576—Originating in the Committee on Finance)

[Passed March 5, 1996; 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-six, to the bureau of commerce, division of miners’ health, safety and training, account no. fund 8709, fiscal year 1996, organization 0314, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8709, fiscal year 1996, organization 0314, be supplemented and amended by increasing the total appropriation by two hundred six thousand eight hundred ninety-three dollars as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 5. Appropriations of federal funds.
3 BUREAU OF COMMERCE
4 228—Division of Miners’ Health, Safety and Training
5 (WV Code Chapter 22)
6 Account No.
7 Fund 8709 FY 1996 Org 0314
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding two hundred six thousand eight hundred ninety-three dollars to the existing appropriation for support of the state safety and training program.

CHAPTER 58

(S. B. 604—By Senators Blatnik, Boley, Chafin, Dugan, Helmick, Jackson, Kimble, Love, Minear, Sharpe and Whitlow)

[Passed March 9, 1996; 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-six, to the department of health and human resources, consolidated medical service fund, account no. fund 8723, fiscal year 1996, organization 0506, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8723, fiscal year 1996, organization 0506, be supplemented and amended by increasing the total appropriation by six hundred thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$206,893</td>
</tr>
</tbody>
</table>
TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

116—Consolidated Medical Service Fund—

(WV Code Chapter 16)

Account No.

Fund 8723 FY 1996 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total.</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding six hundred thousand dollars to the existing appropriation for current obligations of the consolidated medical service fund.

CHAPTER 59

(S. B. 592—Originating in the Committee on Finance)

[Passed March 6, 1996; 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-six, to the department of agriculture, account no. fund 8736, fiscal year 1996, organization 1400, supplementing and
amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, account no. fund 8736, fiscal year 1996, organization 1400, be supplemented and amended by increasing the appropriation by forty-five thousand two hundred fifty dollars to read as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$45,250</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding forty-five thousand two hundred fifty dollars to the existing appropriation for a pesticide recordkeeping project and pesticide laboratory equipment. These moneys shall be available for expenditure upon passage of this bill.
CHAPTER 60

(H. B. 4636 —By Delegates Kiss, Seacrist, Compton, Evans, Clements, Leggett and Wallace)

[Passed March 6, 1996; 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-six, to the Legislature, Crime Victims Compensation Fund, account no. fund 8738, fiscal year 1996, organization 2300, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the crime victims compensation fund, account no. fund 8738, fiscal year 1996, organization 2300, be supplemented and amended by increasing the appropriation by six hundred thousand dollars as follows:

1

TITLE II—APPROPRIATIONS.

2

Sec. 5. Appropriations of federal funds.

3

200—Crime Victims Compensation Fund

(WV Code Chapter 14)

5

Fund 8738 FY 1996 Org 2300

Federal

Activity Funds

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>096</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding six hundred thousand dollars to the existing appropriation to authorize the agency to spend additional federal moneys received. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 61

(S. B. 582—Originating in the Committee on Finance)

[Passed March 5, 1996; 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-six, to the department of transportation, division of motor vehicles, account no. fund 8787, fiscal year 1996, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.
DEPARTMENT OF TRANSPORTATION

222a—Division of Motor Vehicles

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

Account No.

Fund 8787 FY 1996 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$ 80,186</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement the budget act for the fiscal year 1995-96 by providing for a new item of appropriation to be established therein to appropriate federal funds available in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to provide funding in the amount of eighty thousand one hundred eighty-six dollars for the implementation of the international fuel tax agreement.

CHAPTER 62

(S. B. 578—Originating in the Committee on Finance)

[Passed March 5, 1996; 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-six, to the governor’s office—governor’s cabinet on children and families, account no. fund 8792, fiscal year 1996, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8792, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by thirty-five thousand five hundred fifty dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Unclassified—Total</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>096</td>
<td>35,550</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding thirty-five thousand five hundred fifty dollars to the existing appropriation for a teletechnology community awareness project.
CHAPTER 63
(S. B. 606—Originating in the Committee on Finance)

[Passed March 14, 1996; 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-six, to the governor's office—governor's cabinet on children and families, account no. fund 8792, fiscal year 1996, organization 0100, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to account no. fund 8792, fiscal year 1996, organization 0100, be supplemented and amended by increasing the total appropriation by twenty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 EXECUTIVE

4 196—Governor's Office—

5 Governor's Cabinet on Children and Families

6 (WV Code Chapter 5)

7 Account No.

8 Fund 8792 FY 1996 Org 0100
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by adding twenty thousand dollars to the existing appropriation for a head start collaboration grant.

CHAPTER 64

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

[Passed March 5, 1996; 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-six, to the department of military affairs and public safety—fire commission, account no. fund 8804, fiscal year 1996, organization 0619, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:
TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

218a—Fire Commission

(WV Code Chapter 29)

Account No.

<table>
<thead>
<tr>
<th>Fund 8804 FY 1996 Org 0619</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act-</td>
</tr>
<tr>
<td>ivity</td>
</tr>
<tr>
<td>1</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement the budget act for the fiscal year 1995-96 by providing for a new item of appropriation to be established therein to appropriate federal funds available in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to provide funding in the amount of five thousand eight hundred fifty dollars for computer system equipment.

CHAPTER 65

(S. B. 302—Originating in the Committee on Finance.)

[Passed February 19, 1996; 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-six, to a new item of appropriation designated auditor's office, "WVFIMS" account no. fund 8807, fiscal year 1996, organization 1200, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.
WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, 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 for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to a new item of appropriation designated auditor's office, "WVFIMS" account no. fund 8807, fiscal year 1996, organization 1200, be supplemented and amended by increasing the appropriation by six hundred thousand dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$600,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by providing for a new item of appropriation to be established therein to appropriate federal funds available in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to provide funding in the amount of six hundred thousand dollars for the national white collar crime center. 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 moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to the department of military affairs and public safety, division of corrections, central office, account no. fund 8812, fiscal year 1996, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section five thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

4 215a—Division of Corrections—

5 Central Office

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

7 Account No.
The purpose of this bill is to supplement the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, by providing for a new item of appropriation to be established therein to appropriate federal funds available in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, to provide funding in the amount of five thousand five hundred forty-six dollars for the criminal alien assistance program.

CHAPTER 67

(S. B. 581—Originating in the Committee on Finance)

[Passed March 7, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1996, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-five, 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 account no. fund 9017, fiscal year 1996, organization 0803, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>
### TITLE II—APPROPRIATIONS.

#### Sec. 2. Appropriations from state road fund.

**DEPARTMENT OF TRANSPORTATION**

89—Division of Highways

(WV Code Chapters 17 and 17C)

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 Other Federal Aid Programs</td>
<td>279 25,000,000</td>
</tr>
<tr>
<td>17 Appalachian Programs</td>
<td>280 13,000,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1996, organization 0803, be amended and increased in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>270 11,400,000</td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>271 11,600,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road</td>
<td>272 2,000,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and transfer between existing items in the aforesaid account for the designated spending unit. The item for other federal aid programs is reduced by twenty-five million dollars. The item for Appalachian programs is reduced by thirteen million dollars. The item for maintenance, expressway trunkline and feeder is increased by eleven million four hundred thousand dollars. The item for maintenance, state local services is increased by eleven million six hundred thousand dollars. The item for maintenance, contract paving and secondary road maintenance is increased by two million dollars. The item for bridge repair and replacement is increased by six million dollars. The item for interstate construction is increased by six million dollars. The item for nonfederal aid construction is increased by two million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 68

(Com. Sub. for S. B. 320—By Senators Whitlow, Helmick, Ross, Miller and Anderson)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section three, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensure of auctioneers; fees; required bond; creation of special revenue fund for administration and enforcement and continuing education; licensure renewals; service of process; and depos-
iting auctioneer application fees to the department of agriculture.

Be it enacted by the Legislature of West Virginia:

That section three, article two-c, 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 2C. AUCTIONEERS.

§19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.

Any person who wishes to conduct an auction as an auctioneer may apply for a license on forms prescribed by the commissioner and containing such information as the commissioner may require by a legislative rule promulgated in accordance with article three, chapter twenty-nine-a of this code. A nonreturnable application fee of fifty dollars shall accompany each application as well as a license fee of fifty dollars. All fees collected under this article shall be paid into a special revenue fund in the state treasury to be used by the department of agriculture for the expressed purpose of administering and enforcing this article and for providing continuing education for auctioneers: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, fees collected under this article shall be paid into the state fund, general revenue.

In addition to the payment of fees, an applicant shall file with his or her application a bond as required in section four of this article.

The commissioner shall, within thirty days after the receipt of an application, notify the applicant of his or her eligibility to be examined at the next regularly scheduled examination, as well as the date of the examination.

In the event the license is denied, the commissioner shall refund the license fee submitted with the application to the applicant.

Licenses issued expire on the thirty-first day of December of each year but are renewable upon the payment
of the annual license fee within sixty days of the expiration date. Renewals received more than sixty days after the expiration date are subject to a late renewal fee of twenty-five dollars in addition to the annual renewal fee. The commissioner shall not renew licenses which have been expired for more than two years and the auctioneer or apprentice auctioneer shall take the written and oral examination and pay the examination fee in order to renew his or her license. The commissioner shall not renew a license unless the applicant complies with the other requirements of this article.

Where an auctioneer or apprentice auctioneer requires a duplicate or replacement license or a license reflecting a change in information, the auctioneer or apprentice auctioneer shall submit a fee of five dollars with the request.

The state department of agriculture is the agent for the purpose of service of process on any licensed auctioneer for any action occasioned by the performance of the duties of the auctioneer. Every licensed auctioneer, by virtue of his or her application for a license, shall be considered to have consented to the statutory agency.

CHAPTER 69

(S. B. 306—By Senators Ross, Anderson, Buckalew, Sharpe, Bowman, Helmick, Blatnik, Dugan, Yoder and Schoonover)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing amounts for authorized exemptions of property in bankruptcy proceedings.

*Be it enacted by the Legislature of West Virginia:*
That section four, article ten, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.

§38-10-4. Exemptions of property in bankruptcy proceedings.

1 Pursuant to the provisions of 11 U.S.C. 522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. 522(d).

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed fifteen thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor.

(b) The debtor's interest, not to exceed two thousand four hundred dollars in value, in one motor vehicle.

(c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: Provided, That the total amount of personal property exempted under this subsection shall not exceed eight thousand dollars.

(d) The debtor's interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.
(e) The debtor's interest, not to exceed in value eight hundred dollars plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value eight thousand dollars less any amount of property of the estate transferred in the manner specified in 11 U.S.C. 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor's right to receive:

(1) A social security benefit, unemployment compensation or a local public assistance benefit;

(2) A veterans' benefit;

(3) A disability, illness or unemployment benefit;

(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:
(A) Such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(B) Such payment is on account of age or length of service; and

(C) Such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1954.

(k) The debtor's right to receive, or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(4) A payment, not to exceed fifteen thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

This section shall not be construed to affect the applicability of any provision of the federal bankruptcy law other than 11 U.S.C. 552(d).
CHAPTER 70

S. B. 326—By Senators Manchin, Helmick, Craigo, Dittmar, Sharpe, Wagner, Kimble, Scott, Blatnik, Chafin, Wiedebusch and Yoder

Clerk's Note: It has been determined that S. B. 326, originally styled as Chapter 70, occupying pages 279 through 304, was not properly enacted and that the purported act as presented to the Governor was not passed by both houses in identical form. Therefore, the text of the document has been omitted to avoid confusion on the part of the user of these Acts.

Page 280 blank
Next Page No 305
AN ACT to amend and reenact section two, article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, thirteen and fourteen, article two of said chapter; to amend and reenact section two, article three of said chapter; to amend and reenact sections two, four, six, eight, twenty and twenty-six, article four of said chapter; to amend and reenact sections twelve, twelve-b, fifteen and sixteen, article eight of said chapter; to further amend said article by adding thereto a new section, designated section eight-a; and to amend and reenact section one hundred ten, article three, chapter forty-six-a of said code, all relating to banks and banking; defining terms; protection of financial institution condition records from disclosure; entry of voluntary assurances of compliance; the imposition of injunctions and civil penalties; use of the term "bank" or "banc"; issuance of bank stock prior to conducting business; access to audit workpapers and electronic data procedure review materials; the ability of banks to invest in certain securities and derivatives; criteria for establishing a nonsurviving interim bank or resulting branches in a bank merger or acquisition transaction; citizenship of a majority of the bank's directors; renewal of oaths by bank directors upon their re-election; permissible use of telecommunication and computer technology for home and office banking services; nonbanking point-of-sale terminals; the increase in fines for criminal violations; the element of willfulness in criminal violations; and clarification of the limitation on prepayment penalties in loans or credits secured by land.

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

Chapter

31A. Banks and Banking.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 31A. BANKS AND BANKING.

Article.

2. Division of Banking.
3. Board of Banking and Financial Institutions.
4. Banking Institutions and Services Generally.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1. As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action," in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation heretofore or hereafter chartered to conduct

*Clerk's Note: This section was also amended by S. B. 280 (Chapter 72), which passed subsequent to this act.
a banking business under the laws of West Virginia or an
association heretofore or hereafter authorized to conduct a
banking business in West Virginia under the laws of the
United States and having its principal office in this state
and shall embrace and include a savings bank, savings and
loan association, trust company or an institution combin­
ing banking and trust company facilities, functions and
services so chartered or authorized to conduct such busi­
ness in this state;

(c) The words "bankers' bank" mean a banking institu­
tion, insured by the Federal Deposit Insurance Corpora­
tion, the stock of which is owned exclusively by banks and
other depository institutions, and such banking institution
and all subsidiaries thereof are engaged exclusively in
providing services for banks and other depository institu­
tions and their officers, directors and employees;

(d) The term "banking business" means the functions,
services and activities contained, detailed and embraced in
sections thirteen and fourteen, article four of this chapter,
and as elsewhere defined by law;

(e) The word "board" means the West Virginia board
of banking and financial institutions;

(f) The words "branch bank" mean an office or other
place at which a bank performs any or all banking busi­
ess. For purposes of this chapter, a branch bank does not
include:

(1) A bank's principal place of business;

(2) Any customer bank communication terminals
installed and operated pursuant to section twelve-b, article
eight of this chapter; and

(3) Any loan origination office authorized by section
twelve-c, article eight of this chapter;

(g) The words "commissioner" or "commissioner of
banking" mean the commissioner of banking of West
Virginia;

(h) The word "community" means a city, town or other
incorporated area, or, where not so incorporated, a trading
area;
The word "department" means the department of banking of West Virginia;

The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors, or any holder of a similar position of trust or responsibility;

The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller, or any other person who performs the duties appropriate to those offices, and the terms "executive officer" as herein used, when referring to banking institutions, mean an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his title or office, being determinative of whether he is an "executive officer";

The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality,
trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(o) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank, and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

(p) The words "state bank" or "state banking institution" mean a bank chartered under the laws of West Virginia, as distinguished from a national banking association; and

(q) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter, and as elsewhere defined by law and as may be included within the meaning of the term "banking business."

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.


§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of department transferred to commissioner; powers and duties of commissioner.

(a) Subject to the powers vested in the board by article three of this chapter, the commissioner shall have supervision and jurisdiction over state banks, industrial loan companies, building and loan associations, supervised lenders, credit unions, and all other persons now or hereafter made subject to his supervision or jurisdiction. All powers, duties, rights and privileges vested in the department are hereby vested in the commissioner. He shall be the chief executive officer of the department of banking and shall be responsible for the department's organization, services and personnel, and for the orderly and efficient administration, enforcement and execution of the provisions of
this chapter and all laws vesting authority or powers in or
prescribing duties or functions for the department or the
commissioner.

(b) The commissioner shall:

(1) Maintain the office for the department at the state
capitol, and there keep a complete record of all the depart-
ment's transactions, of the financial conditions of all finan-
cial institutions and such records of the activities of other
persons as the commissioner may deem important. Not-
withstanding any other provision of the code of West Vir-
ginia, heretofore or hereafter enacted, the records relating
to the financial condition of any financial institution and
any information contained therein shall be confidential
for the use of the commissioner and authorized personnel
of the department of banking. No person shall divulge
any information contained in any such records except as
hereafter authorized in response to a valid subpoena or
subpoena duces tecum issued pursuant to law in a criminal
proceeding or in a civil enforcement action brought by
the state or federal regulatory authorities. Subpoenas shall
first be directed to the commissioner, who shall authorize
disclosure of relevant records and information therefrom
for good cause, upon imposing terms and conditions as
are deemed necessary to protect the confidential nature of
the records, the financial integrity of the financial institu-
tion or the person to which the records relate, and the
legitimate privacy interests of any individual named in
such records. Conformity with federal procedures shall be
sought where the institution maintains federal deposit
insurance. The commissioner shall have and may exercise
reasonable discretion as to the time, manner and extent the
other records in his office and the information contained
therein shall be available for public examination;

(2) Require all financial institutions to comply with all
the provisions of this chapter and other applicable laws, or
any rule and regulation promulgated or order issued
thereunder; and

(3) Investigate all alleged violations of this chapter and
all other laws which he is required to enforce and of any
(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner is authorized and empowered:

(1) To provide for the organization of the department and the procedures and practices thereof and implement the same by the promulgation of rules and regulations and forms as appropriate, which rules and regulations shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the department, including, but not limited to, examiners, assistant examiners, conservators and receivers, to establish the amount and condition of bonds for such thereof as he deems appropriate and to pay the premiums thereon, and if he so elects, to have all such personnel subject to and under the classified service of the state personnel department;

(3) To cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, to inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his opinion may warrant;

(5) To call for and require all such data, reports and information from financial institutions under his jurisdiction, at such times and in such form, content and detail, deemed necessary by him in the faithful discharge of his duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, to supervise the location, organiza-
tion, practices and procedures of financial institutions and, without limitation on the general powers of supervision thereof, to require financial institutions to:

(A) Maintain their accounts consistent with such regulations as he may prescribe and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against such other risks as he may deem and determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take such other action as may in his judgment be required of the institution in order to maintain its stability, integrity and security as required by law and all rules and regulations promulgated by him; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, to receive from any person or persons and to consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act thereupon in accordance with any provisions of law applicable thereto;
(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, to issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings, any such subpoenas or subpoenas duces tecum to be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at such a hearing may be accompanied by an attorney employed by him;

(9) To issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) To study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state, and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and to compile and keep current data thereon to aid and guide him in the administration of the duties of his office;

(11) To implement all of the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) To implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit sales by the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code so long as said rules and regulations do not conflict with any rules and regulations promulgated by the state's attorney general;

(13) To foster and encourage a working relationship between the department of banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to
make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) To provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and such other forms and printed materials as may be found by him to be helpful to financial institutions, their shareholders, depositors and patrons, and to make reasonable charges therefor;

(15) To delegate the powers and duties of his office, other than the powers and duties in this subsection hereinafter excepted, to qualified department personnel, who shall act under the direction and supervision of the commissioner and for whose acts he shall be responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other department personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner shall likewise be responsible:

(A) To order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule and regulation promulgated or order issued thereunder;

(B) To order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor thereof;

(C) To revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) To accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which conduct could be subject to an order under the provisions of this chapter. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to
such assurance the person engaged in conduct described in such assurance;

(16) To seek and obtain from courts, civil penalties against any person who violates this chapter, the rules issued pursuant thereto, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not less than fifty dollars nor more than five thousand dollars for each violation;

(17) To receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove such applications; and

(18) To take such other action as he may deem necessary to enforce and administer the provisions of this chapter (except the provisions of article three) and all other laws which he is empowered to administer and enforce, and to apply to any court of competent jurisdiction for appropriate orders, writs, processes and remedies.


(a) If any financial institution shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order; or may apply to the board of banking and financial institutions for appropriate relief.

(b) In addition, if any financial institution other than a state bank shall fail or refuse to comply with any order of the commissioner, entered pursuant to the provisions of paragraphs (A) or (B), subdivision (15), subsection (c), section four of this article, the commissioner may make and enter an order revoking the certificate of authority, permit or license of such institution to engage in the business of a financial institution in this state.

§31A-2-14. Banking interests of and acceptance of gratuities by officers and employees of department.
No officer or employee of the department of banking shall be an officer, director, trustee, attorney, owner, shareholder, or partner in or of any financial institution. Nor shall any officer or employee of the department receive, directly or indirectly, any payment or gratuity from any financial institution, or be engaged in any manner in the negotiation of loans for others therewith. Nothing herein shall prohibit said persons from having shares as a result of membership in a credit union, mutual savings association, or similar depository institution by virtue of being a customer; nor shall it prohibit the receipt of interest or other payments on accounts made in the regular course of business.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

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

(1) Regulate its own procedure and practice;

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

(3) Advise the commissioner in all matters within his jurisdiction;

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

(5) Grant permission and authority to a financial institution:

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

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

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

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

(6) Seek judicial enforcement to compel compliance
with any of its orders and to seek and obtain civil penalties
as set forth under this chapter.

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

(1) Restrict the withdrawal of deposits from any finan-
cial institution when, in the judgment of the board, ex-
traordinary circumstances make such restrictions neces-
sary for the protection of creditors of and depositors in
the affected institution;

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

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

(4) Approve or disapprove applications to incorporate and organize state-chartered bankers' banks in accordance with the provisions of sections six and seven, article four of this chapter;

(5) Exempt a bankers' bank from any provision of this chapter if the board finds that such provision is inconsistent with the purpose for which a bankers' bank is incorporated and organized and that the welfare of the public or any banking institution or other financial institution would not be jeopardized thereby;

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if such institution shall fail or refuse to comply with any order of the commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (15), subsection (c), section four, article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

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

(8) To receive from state banking institutions applications to establish branch banks by the purchase of the
(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of section seven, article seven of this chapter;

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

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

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

(d) Any order entered by the West Virginia board of
banking and financial institutions pursuant to this section
is a matter of public record.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER-
ALLY.

§31A-4-2. Use of terms; unlawfully engaging in banking business; penal-
ties; enforcement.

§31A-4-4. Majority of stock to be paid in full before engaging in business;
sale of additional stock; organizational expense fund; affidavit
of incorporators; penalties; stockholder preemptive rights.

§31A-4-6. Examination and investigation of proposed bank by board.

§31A-4-8. Directors, their qualifications and oaths.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment,
duties and report of examining committee; employment of
accountants; examiners may require presence of executive or
examining committee.

§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; valua-
tion of securities.

§31A-4-2. Use of terms; unlawfully engaging in banking busi-
ness; penalties; enforcement.

(a) No person doing business in this state, except a
banking institution or a person authorized by the commis-
ioneer under the terms of this section, shall use or advertise
in connection with such business, or as a designation or
title thereof, the term "bank," "banker," "banking," "bank-
ing company," "industrial bank," "savings bank," or "trust
company," or engage in the banking or trust business in
this state.

(b) It shall be unlawful for any such person other than
banking institutions as herein excepted, to advertise or
hold himself, itself, or themselves, as the case may be, out
to the public in any manner indicating, directly, indirectly
or by implication, that any of them is engaged in the
banking or trust business or is authorized and approved to
engage therein in this state.
(c) The commissioner may authorize a person to utilize the term "bank" or "banc" in connection with non-profit organizations or medical businesses where the term would have a common meaning separate and apart from a financial institution and would not result in confusion to the public (e.g., food bank; medical databank); and in connection with bank holding companies or their non-banking affiliates where the term denotes the entities' common affiliation and would not result in confusion to the public.

(d) Any violation of the provisions of this section shall constitute a misdemeanor offense, punishable as provided in section fifteen, article eight of this chapter.

(e) The commissioner of banking or any one or more banking institutions, acting individually or jointly, may petition the circuit court of the county in which any violation of the provisions of this section occur or are threatened to occur for injunction or other appropriate judicial remedies for enforcement of the provisions hereof and the prevention of further or continued violations thereof.

§31A-4-4. Majority of stock to be paid in full before engaging in business; sale of additional stock; organizational expense fund; affidavit of incorporators; penalties; stockholder preemptive rights.

(a) The majority of the capital stock of every banking institution, chartered under the laws of this state, shall be paid in full in cash and issued to the ultimate subscribers, not an agent or broker acting on behalf of the organizers, before it shall be authorized to engage in business, except such business as is incidental and necessary preliminary to its organization. Authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan approved by the commissioner or may be issued for such other purposes and consideration as may be approved by the board of directors of said bank. The commissioner shall establish the minimum amount of authorized capital stock which shall be paid in full in cash and issued prior to opening the bank for business.
(b) Each subscriber at the time he or she subscribes to the stock of a proposed banking institution shall pay in cash a sum at least equal to five percent of the par value of such stock into a fund to be used to defray the expenses of organization of said institution. No organizational expenses shall be paid out of any other funds of the bank. The amount of any organizational expenses which are accumulated and recorded on the newly organized bank's accounting records as an asset to be amortized over a period of time according to generally accepted accounting principles shall be added to the capital requirement for incorporation of the bank as determined by the West Virginia board of banking and financial institutions pursuant to subsection (a), section three, article four of this chapter. Upon the grant of a charter to the institution any unexpended balance in the organizational expense fund shall be transferred to undivided profits of the institution. If the charter application is finally denied, any unexpended balance in said fund shall be distributed among the contributors in proportion to their respective payments.

(c) A majority of the incorporators shall file with the West Virginia board of banking and financial institutions at the time of filing of the charter application an affidavit: (1) Setting forth all expenses incurred or to be incurred in connection with the organization of the institution, subscriptions for its shares and sale of its shares, and (2) stating that no fee, compensation or commission prohibited by this section has been or will be paid or incurred. The board may disapprove the charter application on account of any violation of this section and order the incorporators to restore any sum expended for other than proper organizational expense. In addition, violations hereof shall constitute a misdemeanor offense punishable as prescribed in section fifteen, article eight of this chapter.

(d) Unless otherwise provided in the charter, whenever additional stock is offered for sale, stockholders of record on the date of the offer shall have the right to subscribe to such proportion of the shares as the stock held by them bears to the total of the outstanding stock. This right shall be transferable but shall terminate if not exercised within sixty days of the offer. If the right be not exercised, the
stock shall not be offered for sale to others at a lower price
without the stockholders again being accorded a preemp-
tive right to subscribe. No banking institution shall sell its
shares of stock at less than par, but may sell its shares at
such price above par as may be set by the board of direc-
tors. The preemptive rights of the stockholders, as provid-
ed in this paragraph, shall not apply to any stock issued by
a banking institution, to another bank or financial institu-
tion or the stockholders thereof, pursuant to a merger or
consolidation with such other bank or financial institution,
or to authorized but unissued stock authorized by the
charter of the banking institution.

§31A-4-6. Examination and investigation of proposed bank
by board.

(a) When an agreement of incorporation, fully com-
plying with the requirements of this article, has been filed
with the board, it shall promptly make or cause to be made
a careful examination and investigation relative to the
following:

(1) The character, reputation, financial standing and
motives of the organizers, incorporators and subscribers in
organizing the proposed bank;

(2) The need for the facilities and services which the
proposed bank will offer in the community where it is to
be located, giving particular consideration to the adequacy
of existing banking and trust facilities and services;

(3) The present and future ability of the community to
support the proposed bank and all other existing banking
and trust facilities and services in the community;

(4) The character, financial responsibility, banking
experience and business qualifications of the proposed
officers; and

(5) The character, financial responsibility, business
experience and standing of the proposed stockholders and
directors.

(b) The board shall approve or disapprove the applica-
tion, in the exercise of its reasonable discretion, but shall
not approve such application unless it finds:
(1) Public convenience and advantage will be promoted by the establishment of the proposed bank;

(2) Local conditions assure reasonable promise of successful operation for the proposed bank and those banks already established in the community;

(3) The proposed capital structure is adequate;

(4) The proposed officers and directors have sufficient banking experience and trust experience, if the bank proposes to engage in the trust business, ability, character and standing to assure reasonable promise of successful operation;

(5) The name of the proposed bank or trust company is not so similar as to cause confusion with the name of an existing bank; and

(6) Provision has been made for suitable banking house quarters in the community specified in the application.

c) In the course of its examination and investigation, the board may call upon the attorney, agent or other responsible person representing the incorporators and upon the incorporators for additional information and disclosures it deems necessary in taking appropriate action on and making proper disposition of the application.

d) Where the agreement of incorporation is for an interim bank organized solely for the purpose of facilitating the acquisition of another bank, which interim bank will not survive the acquisition and merger, the board may dispense with further investigation and find the criteria set forth in subsections (a) and (b) of this section have been met on the basis of its examination of the performance or attributes of the surviving bank.

§31A-4-8. Directors, their qualifications and oaths.

For every state-chartered banking institution there shall be a board of not less than five nor more than twenty-five directors, who shall meet at least once each month and who shall have power to do, or cause to be done, all things that are proper to be done by the banking
institution; and a majority of whom shall at all times be
United States citizens and residents of this state. Every
such director shall own capital stock in the banking insti-
tution of which he is a director. Said director must own
shares in the aggregate par value of not less than five hun-
dred dollars, an exception being that if a bank holding
company has control of that banking institution, shares
owned by a director of the subsidiary bank in the control-
ling bank holding company will satisfy the requirements
of this section: Provided, That the director owns, in his
own right, common or preferred stock of the controlling
bank holding company in an amount equal to or greater
than any one of the following: (i) Aggregate par value of
five hundred dollars; (ii) aggregate shareholders' equity of
five hundred dollars; or (iii) aggregate fair market value
of five hundred dollars. Determination of the fair market
value of the controlling bank holding company's stock
shall be based upon the value of that stock on the date it
was purchased or on the date the person became a direc-
tor, whichever is greater. If a bank holding company con-
trols more than one bank subsidiary, a director owning at
least five hundred dollars of the shares of a bank holding
company is qualified, if otherwise permitted by applicable
law, to serve as a director of every bank subsidiary con-
trolled by that bank holding company. Before entering on
the discharge of his duties as such director, he shall take
an oath that he will, so far as the duty devolves upon him,
diligently and honestly administer the affairs of the bank-
ing institution, and that he will not knowingly or willingly
permit to be violated any of the provisions of the laws of
this state relative to banking and banking institutions, and
that the stock standing in his name upon the books of the
banking institution is not hypothecated or pledged in any
way as security for loans obtained from or debts owing to
the banking institution of which he is a director, and that
the number of shares necessary to qualify a stockholder to
be a director are not now, and shall not at any time while
he serves as a director be pledged or hypothecated in any
manner for any debt or obligation of the director, or any
other person; which oath subscribed by him and certified
by the officer before whom it was taken shall be filed and
preserved in the office of the commissioner of banking.
Should a director fail to subscribe to or renew the oath herein provided within sixty days after notice of his election or re-election, or at any time after qualifying as such, sell or dispose of, or in any manner hypothecate or pledge as security for a debt or obligation, such qualifying shares, or any number thereof, necessary for his qualification, thereupon the remaining directors shall elect another director in his stead. No person shall serve as a director of any banking institution who has evidenced personal dishonesty and unfitness to serve as such director by his conduct or practice with another financial institution which resulted in a substantial financial loss or damage thereto or who has been convicted of any crime involving personal dishonesty.

§31A-4-20. Stockholders' annual meeting; financial statement; appointment, duties and report of examining committee; employment of accountants; examiners may require presence of executive or examining committee.

(a) The stockholders of each state banking institution shall meet annually and at such annual meeting it shall be the duty of the cashier or other executive officer of such banking institution to prepare and submit to the stockholders a clear and concise statement of the financial condition of the corporation as of the close of business on the last day of the month next preceding.

(b) At such meeting, the stockholders present in person or by proxy shall elect an examining committee composed of not less than three nor more than five persons, each of whom shall be a stockholder either in such banking institution, or, if such banking institution is controlled by a bank holding company, in that bank holding company.

(c) At such time or times as it may be directed to do so by the written request of the board of directors or the commissioner of banking, such committee shall immediately proceed to examine the condition of the bank and, upon completion of such examination, shall file its report in writing with the board of directors. Such report shall set forth in detail all items included in the assets of the
bank which the committee has reason to believe are not of the value at which they appear on the books and records of the bank, and shall give the value of each of such items according to its judgment. The board of directors shall cause such report to be retained as a part of the records of the bank and shall transmit a duly authenticated copy thereof to the commissioner of banking.

(d) With the consent and approval of the stockholders, such committee may employ registered or certified public accountants to make such examination or make the same in conjunction with any official examination made by any supervisory authority.

(e) The workpapers of any audit, including any materials associated with an audit of the bank’s electronic data procedures, shall be made available to the commissioner or to the examiners of the department of banking upon request, and will be accorded confidentiality in conformity with section four, article two of this chapter.

(f) Any official examiner of the department of banking may require the presence of the examining committee or the executive committee during his examination.

§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 ex­
tensions of up to ten percent of the unimpaired capital and
unimpaired surplus of that state-chartered banking institu­
tion initially determined for the period such loan or exten­
sion 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 out­
standing as indicated in the bank's most recent quarterly
report of condition and income as filed with the com­
missioner 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 pursu­
ant to generally accepted accounting principles. Unreal­
ized 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 securing 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 institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when such loans or extensions of credit are approved by the commissioner of banking, shall not be subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper shall be subject under this section to a maximum limitation equal to twenty-five percent 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 consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors
of the bank certifies in writing that the bank is relying
primarily upon the responsibility of each maker for 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
ing 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 pay­
ment 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 sur­
plus, 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 re­
quired 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" means a marketable obligation in the form of a stock, bond, note, or debenture, commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. "Derivative security" means a type of investment security involving a financial contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term derivative refers inter alia to financial contracts such as collateralized mortgage obligations ("CMOs"), forwards, futures, forward rate agreements, swaps, options, and caps; /floors/collars, whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(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 U.S.C. §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 U.S.C. §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 U.S.C. §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 U.S.C. §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 U.S.C. §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 U.S.C. §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 U.S.C. §1437i(a)(1)(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 U.S.C. §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 U.S.C. §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 capi-
tal 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 sub-
section, 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: Provided,
That (i) the purchase of investment securities under this
subdivision shall be made only when in the bank's pru-
dent judgment, which judgment may be based in part on
estimates which it believes to be reliable, there is adequate
evidence that the obligor will be able to perform all it
undertakes to perform in connection with the securities,
including all debt service requirements, and that the secu-
rities may be sold with reasonable promptness at a price
that corresponds to their fair value; and (ii) the purchase
conforms to the requirement of subparagraph (9) of this
subdivision. The commissioner of banking may, from
time to time, provide notice to state-chartered banking
institutions of authorized investments under this para-
graph.

(9) The purchase of investment securities, including
derivative securities, in which the investment characteristics
are considered distinctly or predominantly speculative, or
the purchase of such securities that are in default, whether
as to principal or interest, is prohibited. The proper man-
agement of interest rate risk through the use of derivative
or other investment securities shall not be held a specula-
tive purpose.
(10) 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 explaining 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 institution may not borrow, directly or indirectly, from a banking institution with which he is connected, any sum of money without the prior approval of a majority of the
board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. Such approval shall be by resolution adopted by a majority vote of such board or committee, exclusive of the director or executive officer to whom the loan is made.

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

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

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major 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.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-8a. Unauthorized disclosure of information from a financial institution examination report.

§31A-8-12. Procedure for authorizing of branch banks; penalties for violation of section.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

§31A-8-15. General penalties.

§31A-8-16. Misdemeanors and felonies.

§31A-8-8a. Unauthorized disclosure of information from a financial institution examination report.

Any person having a duty to the financial institution or to a state agency to maintain the confidentiality of examination reports by the department of banking, who willfully and knowingly makes an unauthorized public
disclosure of confidential information or records from a state-chartered depository financial institution examination report shall be subject to suit by the commissioner or attorney general for civil penalties of up to one thousand dollars: *Provided*, That no such suit shall lie where the person was ordered to make the disclosure by a court of competent jurisdiction, or lawfully compelled to make the disclosure as part of a legislative or executive agency investigation. Officials of the financial institution or the commissioner may refer matters of possible wrongdoing discovered by the examination which impact on the institution's soundness or financial integrity, or which concern possible criminal conduct to law enforcement officials, or other appropriate governmental regulatory agencies, including appropriate state bar or ethics officials and such referral shall not constitute public disclosure.

*§31A-8-12. Procedure for authorizing of branch banks; penalties for violation of section.*

(a) 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 subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U.S.C. 1828, and does not constitute branch banking; nor shall such activity constitute a violation of section forty-two, article four of this chapter: *Provided*, That no banking institution may utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this

*Clerk's Note:* This section was also amended by S. B. 280 (Chapter 72), which passed subsequent to this act.
(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 accepting 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 institution must first obtain written permission from the institution 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 section 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, pursuant 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 necessary, for the continued operation of such branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it shall be unlawful for any individual, partnership, society, association, 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 hundred 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 subsection; 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 assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Notwithstanding any other provision of this chapter 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 institution 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 institution's principal office.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide 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 examination and investigation fee of one thousand dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and two thousand five hundred dollars for a branch bank that is to be established by the purchase 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 investigation within ninety days from the date on which such application 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 received.

(i) Upon completion of the examination and investigation with respect to such application, the board shall, if a hearing be required pursuant to subsection (j) of this section, 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: Provided, That where the branch results from the merger or acquisition of banking institutions, the findings of fact required in subdivisions (1) through (3) hereof may be based on the performance and suitability of the previous banking offices.

(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.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in
this state, or any combination thereof, may upon thirty
days prior written notice filed with the commissioner,
install, operate and engage in banking business by means
of one or more customer bank communication terminals.
Any banking institution which installs and operates a cus-
tomer bank communication terminal:

(1) Shall make such customer bank communication
terminal available for use by other banking institutions;
and

(2) May make such customer bank communication
terminal available for use by other federally insured finan-
cial institutions, all in accordance with regulations promul-
gated by the commissioner. Such customer bank commu-
nication terminals shall not be considered to be branch
banks or branch offices, agencies or places of business or
off-premises walk-in or drive-in banking facilities; nor
shall the operation of such customer bank communication
terminals to communicate with and permit financial trans-
actions to be carried out through a nonexclusive access
interchange system be considered to make any banking
institution which is part of such a nonexclusive access
interchange system to have illegal branch banks or branch
offices, agencies or places of business or off-premises
walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1),
subsection (a) of this section, a customer bank communi-
cation terminal located on the premises of the principal
office or branch bank of a banking institution or on the
premises of an authorized off-premises facility need not
be made available for use by any other banking institution
or its customers.

(c) For purposes of this section, "customer bank com-
munication terminal" means any electronic device or ma-
chine owned, leased, or operated by a bank, together with
all associated equipment, structures and systems, including,
without limitation, point of sale terminals, through or by
means of which a customer and a banking institution may
engage in any banking transactions, whether transmitted to
the banking institution instantaneously or otherwise, in-
cluding, without limitation, the receipt of deposits of every
kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer's benefit. Personal computers, telephones, and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank's computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

(d) No person, other than (1) a banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") located in this state.

(e) For the purposes of this section, "point of sale terminal" means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(f) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased, or operated by non-banking entities: Provided, however, that such persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than fifty dollars in excess of the sales transaction purchase amount, will be presumed to constitute engaging in the business of banking.
(g) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

(1) Employees of the banking institution may be present at such terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing, maintaining, repairing and servicing same; and

(2) A banking institution may provide an employee to instruct and assist customers in the operation thereof: Provided, That such employee shall not engage in any other banking activity.

(h) The commissioner shall prescribe by regulation the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.

§31A-8-15. General Penalties.

(a) Upon conviction for any misdemeanor offense under the provisions of this chapter, an offending financial institution shall be fined not more than five thousand dollars nor less than fifty dollars and may, in the discretion of the court in consideration of the nature of the offense, be required to forfeit its corporate charter and franchise. Upon conviction of any individual, whether officer, director, agent, employee or any other person connected or not connected with a financial institution, of any misdemeanor offense under the provisions of this chapter, the offending individual shall be fined not more than five thousand dollars nor less than fifty dollars and may, in the discretion of the court, be confined in the county jail for not more than twelve months.

(b) Any person or financial institution which violates the provisions of this chapter, the rules adopted thereunder, or a lawful order of the commissioner or board, shall, unless previously fined under the provisions of subsection
(a) of this section, be subject to civil penalties in an amount not more than five thousand dollars nor less than fifty dollars in civil actions brought by the commissioner or the board.

§31A-8-16. Misdemeanors and felonies.

The willful failure to perform any duty required of any financial institution or individual pursuant to provisions of this chapter, or the willful doing of any act by any financial institution or individual forbidden by the provisions of this chapter, shall constitute a misdemeanor offense, except any act which is made a felony offense by specific language of this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-110. Right to prepay.

(1) Subject to the provisions on rebate upon prepayment, the consumer may repay in full the unpaid balance of a consumer credit sale or a consumer loan, refinancing or consolidation at any time without penalty.

(2) Notwithstanding subsection one of this section, it is permissible within the first three years of a credit extension or loan to charge a prepayment penalty of up to one percent of the original principal amount in a consumer credit sale subject to the provisions of section one hundred two of this article or on a consumer loan secured by an interest in land: Provided, That said prepayment penalty may not be imposed as part of any industrial loan company licensee or secondary mortgage lender licensee contract, and that in no event can a prepayment penalty be assessed on a refinancing within one year from the date of the prior loan.

(3) Housing loans originated by the West Virginia Housing Development Fund are exempt from the restrictions set forth in this section.
ACT to repeal section four-a, article eighteen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eleven, article two of said chapter; to further amend said article by adding thereto a new section, designated section twelve-a; to amend and reenact sections fourteen, fourteen-a and forty-two, article four of said chapter; to amend and reenact section twelve, article eight of said chapter; to amend and reenact article eight-a of said chapter; to further amend said chapter by adding thereto three new articles, designated articles eight-d, eight-e and eight-f; to amend and reenact section three, article five, chapter forty-four of said code; to amend and reenact section seven, article ten of said chapter; and to amend and reenact section eleven, article one, chapter forty-four of said code, all relating generally to the definition of "bank" and "banking institution"; licensing of financial institutions; trust authority of interstate banks; the acquisition, by in-state and out-of-state bank holding companies, of banks and bank holding companies in West Virginia and the application process, standards for approval, effect on competition, acquisition deposit limitations in lieu of antitrust depository caps, provision of reports, examinations, issuance of rules, business of banking, enforcement and penalties relating thereto; interstate bank branching by merger, and the authority, effect on competition, acquisition deposit limitations, notice and filing requirements, powers and additional branches, examinations, reports, cooperative regulatory agreements and fees, enforcement and rules relating thereto; interstate branch banking by de novo entry; authority for West Virginia state banks to branch interstate de novo or by branch acquisition; authority for out-of-state state banks to branch into West Virginia de novo or by branch acquisition; notice and approval requirements, additional powers for out-of-state branches of West Virginia banks, examinations, reports, cooperative regulatory agreements, fees, enforcement, rules and orders and notices relat-
Be it enacted by the Legislature of West Virginia:

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

Chapter

31A. Banks and Banking.

44. Administration of Estates and Trusts.

44A. West Virginia Guardianship and Conservatorship Act.

CHAPTER 31A. BANKS AND BANKING.

Article

2. Division of Banking.
4. Banking Institutions and Services Generally.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.
8A. Acquisitions of Banks By Bank Holding Companies.
8D. Interstate Branching By Bank Mergers.
8E. Interstate Branching By De Novo Entry and Acquisition of Branches.
8F. The West Virginia International Banking Act.
ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1. As used in this chapter, unless the context in which used plainly requires a different meaning:

(a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

(b) The words "bank" and "banking institution" mean a corporation or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U.S.C. §1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

(c) The words "bankers' bank" mean a banking institution, insured by the federal deposit insurance corporation, the stock of which is owned exclusively by banks and other depository institutions, and such banking institution and all subsidiaries thereof are engaged exclusively in providing services for banks and other depository institutions and their officers, directors and employees;

(d) The term "banking business" means the functions, services and activities contained, detailed and embraced in sections thirteen and fourteen, article four of this chapter, and as elsewhere defined by law;

(e) The word "board" means the West Virginia board of banking and financial institutions;

*Clerk's Note: This section was also amended by H. B. 4624 (Chapter 71), which passed prior to this act.
(f) The words "branch bank" mean an office or other place at which a bank performs any or all banking business. For purposes of this chapter, a branch bank does not include:

1. A bank's principal place of business;
2. Any customer bank communication terminals installed and operated pursuant to section twelve-b, article eight of this chapter; and
3. Any loan origination office authorized by section twelve-c, article eight of this chapter;

(g) The words "commissioner" or "commissioner of banking" mean the commissioner of banking of West Virginia;

(h) The word "community" means a city, town or other incorporated area, or, where not so incorporated, a trading area;

(i) The word "department" means the department of banking of West Virginia;

(j) The words "deputy commissioner" or "deputy commissioner of banking" mean the deputy commissioner of banking of West Virginia;

(k) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust or responsibility;

(l) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the commissioner of banking;

(m) The word "officer" when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors,
the chairman of the executive committee, and any trust
officer, assistant vice president, assistant treasurer, assistant
secretary, assistant trust officer, assistant cashier, assistant
comptroller or any other person who performs the duties
appropriate to those offices, and the term "executive offi-
cer" as herein used, when referring to banking institutions,
means an officer of a bank whose duties involve regular,
active and substantial participation in the daily operations
of such institution and who, by virtue of his position, has
both a voice in the formulation of the policy of the bank
and responsibility for implementation of the policy, such
responsibility of and functions performed by the individu-
al, and not his title or office, being determinative of wheth-
er he is an "executive officer";

(n) The words "out-of-state bank" or "out-of-state
banking institution" mean a bank chartered under the laws
of a state or United States territory, possession or district,
other than West Virginia, or organized under federal law
and having its main office located in a state, United States
territory, possession or district, other than West Virginia;

(o) The words "person" or "persons" mean any indi-
vidual, partnership, society, association, firm, institution,
company, public or private corporation, state, governmen-
tal 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;

(p) The words "safe-deposit box" mean a safe-deposit
box, vault or other safe-deposit receptacle maintained by a
lesser bank, and the rules relating thereto apply to proper-
ty or documents kept therein in the bank's vault under the
joint control of lessor and lessee;

(q) The words "state bank" or "state banking institu-
tion" mean, unless the context requires otherwise, a bank
chartered under the laws of West Virginia, as distinguished
from either an out-of-state bank or a national banking
association and is also referred to as a "West Virginia state
bank" or "West Virginia state banking institution"; and
The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter, and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

§31A-2-11. Annual deposit and loan reports by banking institutions.

§31A-2-12a. Establishment of deposit acquisition limitation.

*§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) Application for such license or certificate shall be upon such forms and contain such information as the commissioner may prescribe. In connection with such applications, every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(c) If the application be that of a West Virginia state banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 70) and S. B. 366 (Chapter 73), which passed subsequent to this act.
equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and statements submitted, and, if he finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he shall issue to it a certificate or license permitting it to engage in business:

Provided, That any supervised lender which is operating in good standing in accordance with the provisions of article four, chapter forty-six-a of this code shall be presumed to have established that the public convenience and advantage will be promoted in regard to its application for a certificate of authority to operate as an industrial loan company as defined in article seven, chapter thirty-one of this code in the same location for which it is licensed as a supervised lender. Such certificate or license shall be preserved and displayed in the place of business of such banking or other financial institution.

(d) In addition to the requirements of subsection (b) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state, other than an out-of-state banking institution, shall file with the commissioner of banking a copy of the laws of the jurisdiction under which it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provi-
sions of this chapter and other applicable laws and that the
public convenience and advantage will be promoted by
the issuance of a license or certificate thereto, he shall
issue to such corporation a certificate or license permitting
it to engage in business in this state, which certificate or
license shall authorize such corporation to engage in the
business of the type of financial institution specified ther-
in, until the thirtieth day of the following June. Thereafter
a new certificate or license shall be secured annually by
any such foreign corporation. The fee for the original
and each additional license or certificate issued to a for-

gi foreign corporation shall be one hundred dollars, unless
otherwise provided by statute. A verified statement of the
financial condition of every such foreign corporation shall
be filed with the commissioner before the issuance of each
annual certificate or license. Such certificate or license
shall be preserved and displayed in the place of business
of such corporation.

(e) No amendment of the charter or bylaws of any
domestic or foreign corporation, other than an out-of-state
banking institution, engaging in business in this state as a
financial institution shall become effective until the pro-
posed change shall have been submitted to and approved
by the commissioner of banking; but, if the commissioner
does not disapprove such proposed change within twenty
days after it is received by him, it shall be deemed to have
been approved.

(f) Nothing contained in this code shall authorize any
person to engage in the banking business in this state
except corporations chartered to conduct a banking busi-
ness under the laws of West Virginia and which hold a
license or certificate to do so issued under this section,
associations authorized to conduct a banking business in
West Virginia under the laws of the United States and
having their principal place of business in this state,
out-of-state banks authorized to conduct the business of
banking in this state pursuant to articles eight-a, eight-d
and eight-e of this chapter, or foreign banks authorized to
conduct limited banking activities through licensed agen-
cy and representative offices in this state pursuant to arti-
cle eight-f of this chapter or through licensed federal
§31A-2-11. Annual deposit and loan reports by banking institutions.

In addition to other reports that may be required under this chapter, every banking institution with a main office or branch located in this state shall file with the commissioner an annual report specifying for its main office and each branch (excluding automated teller machines) in this state:

(1) The location of each such office, including county and, where applicable, municipality;

(2) The amount of deposits held by each such office as of the end of the preceding calendar year; and

(3) The amount of loans outstanding by each such office at the end of the preceding calendar year.

The foregoing report shall be based upon the bank’s allocation of its deposit base and loan portfolio among its offices. The report shall be filed with the commissioner on or before the fifteenth day of February of each year on forms prescribed by the commissioner. This requirement may be met by the filing of such report by the bank’s bank holding company pursuant to subsection (a), section seven, article eight-a of this chapter.

§31A-2-12a. Establishment of deposit acquisition limitation.

After a review of the structure of depository institutions in the state of West Virginia, the Legislature hereby determines that:

(a) It is in the best interest of this state and its citizens to foster and encourage healthy competition among its domestic depository institutions;

(b) Obtaining excessive concentration or control of the deposit resources of this state by merger or acquisition is antithetical to fostering a competitive environment; and

(c) Therefore, an acquisition or merger shall not be
permitted under this chapter or otherwise if upon consum-
mination of the transaction, the resulting depository institu-
tion or its holding company, including any depository
institution(s) affiliated therewith, would assume sufficient
additional deposits to cause it to control deposits in this
state in excess of the following acquisition deposit limita-
tion amount: Twenty percent of the total amount of all
deposits held by insured depository institutions, which
permissible amount shall increase to twenty-five percent of
such total deposits on the thirty-first day of May, one
thousand nine hundred ninety-seven.

(d) The term "depository institutions", as used in this
section, shall include, but is not limited to, state-chartered
banking institutions, national banking associations, federal
savings and loan associations, bank holding companies,
savings and loan holding companies, federal savings
banks, state-chartered credit unions and federally-char-
tered credit unions.

(e) Any merger or acquisition contrary to this provi-
sion is unlawful: Provided, That the commissioner may
by rule adopt a procedure whereby said acquisition depos-
it limitation as set forth herein may be waived for good
cause shown.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENER-
ALLY.

§31A-4-14. Trust powers of banking institutions.
§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated
subsidiary banks of a bank holding company.
§31A-4-42. Unlawful for persons other than banking institutions to engage
in the banking business; penalties.

§31A-4-14. Trust powers of banking institutions.

(a) Every state banking institution which files the re-
ports required in the following section and which is not
otherwise prohibited by the commissioner or federal bank
regulators from doing so, shall have and exercise the fol-
lowing powers:

(1) All the powers, rights and privileges of any state
banking institution;
(2) To act as trustee, assignee, special commissioner, general or special receiver, guardian, executor, administrator, committee, agent, curator or in any other fiduciary capacity, and to take, assume, accept and execute trusts of every description not inconsistent with the constitution and laws of the United States of America or of this state; and to receive, hold, manage and apply any sinking fund on the terms and for the purposes specified in the instrument creating such fund;

(3) To act as registrar, transfer agent or dividend or coupon paying agent for any corporation;

(4) To make, hold and dispose of investments and establish common trust funds, and account therefor, pursuant to the provisions of chapter forty-four of this code;

(5) To purchase and sell and take charge of and receive the rents, issues and profits of any real estate for other persons or corporations;

(6) To act as trustee or agent in any collateral trust and in order to secure the payment of any obligations of any person, firm, private corporation, public corporation, public body or public agency to receive and hold in trust any items of personal property (including, without limitation, notes, bonds, debentures, obligations and certificates for shares of stock) with the right in case of default to sell and dispose of such personal property and to collect, settle and adjust any obligations for the payment of money, and at any sale of such personal property held by it, to purchase the same for the benefit of all or any of the holders of the obligations, to secure the payment of which such items of personal property were pledged and delivered to the trustee or agent. Any such sale may be made without any proceedings in any court, and at such times and upon such terms as may be specified in the instrument or instruments creating the trust, or, in the absence of any specification of terms, at such time and upon such terms as the trustee shall deem reasonable; and

(7) To do and perform any act or thing requisite or necessary in, or incidental to, the exercise of the general powers herein set forth.
(b) All national banks having their main office in this state which have been, or hereafter may be, authorized under the laws of the United States to act as trustee and in other fiduciary capacities in the state of West Virginia shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

(c) Banks having their main office in another state which lawfully have a branch in this state pursuant to the provisions of federal law or articles eight-d or eight-e of this chapter which have been, or hereafter may be, authorized under the laws of the United States or the laws of the state in which such bank is chartered to act as trustee and in other fiduciary capacities in the state in which their main office is located shall have all the rights, powers, privileges and immunities conferred hereunder, provided they comply with the requirements hereof.

§31A-4-14a. Transfer of fiduciary accounts or relationships between affiliated subsidiary banks of a bank holding company.

(a) Notwithstanding any other provision of this code, and unless the will, deed or other instrument creating a trust or fiduciary account or relationship specifically provides otherwise, any affiliate subsidiary which is empowered with and authorized to exercise trust powers, or otherwise performs fiduciary services for a fee, may, without any order or other action on the part of any court or otherwise, transfer to any other affiliate subsidiary exercising or authorized to exercise trust powers any or all rights, franchises and interests in its fiduciary accounts or relationships including, but not limited to, any or all appointments, designations and nominations and any other rights, franchises and interests, as trustee, executor, administrator, guardian, committee, escrow agent, transfer and paying agent of stocks and bonds and every other fiduciary capacity; and the transferee or receiving affiliate subsidiary shall hold and enjoy all rights of property, franchises and interests in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by the transferor affiliate subsidiary. As to transfers to an affiliate subsidiary pursuant to this section, the receiving affiliate subsidiary shall take, receive, accept, hold, admin-
ister and discharge any grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of, or in the name of, the transferor affiliate subsidiary, whether made, executed or entered before or after such transfer and whether to vest or become effective before or after such transfer, as fully and to the same effect as if the receiving affiliate subsidiary had been named and in such deed, deed of trust, will, agreement, order or other instrument instead of such transferor affiliate subsidiary. All acts taken or performed in its own name or in the name of or on behalf of the transferor affiliate subsidiary by any receiving affiliate subsidiary as trustee, agent, executor, administrator, guardian, depositary, registrar, transfer agent or other fiduciary with respect to fiduciary accounts or relationships transferred pursuant to this section are as good, valid and effective as if made by the transferor affiliate subsidiary.

(b) For purposes of this section, the term "affiliate subsidiary" means any two or more subsidiaries (as defined in section two, article eight-a of this chapter) which are "banks" or "banking institutions" (as those terms are defined in section two, article one of this chapter) and which have a common bank holding company as their parent company. For purposes of this section, the term "bank holding company" shall have the meaning set forth in section one, article eight-a of this chapter.

(c) At least thirty days before any transfer authorized by this section, the transferor affiliate subsidiary shall send a statement of intent to transfer together with the name and address of the transferee or receiving affiliated subsidiary by regular United States mail to the most recent known address of all persons who appear in the records of the transferor affiliate subsidiary as having a vested present interest in the trust, fiduciary account or relationship to be transferred.

(d) This section shall be applicable to both domestic and foreign bank holding company affiliate subsidiaries.

§31A-4-42. Unlawful for persons other than banking institutions to engage in the banking business; penalties.
No person, except banking institutions chartered under the laws of this state, or authorized to conduct a banking business in this state under the laws of the United States of America or those chartered under the laws of another state or the United States of America with branch offices in this state under the provisions of articles eight-d and eight-e of this chapter, shall engage in the business of banking or the trust business in the state of West Virginia, or shall receive or accept deposits of money, or borrow money by receiving and giving credits for deposits, or by issuing certificates of deposits or certificates of indebtedness, or by making and negotiating any writing purporting to be a bond, contract or other obligation, the performance of which requires the holder or other party to make deposits of money with the issuer or receive or accept deposits by means of any other plan, pretext, scheme, shift or device.

Nothing contained in this section shall affect the rights, privileges, objects or purposes delegated to other corporations by the general corporation law or other laws of this state.

Any corporation or individual who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five thousand dollars, and, in addition to such penalty, every corporation so offending shall forfeit its corporate franchise, and every individual so offending shall be subject to a further penalty by confinement in jail for not more than one year.

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.

*Clerk's Note: This section was also amended by H. B. 4624 (Chapter 71), which passed prior to this act.
(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, at a customer bank communication terminal permitted by section twelve-b of this article or at any loan origination 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 branch offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U.S.C. §1828, and does not constitute branch banking; nor shall such activity constitute a violation of section forty-two, article four of this chapter: Provided, That no banking institution may utilize that agency relationship to evade state consumer protection laws, including 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 section two, article eight-c of this chapter.

(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 accepting 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 institution must first obtain written permission from the institution 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 section one, article two, chapter two of this code.

(3) Any banking institution which on the first day of January, one thousand nine hundred eighty-four, was
authorized to operate an off-premises walk-in or drive-in
facility, pursuant 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 necessary, for the continued operation of such
branch bank, to obtain additional approvals, notwithstanding
the provisions of subsection (d) of this section and
subdivision (6), subsection (b), section two, article three of
this chapter.

(b) Except for a bank holding company, it shall be
unlawful for any individual, partnership, society, association,
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 within any county of this state; or

(2) The purchase of the business and assets and as-
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 main office or a branch of a West Virginia
state banking institution may not be relocated without the
approval by order of the commissioner.

(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-
lars 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 requests 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-
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 bank-
(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.

If the branch results from the merger or acquisition of banking institutions, the findings of fact required in subdivisions (1) through (3) of this subsection may be based on the performance and suitability of the previous banking offices.

(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.
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.

ARTICLE 8A. ACQUISITIONS OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-4. Required application.
§31A-8A-5. Standards for approval.
§31A-8A-6. Procedures relating to applications.
§31A-8A-7. Reports; examinations.
§31A-8A-8. Authority to issue rules; cooperative agreements; fees.
§31A-8A-9. Authority to conduct banking business; credit card processing.


For purposes of this article:

(a) "Acquire" means:

(1) For a company to merge or consolidate with a bank holding company;

(2) For a company to assume direct or indirect ownership or control of:

(i) More than twenty-five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

(ii) More than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition; or

(iii) All or substantially all of the assets of a bank holding company or a bank; or

(3) For a company to take any other action that results in the direct or indirect acquisition of control by such
company of a bank holding company or a bank.

(b) "Affiliate" means any company that controls, is controlled by, or is under common control with a bank or another company or otherwise meets the criteria set forth in Section 2(k) of the Bank Holding Company Act, 12 U.S.C. §1841(k).

(c) "Bank" means a corporation or association herefore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, 12 U.S.C. §1841(c).

(d) "Bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company as that term is set forth in Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a), and, unless the context requires otherwise, includes a West Virginia bank holding company, an out-of-state bank holding company and a foreign bank holding company.

(e) "Bank Holding Company Act" means the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq.

(f) "Bank supervisory agency" means any of the following:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

(g) "Board of Banking and Financial Institutions" means the board created pursuant to article three of this chapter and is referred to herein as "board".
(h) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.

(i) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(j) "Company" has the meaning set forth in Section 2(b) of the Bank Holding Company Act, 12 U.S.C. §1841(b), and includes a bank holding company.

(k) "Control" shall be construed consistently with Section 2(a) of the Bank Holding Company Act, 12 U.S.C. §1841(a).

(l) "Deposit" has the meaning set forth in 12 U.S.C. §1813(l) plus all deposits held by credit unions within this state.

(m) "Depository institution" means any institution included for any purpose within the definitions of "insured depository institution" as set forth in 12 U.S.C. §§1813(c)(2) and (3).

(n) "Foreign bank holding company" means a bank holding company that is organized under the laws of a country other than the United States (including any territory or possession thereof).

(o) "Home state regulator" means, with respect to an out-of-state bank holding company, the bank supervisory agency of the state in which such company maintains its principal place of business.

(p) "Out-of-state bank holding company" means:

(1) A bank holding company that is not a West Virginia bank holding company; and

(2) Unless the context requires otherwise, includes a foreign bank holding company.

(q) "Principal place of business" of a bank holding company means the state in which the total deposits of its bank subsidiaries were the greatest on the later of the first
day of July, one thousand nine hundred sixty-six, or the
date on which such company became a bank holding
company.

(r) "State" means any state, territory or other posses-
sion of the United States, including the District of Colum-
bia.

(s) "Subsidiary" has the meaning set forth in Section
2(d) of the Bank Holding Company Act, 12 U.S.C.
§1841(d).

(t) "West Virginia bank" means a bank that is:

(1) Organized under the laws of the state of West Vir-
ginia; or

(2) Organized under federal law and has its main of-

ce in this state.

(u) "West Virginia bank holding company" means a
bank holding company that:

(1) Had its principal place of business in this state on
the first day of July, one thousand nine hundred sixty-six,
or the date on which it became a bank holding company,
whichever is later; and

(2) Is not controlled by a bank holding company
other than a West Virginia bank holding company.

(v) "West Virginia state bank" means a bank organized
under the laws of the state of West Virginia.


This article sets forth the conditions under which a
company may acquire a West Virginia state bank or may
form or acquire a West Virginia bank holding company.
This article is intended not to discriminate against
out-of-state bank holding companies or against foreign
bank holding companies in any manner that would violate
Section 3(d) of the Bank Holding Company Act, 12 U.
S.C. §1842(d), as amended, effective September 29, 1995,
by Section 101 of the Riegle-Neal Interstate Banking and
Branching Efficiency Act of 1994, Public Law No. 103-328.

(a) Except as otherwise expressly permitted by federal law, no company may form a West Virginia bank holding company or acquire a West Virginia state bank or a bank holding company controlling a West Virginia state bank without the prior application and approval upon order of the board.

(b) The prohibition in subsection (a) of this section shall not apply where the acquisition is made:

(1) Solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) In a transaction arranged by the commissioner with the consent of the West Virginia board of banking and financial institutions with another state or federal bank supervisory agency to prevent the insolvency or closing of the acquired bank; or

(3) In a transaction in which a national bank or out-of-state state bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company.

(c) In any transaction involving the acquisition or change in control of a West Virginia bank, West Virginia bank holding company, bank branch located in West Virginia by a bank holding company, the formation of a West Virginia bank holding company or the acquisition of a thrift institution in West Virginia by a bank holding company for which an application to the board for approval is not initially required under subsection (a) or (b) of this section, the party seeking the action shall give written notice to the commissioner at the time the application or notice is filed with the responsible federal bank supervisory agency and at least forty-five days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law. In addition, the parties shall give the commissioner copies of all final federal and state applications filed in connection with the transaction together with a two hundred fifty dollar filing fee.
fee. Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice to object to any proposed transaction, require an application and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing.

(d) To the extent that any acquisition under this section involves the merger of a bank with and into a West Virginia state bank, the merger transaction remains subject to the jurisdiction and approval of the board pursuant to section seven, article seven of this chapter.

(e) An acquisition shall not be permitted under this article or otherwise if upon consummation of the transaction, the resulting bank or bank holding company, including any depository institution(s) affiliated with the applicant, would assume sufficient additional deposits to cause it to control deposits in this state in excess of that allowed by section twelve-a, article two of this chapter: Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing such deposit information filed with state or federal authorities.

§31A-8A-4. Required application.

(a) A company that proposes to make an acquisition under this article shall:

(1) File with the commissioner a copy of the application that such company has filed with the responsible federal bank supervisory agency, together with such additional information as the commissioner may prescribe; and

(2) Pay to the commissioner a four thousand five hundred dollar application fee.
(b) To the extent consistent with the effective discharge of the commissioner's responsibilities, the forms established under this article for application and reporting shall conform to those established by the board of governors of the federal reserve system under the Bank Holding Company Act.

(c) In connection with an application received under this article, the commissioner shall:

1. Require that prior notice of the application be published once in a daily newspaper of general circulation and provide an opportunity for public comment; and
2. Make the application available for public inspection to the extent required or permitted under applicable state law.

(d) If the applicant is an out-of-state bank holding company that is not incorporated under the laws of this state, it shall submit with the application proof that the applicant has complied with applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in the state of West Virginia.

§31A-8A-5. Standards for approval.

(a) In deciding whether to approve an application for a proposed acquisition under this article, the board shall consider whether the acquisition may:

1. Be detrimental to the safety and soundness of the West Virginia state bank or the West Virginia bank holding company to be acquired which controls a West Virginia state bank, or be contrary to the best interests of the customers or shareholders of the bank whose shares are affected by the action, taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned;
2. Result in a substantial reduction of competition in any section of this state, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any section of this state;
(3) Have a significantly adverse effect on the convenience and needs of the community or communities in this state that are served by the West Virginia state bank or the West Virginia bank holding company to be acquired; or

(4) Violate the acquisition deposit limitation set forth in section three of this article.

(b) The board shall not approve an application for, nor shall the commissioner consent to, an acquisition under this article unless the West Virginia bank to be acquired, or all West Virginia bank subsidiaries of the bank holding company to be acquired, have as of the proposed date of acquisition been in existence and in continuous operation for more than two years: Provided, That this limitation shall not apply to acquisitions made on or after the thirty-first day of May, one thousand nine hundred ninety-seven.

(c) The board may approve an application which may lessen competition if the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served.

(d) In deciding whether to approve an application for an acquisition under this article, the board shall consider the applicant’s record of compliance with all applicable state(s) and federal community reinvestment laws.

§31A-8A-6. Procedures relating to applications.

(a) The board shall decide whether to approve an acquisition under this article within one hundred twenty days after receipt of a completed application: Provided, That if the board or commissioner requests additional information from the applicant following receipt of a completed application, the time limit for decision by the board shall be the later of:

(i) The date set forth above in this subsection; or
(ii) Thirty days after the board's or commissioner's receipt, whichever is applicable, of the requested additional information.

(b) The board shall, in accordance with its rules, hold a public hearing in connection with an application and determine any significant issue of law or fact raised with respect to the proposed acquisition relevant and necessary for proper disposition of the application.

(c) If the board holds a full public hearing under the provisions set forth in article five, chapter twenty-nine-a of this code in connection with an application, the time limit specified in subsection (a) of this section shall be extended to the later of thirty days after the conclusion of the public hearing or thirty days after submission of all documents and materials necessary for proper adjudication of the matter, including transcripts.

(d) An application shall be deemed approved if the board takes no action on the application within the time limits specified in this section.

§31A-8A-7. Reports; examinations.

(a) To the extent specified by the commissioner by rule, order or written request, each bank holding company that directly or indirectly controls a West Virginia bank, bank branch in West Virginia or a West Virginia bank holding company shall submit to the commissioner an annual report specifying for each bank and branch (excluding automated teller machines) in this state controlled by the bank holding company:

(i) The location of each such office, including county and, where applicable, municipality;

(ii) The amount of deposits held by each such office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each such office at the end of the preceding calendar year.

The foregoing report shall be based upon each bank's allocation of its deposit base and loan portfolio among its main office and branches. The report shall be filed with
the commissioner on or before the fifteenth day of February of each year on forms prescribed by the commissioner.

(b) A parent bank holding company controlling a bank or bank holding company having, or through a subsidiary having, a place of business in this state shall, on or before the thirty-first day of March of each year, register with the commissioner on forms provided or prescribed by said office, which shall include such information with respect to the financial condition, operation, management and intercompany relationships of the parent bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this article. The information required herein may be supplied by submission of copies of other similar federal or state regulatory filings or forms containing the information, unless otherwise required by order or rule.

(c) The commissioner may enter into cooperative agreements with any other bank supervisory agencies to facilitate the examination of any bank holding company that: (i) Has acquired or has an application pending to acquire a West Virginia bank or West Virginia bank holding company pursuant to this article; or (ii) operates a subsidiary doing business in this state which is subject to the jurisdiction or supervision of the commissioner. The commissioner may accept reports of examinations and other records from such other authorities in lieu of conducting his or her own examination of such bank holding companies or their subsidiaries. The commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over such bank holding companies or subsidiaries, or may take action independently in order to carry out his or her responsibilities under this chapter.

(d) When the commissioner considers it necessary, he or she may require any bank holding company that has acquired a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company to submit such reports to the commissioner as he or she determines
to be necessary or appropriate for the purpose of carrying out his or her responsibilities.

(e) When the commissioner of banking considers it necessary or appropriate, he or she may examine any bank holding company that has acquired or has an application pending to acquire a West Virginia bank, bank branch in West Virginia or West Virginia bank holding company. The cost of an examination in connection with an application, if in excess of the initial fee, shall be assessed against and paid by the bank holding company examined. The commissioner may request the bank holding company to be examined pursuant to this subsection to advance the estimated cost of such examination. The cost of an examination for a bank holding company controlling a West Virginia bank or West Virginia bank holding company regarding compliance with the law of this state or safe and sound banking practices shall be assessed against and paid by the bank holding company examined.

§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

In order to carry out the purposes of this article, the commissioner may:

(a) Adopt rules and issue orders;

(b) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated with or representing one or more bank supervisory agencies;

(c) Accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction over a West Virginia state bank or a bank holding company that controls a West Virginia state bank in lieu of conducting the commissioner's own examination or investigation of such bank holding company or bank;

(d) Enter into contracts with any bank supervisory agency having concurrent jurisdiction over a West Virginia state bank or a bank holding company that controls a West Virginia state bank to engage the services of such agency's examiners at a reasonable rate of compensation,
or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code;

(e) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any West Virginia state bank or any bank holding company that controls a West Virginia state bank: Provided, That the commissioner may take any such action independently if the commissioner determines that such action is necessary to carry out his or her responsibilities under this article or to enforce compliance with the laws of this state: Provided, however, That in the case of an out-of-state bank holding company, the commissioner shall recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters; and

(f) Assess supervisory and examination fees that shall be payable by any bank holding company operating a bank or bank branch in West Virginia in connection with the commissioner's performance of his or her duties under this article. The commissioner shall charge and collect from each bank holding company and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the fifteenth day of February computed upon the total deposits in this state of the bank holding company as of the last business day in December of the previous year as is set out in section eight, article two of this chapter. The payment of such registration fee shall be accompanied by the report prescribed by the commissioner under subsection (a), section seven of this article. Examination fees may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between them and the commissioner.

§31A-8A-9. Authority to conduct banking business; credit card processing.
(a) Except as authorized in this article or articles
eight-d, eight-e or eight-f of this chapter, no banking
institution incorporated under the laws of any other state
or having its principal place of business in any other state
may receive deposits or transact any banking business of
any kind in this state other than the lending of money.

(b) A bank holding company with its principal place
of business in another state or foreign country may estab-
lish electronic data processing facilities and credit card
processing facilities in West Virginia. Such facilities are
those established solely for the purpose of processing
accounts and/or processing transactions relating to the
issuance of credit cards.


(a) The commissioner or board may enforce the pro-
visions of this article by any appropriate action in the
circuit court of Kanawha County or other court having
proper jurisdiction, including an action for civil money
penalties or injunctive relief: Provided, That the commis-
sioner shall promptly give notice to the home state regula-
tor of any enforcement action initiated against an
out-of-state bank holding company and, to the extent
practicable, shall consult and cooperate with the home
state regulator in pursuing and resolving said enforcement
action.

(b) Any violation of any provision of this article shall
constitute a misdemeanor offense, which, upon conviction
thereof, shall be punishable by applicable penalties as
provided in section fifteen, article eight of this chapter.

ARTICLE 8D. INTERSTATE BRANCHING BY BANK Mergers.

§31A-8D-1. Legislative purpose.
§31A-8D-2. Definitions.
§31A-8D-3. Authority of West Virginia state banks to establish interstate
branches by merger.
§31A-8D-4. Interstate merger transactions and branching involving
out-of-state banks permitted.
§31A-8D-5. Notice and filing requirements.
§31A-8D-6. Powers; additional branches.
§31A-8D-7. Examinations; periodic reports; cooperative agreements; assessment of fees.


§31A-8D-10. Notice of subsequent merger.

§31A-8D-11. Applicability to thrift institutions.

§31A-8D-1. Legislative purpose.

It is the express intent of this article to permit interstate branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article.

§31A-8D-2. Definitions.

As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(a) "Bank" has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. §3101 (7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(b) "Bank holding company" has the meaning set forth in 12 U.S.C. §1841(a)(1).

(c) "Bank supervisory agency" means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies.

(d) "Board of Banking and Financial Institutions" means the board created pursuant to the provisions of
article three of this chapter and referred to herein as "board".

(e) "Branch" or "branch bank" has the meaning set forth in subsection (f), section two, article one of this chapter.

(f) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(g) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(h) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located;

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(i) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(j) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(k) "Insured depository institution" has the meaning set forth in 12 U.S.C. §§1813(c)(2) and (3).

(l) "Interstate merger transaction" means:

(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.
(m) "Out-of-state bank" means a bank whose home state is a state other than West Virginia.

(n) "Out-of-state state bank" means a bank chartered under the laws of any state other than West Virginia.

(o) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this article.

(p) "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(q) "West Virginia bank" means a bank whose home state is West Virginia.

(r) "West Virginia state bank" means a bank chartered under the laws of West Virginia.

§31A-8D-3. Authority of West Virginia state banks to establish interstate branches by merger.

Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, and with prior approval upon order of the board, a West Virginia state bank may establish, maintain and operate one or more branches in a state other than West Virginia pursuant to an interstate merger transaction in which the West Virginia state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant West Virginia state bank shall file an application on a form prescribed by the commissioner together with a three thousand dollar application fee. The applicant shall also comply with the applicable provisions of section twelve, article eight of this chapter. If the board finds that: (i) The proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, including that local conditions assure reasonable promise of successful operation of the proposed bank branch; (ii) any new officers and directors of the resulting bank are qualified by character, experience and financial responsibility to direct and manage the resulting bank; (iii) the acquired branch offices of which will pro-
vide suitable physical facilities for their intended business; 
(iv) establishment of the proposed branch bank would not 
result in a substantial reduction of competition in any 
section of this state unless the anticompetitive effects of 
the proposed action are clearly outweighed in the public 
interest by the probable effect of the action in meeting the 
convenience and needs of the community to be served, or 
result in a monopoly, or be in furtherance of any combi-
nation or conspiracy to monopolize, or any attempt to 
monopolize the business of banking in any section of this 
state; (v) the proposed merger is consistent with the conve-
nience and needs of the communities to be served by the 
resulting bank in this state and is otherwise in the public 
interest; and (vi) the new branch is in conformity with, and 
would be permitted under the laws of the state where the 
branch is to be located, it shall approve the interstate 
merger transaction and the operation of branches outside 
of West Virginia by the West Virginia state bank. The 
findings required herein shall supplant any other findings 
of fact otherwise required by subdivisions (1) through (6), 
subsection (j), section twelve, article eight of this chapter. 
Such an interstate merger transaction may be consummat-
ed only after the applicant has received the board's written 
approval by entry of an order granting the application.

§31A-8D-4. Interstate merger transactions and branching 
involving out-of-state banks permitted.

(a) Beginning on the thirty-first day of May, one 
thousand nine hundred ninety-seven, one or more West 
Virginia banks may enter into an interstate merger trans-
action with one or more out-of-state banks under this 
article, and an out-of-state bank resulting from such trans-
action may maintain and operate the branches and offices 
in West Virginia of a West Virginia bank that participated 
in such transaction: Provided, That the conditions and 
filng requirements of this article are met.

(b) A merger transaction shall not be permitted under 
this article if, upon consummation of such transaction, the 
resulting bank (including all insured depository institution 
affiliates of the resulting bank) would assume sufficient 
additional deposits to cause it to control deposits in this
Provided, That the commissioner may by rule adopt a procedure whereby said acquisition deposit limitation as set forth in this code may be waived for good cause shown. The commissioner shall calculate the acquisition deposit limitation based upon the most recently available reports containing such deposit information filed with state or federal authorities.

(c) A merger transaction resulting in the acquisition by an out-of-state bank of a West Virginia state bank, or all or substantially all of the branches of a West Virginia state bank, or resulting in the acquisition by an out-of-state state bank of a West Virginia bank or the change of control over a branch operating in West Virginia, shall not be permitted under this article unless: (i) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in West Virginia, it will comply with all applicable laws of this state, including consumer protection laws; (ii) deposits of the resulting bank in this state are insured in conformity with the provisions of section six, article one of this chapter; and (iii) the resulting bank, if state chartered, meets the capital requirements set forth in section three, article four of this chapter.

§31A-8D-5. Notice and filing requirements.

(a) Any out-of-state state bank that will be the resulting bank pursuant to a merger transaction involving a West Virginia bank, or will be the resulting bank pursuant to a merger transaction affecting the change of control over a branch operating in West Virginia shall notify the commissioner of the proposed merger not later than the date on which it files an application for the merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of two hundred fifty dollars.

(b) Any West Virginia state bank which is a party to an interstate merger transaction shall comply with state law governing shareholder rights and director and officer duties with respect to affecting the merger and with other applicable state and federal laws. In addition, the West
Virginia state bank shall give written notice to the commis-
ioner at least forty-five days before the effective date of a
merger where the resulting bank will be an out-of-state
bank, unless a shorter period of notice is required under
applicable federal law.

(c) Unless preempted by federal law, the commissioner
shall have thirty days from receipt of the written notice
under subsection (a) of this section to object to the pro-
posed transaction and request a hearing before the board
on the basis that the transaction is contrary to applicable
West Virginia law. The failure to object within thirty days
shall be construed as consent by the commissioner, or, in
his or her discretion, the commissioner may, at any time,
consent in writing. The commissioner may also request a
hearing on the basis that the bank supervisory agency of
the home state of the resulting out-of-state bank is without
authority or procedures under its state's law to review the
transaction, or is not under its state's law viewed as the
primary regulator of its chartered banks' out-of-state
branches, in which event the criteria, fees and procedures
set forth in section three of this article shall apply.

(d) Any out-of-state state bank which shall be the
resulting bank in such an interstate or other merger trans-
action shall provide satisfactory evidence to the commis-
ioner of compliance with applicable requirements of West
Virginia law requiring foreign corporations to qualify to
do business in West Virginia.

§31A-8D-6. Powers; additional branches.

(a) An out-of-state state bank which establishes and
maintains one or more branches in West Virginia under
this article may conduct any activities at such branch or
branches that are authorized under the laws of this state
for West Virginia state banks.

(b) A West Virginia state bank may conduct any activ-
ities at any branch outside West Virginia that are expressly
permissible for a bank chartered by the host state where
the branch is located. Prior to commencing any such
activities, the West Virginia state bank shall give the com-
missioner forty-five days advance notice of the intention
to exercise any such powers which are not permitted to West Virginia state banks in their operations in this state under state law. This notice shall be made together with a filing providing a written summary with details of the proposed action or program, along with legal analysis for the authority to conduct the activities and how the exercise of the authority will not impair the safety and soundness of the bank and will be kept separate from its operations within West Virginia. Unless, within thirty days after receipt of the notice and filing, the commissioner objects or requests a hearing on the matter before the board, the exercise of the powers shall be deemed authorized. In the discretion of the commissioner or the board, authorization of such powers may be given in writing at any time.

(c) An out-of-state bank that has established or acquired a branch in West Virginia under this article may establish or acquire additional branches in West Virginia to the same extent that any West Virginia bank may establish or acquire a branch in West Virginia under applicable federal and state law. To the extent that an out-of-state bank has already established or acquired a branch in West Virginia and proposes to create additional branches by merger with a West Virginia bank, the provisions of this article govern the transaction.

§3IA-8D-7. Examinations; periodic reports; cooperative agreements; assessment of fees.

(a) To the extent consistent with subsection (c) of this section, the commissioner may make such examinations of any branch established and maintained in this state pursuant to this article by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The provisions of article two of this chapter shall apply to such examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in West Virginia pursuant to this article. The required reports shall be provided by such bank, or upon request of the commissioner by the bank supervis-
ry agency having primary responsibility for such bank.
Any reporting requirements prescribed by the commissioner under this subsection shall be: (i) Consistent with
the reporting requirements applicable to West Virginia state banks; and (ii) appropriate for the purpose of en-
abling the commissioner to carry out his or her responsibilities under this article. Unless the information is filed
by its bank holding company pursuant to subsection (a), section seven, article eight-a of this chapter, an out-of-state
bank with a branch in West Virginia shall also file the information required by said section within the time stated
in said section.

(c) The commissioner may enter into cooperative, coordinating and information-sharing agreements with
any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervi-
sory agencies with respect to the periodic examination or other supervision of any branch in West Virginia of an
out-of-state state bank, or any branch of a West Virginia state bank in any host state, and the commissioner may
accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own exami-
nations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdic-
tion over a West Virginia state bank or an out-of-state state bank operating a branch in this state pursuant to this article to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervi-
sory agencies having concurrent jurisdiction over any branch in West Virginia of an out-of-state state bank or
any branch of a West Virginia state bank in any host state: Provided, That the commissioner may at any time take
such actions independently if the commissioner deems
such actions to be necessary or appropriate to carry out his or her responsibilities under this article or to ensure compliance with the laws of this state: Provided, however, That, in the case of an out-of-state state bank, the commissioner shall recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.


If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a West Virginia state bank: Provided, That the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.


The commissioner and board may promulgate such rules and issue such orders as they determine to be necessary or appropriate to implement the provisions of this article.

§31A-8D-10. Notice of subsequent merger.
An out-of-state state bank that has established and maintains a branch in this state pursuant to this article, shall give at least forty-five days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any successor statutes thereto. Notice under this section shall not obviate the need the acquiring entity may have to file with the commissioner or board pursuant to section five of this article, or section three, article eight-a of this chapter.

§31A-8D-11. Applicability to thrift institutions.

This article shall apply to interstate mergers involving banks with any savings bank, savings and loan association or other thrift institution maintaining federal deposit insurance where the nonthrift bank survives the merger transaction.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

§31A-8E-1. Legislative purpose.
§31A-8E-2. Definitions.
§31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.
§31A-8E-4. Interstate branching by out-of-state banks through de novo entry or acquisition of branches in West Virginia.
§31A-8E-5. Requirement of notice.
§31A-8E-6. Conditions for approval.
§31A-8E-7. Powers; additional branches.
§31A-8E-8. Examinations; periodic reports; cooperative agreements; assessment of fees.
§31A-8E-10. Rules and orders.
§31A-8E-1. Legislative purpose.

It is the express intent of this article to permit interstate branching under Sections 102 and 103 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article and thereby permit interstate branch banking through de novo entry or by acquisition of branches in transactions not involving a whole bank merger or acquisition.

§31A-8E-2. Definitions.

As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

(a) "Acquisition of a branch" means the acquisition of a branch located in a host state, without either engaging in an "interstate merger transaction" as defined in article eight-d of this chapter or acquiring all or substantially all of the assets of another bank by merger or purchase.

(b) "Bank" has the meaning set forth in 12 U.S.C. §1813(h): Provided, That the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. §3101 (7), except that such term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(c) "Bank holding company" has the meaning set forth in 12 U.S.C. §1841(a)(1).

(d) "Bank supervisory agency" means:

(1) Any agency of another state with primary responsibility for chartering and supervising banks; and

(2) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of gover-
nors of the federal reserve system and any successor to these agencies.

(e) "Board of banking and financial institutions" means the board created pursuant to the provisions of article three of this chapter and referred to herein as "board".

(f) "Branch" has the meaning set forth in subsection (f), section two, article one of this chapter.

(g) "Commissioner" means the West Virginia commissioner of banking then in office and, where appropriate, all of his or her successors and predecessors in office.

(h) "Control" shall be construed consistently with the provisions of 12 U.S.C. §1841(a)(2).

(i) "De novo branch" means a branch of a bank located in a host state which: (i) Is originally established by the bank as a branch; and (ii) does not become a branch of the bank as a result of: (A) The acquisition of another bank or a branch of another bank; or (B) the merger, consolidation or conversion involving any such bank or branch.

(j) "Home state" means:

(1) With respect to a state bank, the state by which the bank is chartered;

(2) With respect to a national bank, the state in which the main office of the bank is located; or

(3) With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. §3103(c).

(k) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(l) "Host state" means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch.
§31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.

(a) Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, and with the prior approval upon order of the board, any West Virginia state bank may establish and maintain a de novo branch or acquire a branch in a state other than West Virginia.

(b) A West Virginia state bank desiring to establish and maintain a branch in another state under this section shall file an application on a form prescribed by the commissioner and pay the branch application fee set forth in subsection (h), section twelve, article eight of this chapter. If the board finds that: (i) The applicant has the financial and managerial resources sufficient to undertake the proposed expansion without adversely affecting its safety or soundness, including that local conditions assure reasonable promise of successful operation of the proposed bank branch; (ii) any new officers and directors resulting from the creation of the branch bank are qualified by character, experience and financial responsibility to direct and manage the expanded bank; (iii) the proposed branch offices will provide suitable physical facilities for their intended business; (iv) establishment of the proposed branch bank would not result in a substantial reduction of competition in any section of this state unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in
meeting the convenience and needs of the community to be served, or result in a monopoly, or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any section of this state; (v) the establishment of the proposed branch is consistent with the convenience and needs of the communities to be served by the branch and is otherwise in the public interest; and (vi) the new branch is in conformity with, and would be permitted under the laws of the state where the branch is to be located, it may approve the application. In acting on the application, the board shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish the branch when it has received the board’s written approval by entry of an order granting the application. The findings required herein shall supplant any other findings of fact otherwise required by subdivisions (1) through (6), subsection (j), section twelve, article eight of this chapter.

§31A-8E-4. Interstate branching by out-of-state banks through de novo entry or acquisition of branches in West Virginia.

Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, an out-of-state bank that does not operate a branch in this state and that meets the requirements of this article may establish and maintain a de novo branch in this state, and may also establish and maintain a branch in this state through the acquisition of a branch: Provided, That branches may be so established in West Virginia by out-of-state banks only if the laws of the home state of the out-of-state bank permit West Virginia state banks to establish and maintain de novo branches or to acquire and maintain branches, as applicable, under substantially the same terms and conditions as set forth in this article. If the law of the other state restricts such entry by a West Virginia state bank to that other state, then the board may similarly limit the authority granted by this article for banks having their main office located in that state.

§31A-8E-5. Requirement of notice.
An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in this state pursuant to this article shall provide written notice of the proposed transaction to the commissioner not later than the date on which the bank applies to the responsible federal or state bank supervisory agency for approval to establish the branch. The filing of such notice shall be accompanied by the filing fee of two hundred fifty dollars.

§31A-8E-6. Conditions for approval.

No branch of an out-of-state bank may be established in this state under this article, unless:

(a) The out-of-state bank confirms in writing to the commissioner that as long as it maintains a branch in West Virginia, it will comply with all applicable laws of this state, including consumer protection laws and any acquisition deposit limitations, as well as maintenance of deposit insurance and capital requirements in the same manner as required for West Virginia state banks.

(b) The applicant provides satisfactory evidence to the commissioner of compliance with the applicable requirements of West Virginia law requiring foreign corporations to qualify to do business in West Virginia.

(c) The commissioner, acting within thirty days after receiving notice of an application under section five of this article, or within seven days after a decision if a hearing is held, certifies to the responsible federal bank supervisory agency that the requirements of this article have been met. Unless preempted by federal law, the commissioner shall have thirty days from receipt of the written notice by the out-of-state bank to object to the proposed transaction and request a hearing before the board on the basis that the transaction is contrary to applicable West Virginia law. The failure to object within thirty days shall be construed as consent by the commissioner, or, in his or her discretion, the commissioner may, at any time, consent in writing. The commissioner may also request a hearing on the basis that the bank supervisory agency of the home state of the out-of-state bank is without authority or procedures under its state's law to review the transaction, or is
not under its state’s law viewed as the primary regulator of its chartered banks’ out-of-state branches, in which event the criteria, fees and procedures set forth in section three of this article shall apply.

§31A-8E-7. Powers; additional branches.

(a) An out-of-state state bank which establishes and maintains one or more branches in West Virginia under this article may conduct any activities at such branch or branches that are authorized under the laws of this state for West Virginia state banks.

(b) A West Virginia state bank may conduct any activity at a branch outside West Virginia that is expressly permissible for a bank chartered by the host state where the branch is located. Prior to commencing any such activity, the West Virginia state bank shall give the commissioner forty-five days advance notice of the intention to exercise any such powers which are not permitted to West Virginia state banks in their operations in this state under state law. This notice shall be made together with a filing providing a written summary with details of the proposed action or program, along with legal analysis for the authority to conduct the activities and how the exercise of the authority will not impair the safety and soundness of the bank and will be kept separate from its operations within West Virginia. Unless, within thirty days after receipt of the notice and filing, the commissioner objects or requests a hearing on the matter before the board, the exercise of the powers shall be deemed authorized. In the discretion of the commissioner or the board, authorization of such powers may be given in writing at any time.

(c) An out-of-state bank that has established or acquired a branch in West Virginia under this article may establish or acquire additional branches in West Virginia to the same extent that any West Virginia bank may establish or acquire a branch in West Virginia under applicable federal and state law. To the extent that an out-of-state bank has already established or acquired a branch in West Virginia and proposes to create additional branches by establishing another de novo branch, or by acquisition of
35 another bank's branch in West Virginia, the provisions of
36 this article govern the transaction.

§31A-8E-8. Examinations; periodic reports; cooperative
agreements; assessment of fees.

(a) To the extent consistent with subsection (c) of this
section, the commissioner may make such examinations of
any branch established and maintained in this state pursu-
ant to this article by an out-of-state state bank as the com-
missioner may deem necessary to determine whether the
branch is being operated in compliance with the laws of
this state and in accordance with safe and sound banking
practices. The provisions of article two of this chapter
shall apply to such examinations.

(b) The commissioner may require periodic reports
regarding any out-of-state bank that has established and
maintained a branch in this state pursuant to this article.
The required reports shall be provided by the bank, or
upon request of the commissioner by the bank superviso-
ry agency having primary responsibility for such bank.
Any reporting requirements prescribed by the commis-
ioner under this subsection shall be: (i) Consistent with
the reporting requirements applicable to West Virginia
state banks; and (ii) appropriate for the purpose of en-
abling the commissioner to carry out his or her responsi-
bilities under this article. Unless the information is filed
by its bank holding company pursuant to subsection (a),
section seven, article eight-a of this chapter, an out-of-state
bank with a branch in West Virginia shall also file the
information required by said section within the time stated
in said section.

(c) The commissioner may enter into cooperative,
coordinating and information-sharing agreements with
any other bank supervisory agencies or any organization
affiliated with or representing one or more bank supervi-
sory agencies with respect to the periodic examination or
other supervision of any branch in West Virginia of an
out-of-state state bank, or any branch of a West Virginia
state bank in any host state, and the commissioner may
accept such parties' reports of examination and reports of
investigation in lieu of conducting his or her own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a West Virginia state bank or an out-of-state state bank maintaining a branch in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in West Virginia by an out-of-state state bank or any branch established and maintained by a West Virginia state bank in any host state: Provided, That the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this article or to ensure compliance with the laws of this state: Provided, however, That, in the case of an out-of-state state bank, the commissioner shall recognize the authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.

If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, or that such branch is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a West Virginia state bank: Provided, That the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

§31A-8E-10. Rules and orders.

The commissioner and board may promulgate such rules and issue such orders as they determine to be necessary or appropriate in order to implement the provisions of this article.


An out-of-state state bank that has established and maintains a branch in this state pursuant to this article, shall give at least forty-five days' prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation or other transaction that would cause a change of control with respect to such out-of-state bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §§1841 et seq., or any successor statutes thereto.

§31A-8E-12. Applicability to thrift institutions.

This article shall apply to interstate acquisition of branches of any savings bank, savings and loan association or other thrift institution maintaining federal deposit in-
surance by a bank where the nonthrift bank survives the transaction and maintains the branches.

ARTICLE 8F. THE WEST VIRGINIA INTERNATIONAL BANKING ACT.

§31A-8F-1. Legislative purpose.
§31A-8F-2. Definitions.
§31A-8F-4. Operations in this state of banks owned or controlled by foreign banks and other foreign persons.
§31A-8F-5. Branches by domestic subsidiary banks owned by a foreign bank.
§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.
§31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.
§31A-8F-8. Application to establish and maintain an agency office; contents.
§31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.
§31A-8F-10. No concurrent maintenance of federal branches or agencies.
§31A-8F-12. Representative office of foreign banks; necessity of licensure.
§31A-8F-13. Representative office; application.
§31A-8F-14. Representative office; factors for approval of application.
§31A-8F-15. Representative office; permissible activities.
§31A-8F-16. Posting of license.
§31A-8F-17. Licenses not transferable.
§31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.
§31A-8F-20. Relocation of office; written notice necessary.
§31A-8F-21. Examination; payment of fees.
§31A-8F-22. Supervision and enforcement.
§31A-8F-23. Reports.
§31A-8F-26. Separate assets.
§31A-8F-27. Disclosure of lack of federal deposit insurance.
§31A-8F-29. Voluntary closure of agency or representative office; application.

§31A-8F-1. Legislative purpose.
(a) This article shall be known and may be cited as the "West Virginia International Banking Act".

(b) This article is intended generally to provide for state regulation of the participation by foreign banks in certain financial markets of this state.

(c) This article is intended:

(1) To authorize banking activities and operations in West Virginia by foreign banks having separately capitalized and domestically chartered banks in the United States through branches of such domestic banks in this state;

(2) To authorize agency and representative offices in this state of foreign banks; and

(3) To ensure that the banking laws and rules of this state otherwise apply to foreign banks, and to West Virginia and out-of-state banks and bank holding companies that are owned or controlled by foreign banks, in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

§31A-8F-2. Definitions.

For purposes of this article:

(a) The term "agency office" or "direct agency office" means an office of a foreign bank that is exercising the powers set forth and authorized by sections seven and eleven of this article.

(b) The term "bank supervisory agency" means:

(1) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system and any successor to these agencies;

(2) Any agency of another state with primary responsibility for chartering and supervising banks; and

(3) Any agency of a country (including any colonies, dependencies, possessions or political subdivisions there-
The term "federal agency" means an agency of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.

The term "foreign bank" means any company organized under the laws of a foreign country that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usually in connection with the business of banking in the countries where such foreign institutions are organized or operating.

The term "federal branch" means a branch of a foreign bank that is licensed by the comptroller of the currency pursuant to the provisions of Section 4 of the federal International Banking Act, 12 U.S.C. §3102.


The term "foreign person" means a natural or juridical person who is a citizen or national of one or more countries (including any colonies, dependencies or possessions of such countries) other than the United States.


The term "interstate branch" means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after the twenty-ninth day of September, one thousand nine hundred ninety-four, pursuant to the authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of
the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

(j) The term "limited branch" means a branch of a foreign bank that accepts only such deposits as would be permissible for a corporation organized under Section 25a of the federal Reserve Act in accordance with the provisions of Section 5 (a)(7) of the federal International Banking Act, 12 U.S.C. §3103(a)(7).

(k) The term "out-of-state bank" means a bank organized under the laws of the United States having its main office in a state other than West Virginia or organized under the laws of a state other than West Virginia, which is authorized to engage in the business of banking including the taking of insured retail deposits. For purposes of this definition "state" shall include the District of Columbia and any territory of the United States, Puerto Rico, Guam, the Virgin Islands and American Samoa.

(l) The term "representative office" shall have the same meaning as is set forth in Section 1(b)(15) of the federal International Banking Act, 12 U.S.C. §3101(15), and the term "West Virginia representative office" shall mean any such office that is located in this state.


(a) The commissioner is authorized and empowered to issue such rules and orders to perform his or her duties and functions under this article and to administer and carry out the provisions and purposes of this article and to prevent evasions thereof.

(b) It shall be required that all banks, including foreign banks, operating offices in this state use or make available on request the English language version of any customer contract or agreement when the customer is a United States corporation, citizen or resident. Upon demand of the commissioner of banking any bank or financial affiliate in West Virginia under the jurisdiction of the commissioner of banking shall provide at their own expense the translation of any document or record it holds
into the English language. Unless otherwise provided for
West Virginia licensed domestic banking institutions, all
foreign banking offices licensed under the provisions of
this article shall abide by U.S. general accounting prin-
ciples in the maintenance of their financial records.

§31A-8F-4. Operations in this state of banks owned or con­
trolled by foreign banks and other foreign persons.

(a) The laws and rules of this state governing the ac­
quisition or ownership of controlling or other interests in
West Virginia banks or in out-of-state banks seeking to
establish and maintain one or more interstate branches in
this state shall not generally prohibit ownership of such
institutions by, or otherwise discriminate against, foreign
banks or other foreign persons.

(b) Notwithstanding the provisions of subsection (a) of
this section, the commissioner is authorized to apply any
standards or requirements of the laws and rules of this
state governing the ownership, control or operations of
West Virginia banks, including residency requirements for
directors of West Virginia state-chartered banks, even if
applicable specifically or exclusively to foreign banks or
other foreign persons, to the extent such standards or
requirements are determined by the commissioner to be
either:

(1) Substantially equivalent to, or consistent with, the
standards or requirements governing the ownership, con­
trol or operations of state or national banks in West Vir­
ginia by foreign banks or other foreign persons under
applicable United States federal laws or regulations; or

(2) Otherwise consistent with the laws and policies of
the United States, including its international agreements
governing financial services.

§31A-8F-5. Branches by domestic subsidiary banks owned by
a foreign bank.

An out-of-state bank which is a domestic subsidiary
of, or controlled by a foreign bank, may establish branch­
es in this state through merger, de novo entry or the acqui­
§31A-8F-6. Authority of affiliated bank or branch to act as agent for a foreign bank.

(a) A West Virginia bank or branch of any out-of-state bank owned or controlled by a foreign bank may at its main or branch offices in West Virginia receive deposits, renew time deposits, close loans, service loans and receive payments on loans and other obligations as an agent for any depositary institution affiliate of such foreign bank, including branch, agency and other offices of that same foreign bank located in other states, generally in accordance with the same terms, conditions, procedures and requirements that are applicable under the laws and rules of this state to such agency activities that may be conducted by West Virginia state banks.

(b) Notwithstanding any other provision of the laws or rules of this state no foreign controlled bank, branch or agency office shall be authorized by this article to accept retail deposits on behalf of a foreign bank or branch which is not authorized to take federally insured deposits, nor to act as agent on behalf of any affiliated foreign bank other than its controlling foreign bank or one which has been licensed to transact business in this state pursuant to this article.

(c) A bank or branch of any bank owned or controlled by a foreign bank may not at its main or branch offices in West Virginia:

(1) Conduct any activity as an agent under this section which such office is prohibited from conducting as a principal under any applicable federal or state law, including, but not limited to, the acceptance of impermissible deposits; or

(2) As a principal, have an agent conduct any activity under this section which such office is prohibited from conducting under any applicable federal or state law, in-
including, but not limited to, the acceptance of impermissible deposits.

(d) Any agency relationship permitted under this section involving a depository institution affiliate or other affiliate of such foreign bank shall in any event be on terms that are consistent with safe and sound banking practices and all applicable rules and orders of the commissioner.

§31A-8F-7. Direct agency offices of foreign banks; necessity of licensure.

(a) A foreign bank may directly transact certain banking business in this state as permitted under this article upon obtaining a license to establish and maintain a West Virginia state agency office.

(b) Subsection (a) of this section does not prohibit:

(1) Any foreign bank which establishes and maintains a federal agency or federal branch in this state from transacting at such federal agency or federal branch such banking business as it may be authorized to transact under applicable federal laws and rules; or

(2) Any foreign bank which does not maintain a branch or agency office in West Virginia from making or enforcing loans in this state including loans secured by liens on real or personal property located in this state, as long as such lending is not conducted from an office in this state, and the loan, if a consumer loan, is governed by West Virginia law.

§31A-8F-8. Application to establish and maintain an agency office; contents.

A foreign bank seeking to establish and maintain a West Virginia state agency office shall submit an application to the West Virginia board of banking and financial institutions. Such application shall contain:

(a) The same information as required by the board of governors of the federal reserve system for an application to establish an agency in the United States;
(b) An instrument irrevocably appointing the West Virginia secretary of state or his or her successors in office to be such foreign bank's agent, representative and attorney to receive service of any lawful judicial and administrative process; and

(c) Such additional information as the board or commissioner may require.

§31A-8F-9. Application to establish and maintain an agency office; manner of filing and determination.

(a) A foreign bank making an application under this article for a license to establish and maintain a West Virginia state agency shall deliver to the West Virginia board of banking and financial institutions:

(1) At least two duplicate originals of the foreign bank's application on the form prescribed by the board;

(2) At least two copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of such foreign bank's organization together with translation of such documents if they are in a language other than English, which translation is attested to for accuracy before a notary public or other verifying official;

(3) A letter or resolution from its governing body or chief executive officer guaranteeing that the foreign bank's entire capital and surplus is and shall be available for all liabilities and obligations of its agency office doing business in this state;

(4) An application fee of one thousand dollars payable by check or money order to the West Virginia board of banking and financial institutions;

(5) A document granting power of attorney in favor of the person designated to be in charge of the business and affairs of the proposed office; and

(6) Proof of fidelity bond coverage for active officers and employees, and the oath of the managing officer of the West Virginia office(s) to obey state banking laws as
would be required were the institution a bank incorporated in this state.

(b) The board may approve issuance of a license to a foreign bank to establish and maintain a West Virginia state agency office if it finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia state agency office are adequate and are of good reputation and character;

(3) That the convenience and needs of persons to be served by the proposed West Virginia state agency office will be promoted;

(4) That the foreign bank has committed to allocate and assign to its agency office within this state a capital equivalency deposit of not less than the greater of five hundred thousand dollars or five percent of the total liabilities of the agency, excluding accrued expenses, intercompany liabilities and any amounts due the foreign bank: Provided, That the board may in its discretion require a higher deposit amount or rate to ensure the agency office's financial safety or soundness;

(5) That the proposed office is not being formed for other than legitimate motives and purposes;

(6) That the bank supervisory agency of the foreign bank's country of organization does not object to the application;

(7) That the applicant has submitted a legal opinion indicating that the proposed agency office will be permissible under both the laws of the foreign bank's country of organization and the United States; and

(8) That the foreign bank has complied with this section and satisfies such other standards as the board may establish by rule.
(c) If the board after investigation, notice and hearing determines to issue a license to a foreign bank to establish and maintain a West Virginia state agency office, it shall issue a written order granting the application and authorize the commissioner of banking on its behalf upon payment of all fees required under this article to:

(1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;

(2) File in the office of the commissioner of banking one of the duplicate originals of the application and copies of the charter or articles of incorporation and amendments thereto; and

(3) Issue a license to establish and maintain a West Virginia state agency office to such foreign bank.

(d) Each license issued to a foreign bank to establish and maintain a West Virginia state agency shall state fully the name of the foreign bank to which such license is issued, the place of business for the licensee’s office and all such other information as the commissioner may require.

(e) The board may, by rule or order, prescribe abbreviated application procedures and standards applicable to applications by foreign banks that have already established an initial West Virginia state agency office, subsequently to establish additional intrastate West Virginia state agency offices, as the case may be.

(f) Each licensee must register with the West Virginia secretary of state as a foreign corporation qualified to do business in this state and provide proof of such registration to the commissioner of banking prior to conducting business under its license.

§31A-8F-10. No concurrent maintenance of federal branches or agencies.
(a) No foreign bank which is licensed under this article to establish and maintain a West Virginia state agency shall concurrently maintain a federal branch or federal agency office in this state.

(b) No foreign bank which maintains a federal branch or federal agency office in this state shall concurrently be licensed under this article to maintain a West Virginia state agency office.


(a) A West Virginia state agency office of a foreign bank established under this article may engage in the business of making loans and guaranteeing obligations for the financing of the international movement of goods and services and for all operational needs including working capital and short-term operating needs and for the acquisition of fixed assets. In addition, such agency may also:

(1) Borrow funds from banks and other financial institutions;

(2) Buy and sell foreign exchange;

(3) Receive checks, bills, drafts, acceptances, notes, bonds, coupons and other securities for collection abroad and collect such instruments in the United States for customers abroad;

(4) Hold securities for safekeeping for, or buy and sell securities upon the order and for the risk of, customers abroad;

(5) Act as paying agent for securities issued by foreign governments or other organizations organized under foreign law and not qualified under the laws of the United States, or any state or the District of Columbia to do business in the United States;

(6) In order to prevent the loss on debts previously contracted, an agency may acquire shares in a corporation: Provided, That the shares are disposed of as soon as practicable, but in no event later than two years from the date of acquisition;
(7) Issue letters of credit and create acceptances; and

(8) Conduct activities which are necessary and incidental to the above-enumerated power: Provided, That the commissioner maintains the authority to determine whether the power or activity sought or undertaken is necessary and incidental.

(b) No West Virginia state agency office may take deposits on behalf of any affiliated bank or other depository institution.

(c) Any loan limitation or restriction based on the capital stock and surplus of a bank shall be deemed to refer, as applied to a West Virginia state agency, to the United States dollar equivalent of the capital and stock surplus of the parent foreign bank, and not to the capital equivalency deposit in section twenty-eight of this article.

§31A-8F-12. Representative office of foreign banks; necessity of licensure.

(a) No foreign bank shall establish or maintain a West Virginia state representative office unless the foreign bank is licensed by the commissioner to maintain a West Virginia representative office.

(b) Nothing in subsection (a) of this section shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in this state from establishing or maintaining one or more West Virginia representative offices.

§31A-8F-13. Representative office; application.

(a) The application for a license to establish and maintain a West Virginia representative office shall be in writing under oath and shall be in such form and contain such information as the commissioner may require by regulation or order. The application shall be accompanied by a fee of two hundred fifty dollars.

(b) Each application to establish and maintain a West Virginia representative office shall include an instrument irrevocably appointing the West Virginia secretary of state or his or her successors in office to be such foreign bank's
agent, representative and attorney to receive service of any lawful judicial and administrative process.

§31A-8F-14. Representative office; factors for approval of application.

(a) A foreign bank making an application for a license to establish and maintain a West Virginia representative office shall deliver to the commissioner two (or more as the commissioner may require in writing) duplicate originals of the foreign bank's application.

(b) The commissioner may issue a license to a foreign bank to establish and maintain a West Virginia representative office if he or she finds:

(1) That the foreign bank is of sound financial standing;

(2) That the management of the foreign bank and the proposed management of the West Virginia representative office are adequate and are of good reputation and character;

(3) That the proposed office is not being formed for other than legitimate motives and purposes; and

(4) That the convenience and needs of persons to be served by the proposed West Virginia representative office will be promoted.

(c) If the commissioner determines to issue a license to a foreign bank to establish and maintain a West Virginia representative office, he or she shall, when all fees have been paid as required under this article:

(1) Endorse on each duplicate original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one such duplicate original so endorsed;

(2) File in his or her office one of such duplicate originals of the application; and

(3) Issue a license to establish and maintain a West Virginia representative office to such foreign bank.
(d) Each license issued to a foreign bank to establish and maintain a West Virginia representative office shall state fully the name of the foreign bank to which such license is issued, the address or addresses at which the West Virginia representative office is to be located and all other information as the commissioner may require.

§31A-8F-15. Representative office; permissible activities.

(a) A foreign bank which is licensed to establish and maintain a West Virginia representative office may, subject to such rules as the commissioner may prescribe, engage in the following activities:

1. Solicitation for loans and in connection therewith the assembling of credit information, making of property inspections and appraisals, securing of title information, preparing of applications for loans including making recommendations with respect to action thereon, soliciting of investors to purchase loans from the foreign bank and searching for such investors to contract with the foreign bank for servicing of such loans;

2. The solicitation of new business;

3. The conduct of research; and

4. Back office administrative functions as may be more specifically defined in rules issued by the commissioner.

(b) Any other activity which the foreign bank seeks to conduct at such office shall be subject to the prior written approval of the commissioner upon finding that the character of such other business is such that the granting of the authority would not facilitate evasions of this article or chapter or the rules or orders lawfully made hereunder.

§31A-8F-16. Posting of license.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall post its license in a conspicuous place at the office.

§31A-8F-17. Licenses not transferable.
No license issued by the commissioner in accordance with this article shall be transferable or assignable.

§31A-8F-18. Amended license to establish and maintain a direct agency office or representative office.

(a) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office must secure an amended license if it changes its corporate name, changes corporate control, changes the duration of its corporate existence or desires to pursue in this state other or additional purposes than those set forth in its prior application under this article for a license, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a) of this section, the manner of its execution, the filing of duplicate originals thereof with the commissioner, the issuance of an amended license and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a West Virginia state agency or West Virginia representative office, except as may be provided by the commissioner in the case of a change of control which results merely from a corporate reorganization.


A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner a written notice and request an amended license under section eighteen of this article no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or the bank merges with another foreign or domestic bank.

§31A-8F-20. Relocation of office; written notice necessary.

No foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall relocate any office unless the foreign bank provides prior written notice to the commis-
§31A-8F-21. Examination; payment of fees.

(a) A West Virginia state agency or West Virginia representative office shall be subject to examination by the commissioner at intervals and in a manner as he or she shall establish by rule or order. Unless otherwise provided by rule or order the examinations may be conducted annually.

(b) In conducting an examination pursuant to this section, the commissioner shall:

(1) Have full access to the offices, books, accounts and records of each office located in this state as well as all of the books, accounts and records maintained in this state of any office not located in this state of such foreign bank; and

(2) Have authority to require the attendance of and to examine under oath all persons whose testimony may be required relative to the activities of such office.

(c) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be assessed a reasonable fee for the expenses incurred by the commissioner in making an examination of the office.

(d) A foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall be subject to all reasonable fees and expenses in such amounts as the commissioner may require by rule or order.

(e) The commissioner may require a West Virginia state agency or West Virginia representative office to be audited by an independent accountant licensed to practice by the state of West Virginia. The accountant must have knowledge and experience with respect to auditing books of international corporations. The audit must be based on generally accepted accounting standards without limitation.
on its scope. The cost of the audits must be paid by the foreign bank.

§31A-8F-22. Supervision and enforcement.

(a) The commissioner shall have all of the powers granted to him or her by the laws of this state to the extent appropriate to enable him or her to supervise each West Virginia state agency or West Virginia representative office.

(b) If, after notice and a hearing, the commissioner finds that any person has violated any provision of this article or any regulation or order issued under this article, he or she may, in addition to any other remedy or action available to the commissioner under the laws of this state, seek a civil penalty in an amount in accordance with this chapter and rules thereunder.

(c) In order to carry out the purposes under this article, the commissioner may:

   (1) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;

   (2) With respect to periodic examination or other supervision of a foreign bank that maintains a West Virginia state agency or West Virginia representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;

   (3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank: Provided, that the commissioner may at any time take any actions independently if the commissioner determines that the actions are necessary or appropriate to carry out his or her responsibilities under this article and to ensure compliance with the laws of this state;
(4) Enter into contracts with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a West Virginia state agency or West Virginia representative office, to engage the services of such agency's examiners at a reasonable rate of compensation or provide the services of the commissioner's examiners at a reasonable rate of compensation: Provided, That any such contract shall be deemed excluded from the requirements of article three, chapter five-a of this code; and

(5) Assess supervisory and examination fees that shall be payable by foreign banks maintaining a West Virginia state agency or West Virginia representative office in connection with the commissioner's performance of his or her duties under this article and in accordance with rules adopted by the commissioner.

(d) Supervisory or examination fees assessed by the commissioner in accordance with the provisions of this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the commissioner and such agencies or organizations.

§31A-8F-23. Reports.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall file with the commissioner such reports as and when the commissioner may require.

(b) Each report filed with the commissioner under this article or any rule or order issued under this article shall be in such form and contain such information, shall be signed in such manner, and shall be verified in such manner, as the commissioner may reasonably require.


All reports of examinations and other records relating to the financial condition of any foreign bank, branch, agency office or representative office shall be confidential and subject to subpoena in the same manner as those ex-
aminations and records of other financial institutions pursuant to section four, article two of this chapter.


Each foreign bank which is licensed to establish and maintain a West Virginia state agency or West Virginia representative office shall maintain or make available at any such office appropriate books, accounts and records in the English language reflecting: (i) All transactions effected by or on behalf of such office; and (ii) all actions taken in this state by employees of the foreign banking corporation located in this state to effect transactions on behalf of any office of the foreign bank located outside this state.

§31A-8F-26. Separate assets.

(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency in this state shall keep the assets of its business in this state separate and apart from the assets of its business outside this state as though the West Virginia office was conducted as a separate and distinct entity.

(b) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its West Virginia state agency shall be entitled to absolute preference and priority over the creditors of the foreign bank's offices located outside this state with respect to the assets of the foreign bank in this state.

§31A-8F-27. Disclosure of lack of federal deposit insurance.

Each foreign bank which is licensed to establish and maintain a West Virginia state agency shall clearly and conspicuously disclose that moneys held by or credit balances in such office are not insured by the federal deposit insurance corporation.


(a) Each foreign bank which is licensed to establish and maintain a West Virginia state agency office shall keep on deposit with an unaffiliated West Virginia bank(s) as the foreign bank may designate and the commissioner
may approve, the capital equivalency deposit required by section nine of this article in the form of interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district, or instrumentality of this state or guaranteed by this state, or dollar deposits or obligations of the international bank for reconstruction and development, or obligations issued by the interAmerican development bank, or obligations of the Asian development bank, or obligations issued by the African development bank, or other assets as the commissioner may by rule or order permit, based upon principal amount or market value, whichever is lower, in the case of the above-described securities, and subject to the limitations as he or she shall prescribe.

(b) The West Virginia bank designated to hold the assets in deposit shall issue a written receipt addressed and delivered to the commissioner reciting that the deposit is being held for the sole benefit of the United States domiciled creditors of the foreign bank's West Virginia state agency office and that the deposit is subject to the commissioner's order without offset for the payment of the creditors. For the purpose of this subsection, the term "creditor" shall not include any other offices, branches, subsidiaries or affiliates of the foreign bank.

(c) So long as it shall continue business in the ordinary course, such foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare such securities.

(d) The commissioner in his or her discretion may require additional capital equivalency deposits if: (i) The financial condition of either the office(s) or the foreign bank warrants such additional protection; or (ii) other circumstances exist which may impair the office(s) or foreign bank's safety or soundness.

(e) West Virginia state agency offices must maintain a capital equivalency ledger showing the amount of net liabilities requiring capital equivalency coverage for each
45 business day. On the last day of business of each month
46 the average daily balance shall be computed, and based
47 upon this computation, an increase in the deposit, if neces-
48 sary to maintain the deposit at the level required by this
49 section, shall be made. Any such required increase must
50 be made within the first two business days of the following
51 month. For foreign banks having more than one agency
52 office in this state, the deposit required shall be deter-
53 mined on an aggregate basis for all such agency offices in
54 this state. If securities comprise all or part of the deposit,
55 and interest rate changes or a decline in credit quality of
56 the security results in the depreciation of its market value,
57 the security shall be replaced with an instrument that qual-
58 ifies under subsection (a) of this section or other appropri-
59 ate action shall be taken to ensure the capital equivalency
60 deposit is adequately maintained.

§31A-8F-29. Voluntary closure of agency or representative
office; application.

1 (a) No foreign bank which is licensed to establish and
2 maintain a West Virginia state agency or West Virginia
3 representative office shall close the office without filing an
4 application with, and obtaining the prior approval of, the
5 commissioner. The failure of an agency or representative
6 office to remain open to the public for business at least six
7 hours per day four days per week (excluding legal holi-
8 days) shall, unless previous approval for lesser hours has
9 been granted by the commissioner, constitute a closing, and
10 may result in a suspension or revocation of license.

11 (b) If the commissioner finds, with respect to an appli-
12 cation by a foreign bank under this section, that the clos-
13 ing of the office will not be substantially detrimental to the
14 public convenience and advantage, the commissioner shall
15 approve the application. If the commissioner finds other-
16 wise, he or she shall deny the application.

17 (c) Whenever an application by a foreign bank under
18 this section has been approved and all conditions prece-
19 dent to the closing have been fulfilled, such foreign bank
20 may close the office and shall promptly thereafter surren-
21 der to the commissioner the license which authorized the
22 foreign bank to maintain the office.
CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

Article
5. General Provisions as to Fiduciaries.
10. Guardians and Wards Generally.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

(a) Notwithstanding any other provision of law, no individual who is a nonresident of this state, nor any banking institution which does not maintain a main office or branch office within this state nor any corporation having its principal office or place of business outside this state, may be appointed or act as executor, administrator, curator, testamentary guardian, guardian or conservator in this state, except that:

(1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is lawfully acting as executor in said decedent's state of domicile and submits letters of probate authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(2) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such nonresident individual is acting as administrator in said decedent's state of domicile and submits letters of administration authenticated by the probate authorities of the decedent's state of domicile to the clerk of the county commission of any county of this state wherein ancillary administration is sought;

(3) An individual who is a nonresident of this state may be appointed and act as testamentary guardian of a nonresident infant and thereby exercise dominion and
control over such nonresident infant’s assets situate in this state upon submission of authenticated documentation that such nonresident testamentary guardian was so appointed at the place of domicile of the nonresident infant. Such authenticated documentation shall be submitted to the clerk of the county commission of any county of this state wherein assets belonging to such nonresident infant are situate;

(4) An individual who is a nonresident of this state and who is named executor by a resident decedent may qualify and act as executor in this state;

(5) An individual who is a nonresident of this state may be appointed and act as administrator of a resident decedent’s assets in this state if appointed in accordance with the provisions of section four, article one of this chapter;

(6) An individual who is a nonresident of this state may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article ten of this chapter; and

(7) An individual who is a nonresident of this state may be appointed as guardian or conservator of a resident incompetent: Provided, That such appointment is made in accordance with the provisions of article two, chapter forty-four-a of this code and if such nonresident individual may otherwise qualify as guardian or conservator.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendent or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety
thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will directs that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6), subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian, guardian or conservator pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator, testamentary guardian, guardian or conservator or with respect to such estate, and such qualification shall be a manifestation of said nonresident individual's agreement that any notice or process, which is served in the manner hereinafter provided in this subsection, shall be of the same legal force and validity as though such nonresident was personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process together with a fee of five dollars with the clerk of such county commission. The fee of five dollars shall be deposited with the county treasurer. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his office and such service shall constitute personal service upon such nonresident: Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk or to such nonresident at the
address last furnished by him to said clerk and either: (1) Such nonresident’s return receipt signed by him; or (2) the registered or certified mail bearing thereon the stamp of the post office department showing that delivery therefore was refused by such nonresident is appended to the original notice or process filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him less than thirty days before the return date thereof. The clerk of such county commission shall keep a record in his office of all such notices and processes and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as bar to service by publication where proper or the service of notice or process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant or incompetent may not be removed from this state until the inventory or appraisement of that resident decedent’s, infant’s, or incompetent’s assets have been filed and any new or additional bond required to satisfy the penalty specified in subsection (b) of this section has been furnished. The liability of a nonresident executor, administrator, testamentary guardian, guardian or conservator and of any such surety shall be joint and several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against such nonresident.

(e) Any such nonresident who removes from this state assets administered in and situate in this state without complying with the provisions of this section, the provisions of article eleven of this chapter or any other requirement pertaining to fiduciaries generally, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or, in the discretion of the court, by both such fine and imprisonment.
(f) If a nonresident appointed pursuant to subsection (a) of this section fails or refuses to file an accounting required by this chapter, and the failure continues for two months after the due date, he may, upon notice and hearing, be removed or subjected to any other appropriate order by the county commission, and if his failure or refusal to account continues for six months, he shall be removed by the county commission.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-7. Management of ward’s estate; maintenance, education and custody; duration of guardianship; settlement.

Every guardian who is appointed as aforesaid, and gives bond when it is required, shall have the possession, care and management of his ward’s estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education; and shall have also, except as otherwise provided in this article, the custody of his ward. Unless the guardian shall die, be removed or resign his trust (and the court before which he qualified may allow him to resign), he shall continue in office until his ward shall attain the age of eighteen years notwithstanding the ward may marry before that time, or, in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to the person or persons entitled thereto. But the father or mother of any minor child or children shall be entitled to the custody of the person of such child or children, and to the care of his or their education. If living together, the father and mother shall be the joint guardians of the person of their minor child or children, with equal powers, rights and duties in respect to the custody, control, services, earnings and care of the education of such minor child or children; and neither the father nor the mother shall have any right paramount to that of the other in respect to such custody, control, services or earnings and care of the education of such minor child or children. If the father and mother be living apart, the court to which application is made from the appointment of a guardian, or before which any such matter comes in question, shall appoint, as guardian of the
person of the minor child or children of such father and
mother, that parent who is, in the court’s opinion, best
suited for the trust, considering the welfare and best inter-
ests of such minor child or children. No corporation or
trust company shall be guardian of any minor child or
children be entitled to the custody, control, services, earn-
ings and care of the education of such minor child or
children, and when any corporation or trust company is
guardian of the estate of any minor child or children and
neither of the parents of such child or children is living, or
is a suitable person to act as guardian of the person of
such child or children, then the court shall appoint a
guardian of the person of such child or children who shall
be entitled to the custody, control, services, earnings and
care of the education of such minor child or children.
Any corporation or trust company appointed as guardian
of the estate of any minor child or children shall, unless
for such minor child or children a nonresident of this state
may be appointed guardian, be a corporation organized
under the laws of this state and doing business in this state,
or an authorized banking institution, defined as one au-
thorized to exercise trust and fiduciary powers within this
state under section fourteen, article four, chapter
thirty-one-a of this code.

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND
CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-11. Guardian or conservator who resides out of state
to designate resident agent.

A guardian or conservator who is or who later be-
comes a nonresident of this state shall file with the clerk of
the circuit court in the county in which the proceeding is
pending or where he or she was appointed guardian/con-
server a designation of an agent residing in this state to
accept service of process. Such filing shall be made
promptly following the change of residence. No bank
authorized to execute trust powers or engage in trust busi-
ness in this state shall be considered to be a nonresident of
this state for purposes of this section regardless of the
location of the main office of the bank.
CHAPTER 73

(Com. Sub. for S. B. 366—By Senators Manchin, Helmick, Blatnik, Chafin, Craigo, Dittmar, Sharpe, Wagner, Wiedebusch, Wooton, Kimble, Scott and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

Act to repeal article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eight, article two of said chapter; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact section two, article seven of said chapter; to amend and reenact section twelve-a, article eight of said chapter; to amend and reenact sections one hundred two and one hundred three, article one, chapter forty-six-a of said code; to amend and reenact sections one hundred four and one hundred eleven, article three of said chapter; to amend and reenact sections one hundred one, one hundred two, one hundred three, one hundred four, one hundred five, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve and one hundred thirteen, article four of said chapter; to further amend said article by adding thereto a new section, designated section one hundred ten-a; to amend and reenact sections one hundred one and one hundred three, article five of said chapter; to amend and reenact sections one hundred three and one hundred fifteen, article seven of said chapter; to amend and reenact section one hundred one, article eight of said chapter; and to amend and reenact section five-d, article six, chapter forty-seven of said code, all relating to the supervision and regulation of banking institutions; eliminating separate licensing requirements for supervised lenders and industrial loan companies; creating a license requirement for regulated consumer lenders; defining and redefining terms; making certain technical revisions consistent with new terminology; removing obsolete and conflicting language; establishing the annual assessment for regulated consumer lenders; establishing limitations on finance charges; requiring the rebate of portion of unearned prepaid finance charges; requiring the registration and licensing of consumer lending offices other than mortgage loan companies operating in West
Virginia; setting forth licensure requirements for regulated con­sumer lenders and establishing a fee therefor; when license may be revoked, suspended or forfeited; licensee to maintain records and file annual report with commissioner; providing for the examination by the commissioner of loans, business and records of every licensee at least every eighteen months; limiting author­ized finance charges for regulated consumer lenders; setting forth restrictions on security interests; permissible conduct other than making loans; prohibiting certain conduct; substantial bene­fit required when refinancing at higher rate; exceptions; provid­ing for the continuation of and for the combination of certain licenses; setting forth civil and criminal liability; establishing civil and criminal penalties; providing for the division of administra­tive powers to enforce consumer credit and protection laws; notifi­cation to state tax commissioner; establishing operative date of legislative enactment; authorizing certain deductions upon rebate of unearned finance charges; and clarifying definition of "loan or credit investigation fees".

Be it enacted by the Legislature of West Virginia:

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

Chapter
31A. Banks and Banking.
46A. West Virginia Consumer Credit and Protection Act.
47. Regulation of Trade.

CHAPTER 31A. BANKS AND BANKING.

Article
2. Division of Banking.
4. Banking Institutions and Services Generally.
7. Regulation of Failing Financial Institutions.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful
   Acts; Penalties.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-5. Lending and investing powers and authority of fiduciaries, finan-
   cial institutions, governmental entities and other persons.
§31A-1-6. Deposit insurance required for banking and other depository
   institutions.

§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

1 The state of West Virginia, counties, municipalities,
2 political subdivisions and agencies and instrumentalities of
3 any of them, fiduciaries, building and loan associations,
4 regulated consumer lenders, insurance companies, frater-
5 nal benefit societies and other persons lawfully engaging
6 in the lending and investing business and services shall
7 have and are hereby authorized and empowered to exer-
8 cise the same lawful rights and privileges as are banking
9 institutions under provisions of sections twenty-seven,
10 twenty-eight and twenty-nine, article four of this chapter.

§31A-1-6. Deposit insurance required for banking and other
   depository institutions.
All credit unions established pursuant to article ten, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter shall qualify for and obtain federal deposit insurance, or shall obtain insurance as approved by the commissioner of banking in an amount equal to that provided by the federal deposit insurance corporation for eligible institutions.

Each such institution which fails to obtain deposit insurance as required herein by the first day of July, one thousand nine hundred seventy-eight, shall be prohibited from conducting any business as a lending institution until such insurance is obtained, except that the commissioner may grant continuances for compliance with this section for any institution showing good cause for such a continuance.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

§31A-2-8. Commissioner's assessments and examination fund; assessments, costs and expenses of examinations; collection.

*§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution, licensed pawnbroker or a federally insured depository institution authorized and qualified to do business in this state. The purchase of consumer paper does not constitute the making of consumer loans for the pur-

*Clerk's Note: This section was also amended by S. B. 280 (Chapter 72) and S. B. 326 (Chapter 70), which passed prior to this act.
poses of this subsection, unless the purchase is made by a business affiliated with the credit provider pursuant to a standing arrangement.

(c) Application for such license or certificate shall be upon such forms and contain such information as the commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the commissioner of banking shall examine the information, documents and statements submitted and, if he finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has complied in all respects with the provisions of this chapter and other applicable laws, he shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the commissioner of banking shall examine the information, documents and statements submitted, and, if he finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and the original or copy thereof displayed in all the places of business of such banking or other financial institution located in this state.

(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign corporation applying
57 for a license or certificate to engage in the business of a
58 financial institution in this state, other than an out-of-state
59 banking institution, shall file with the commissioner of
60 banking a copy of the bylaws under which it operates,
61 together with a cite to the statutes of the jurisdiction where
62 it is organized which pertain to its organization and pow-
63 ers and the conduct of its business. The commissioner
64 shall examine the information, documents and statements
65 submitted by such foreign corporation and if he finds that
66 they provide practical, safe, just and equitable rules and
67 methods for the management of the business of the corpo-
68 ration, that it has adequate resources for the proposed
69 business and it has complied in all respects with the provi-
70 sions of this chapter and other applicable laws, and that the
71 public convenience and advantage will be promoted by
72 the issuance of a license or certificate thereto, he shall
73 issue to such corporation a certificate or license permitting
74 it to engage in business in this state, which certificate or
75 license shall authorize such corporation to engage in the
76 business of the type of financial institution specified there-
77 in, until the thirtieth day of the following June. Thereafter
78 a new certificate or license shall be secured annually by
79 any such foreign corporation, except where annual renew-
80 al of the license or certificate is specifically not required
81 for the type of institution involved. The fee for the origi-
82 nal and each additional license or certificate issued to a
83 foreign corporation shall be one hundred dollars, unless
84 otherwise provided by statute. A verified statement of the
85 financial condition of every such foreign corporation shall
86 be filed with the commissioner before the issuance of each
87 annual certificate or license. Such certificate or license
88 shall be preserved and the original or copy thereof dis-
89 played in the West Virginia place of business of such cor-
90 poration.

(f) Unless the institution is a federally insured depos-
92 itory institution or it is otherwise provided for by statute, a
93 new certificate or license shall be secured annually by all
94 domestic state financial institutions, and the fee for the
95 original and each additional license or certificate shall be
96 one hundred dollars.
(g) No amendment of the charter or bylaws of any domestic or foreign corporation, other than an out-of-state banking institution, engaging in business in this state as a financial institution shall become effective until the proposed change shall have been submitted to and approved by the commissioner of banking; but, if the commissioner does not disapprove such proposed change within twenty days after it is received by him, it shall be deemed to have been approved.

(h) Unless specifically provided for by this chapter, nothing contained in this code shall authorize any person to engage in the banking business in this state except corporations chartered to conduct a banking business under the laws of West Virginia and which hold a license or certificate to do so issued under this section or associations authorized to conduct a banking business in West Virginia under the laws of the United States and having their principal place of business in this state.

§31A-2-8. Commissioner’s assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the "Commissioner's Assessment and Examination Fund" which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the division of banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the division of banking, the amount of the excess shall be transferred to the general revenue fund of the state. The Legislature may appropriate money to start the special revenue account.
(b) The commissioner of banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the state treasury for the division of banking assessments as follows:

1. For each state banking institution, a semiannual assessment payable on the first day of January and the first day of July, each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of the preceding thirtieth day of June and the thirty-first day of December, respectively, as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not</th>
<th>This</th>
<th>Of Excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over Million</td>
<td>Over Million</td>
<td>Amount</td>
<td>Plus Over Million</td>
</tr>
<tr>
<td>$0</td>
<td>$2</td>
<td>$0</td>
<td>0.001645020</td>
</tr>
<tr>
<td>2</td>
<td>20</td>
<td>3,290</td>
<td>0.000205628</td>
</tr>
<tr>
<td>20</td>
<td>100</td>
<td>6,991</td>
<td>0.000164502</td>
</tr>
<tr>
<td>100</td>
<td>200</td>
<td>20,151</td>
<td>0.000106926</td>
</tr>
<tr>
<td>200</td>
<td>1,000</td>
<td>30,844</td>
<td>0.000090476</td>
</tr>
<tr>
<td>1,000</td>
<td>2,000</td>
<td>103,225</td>
<td>0.000074026</td>
</tr>
<tr>
<td>2,000</td>
<td>6,000</td>
<td>177,251</td>
<td>0.000065801</td>
</tr>
<tr>
<td>6,000</td>
<td>20,000</td>
<td>440,454</td>
<td>0.000055988</td>
</tr>
<tr>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
<td>0.000052670</td>
</tr>
</tbody>
</table>

2. For each regulated consumer lender an annual assessment payable on the first day of July, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

<table>
<thead>
<tr>
<th>Total Outstanding Balances</th>
<th>But Not</th>
<th>This</th>
<th>Of Excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>Over</td>
<td>Amount</td>
<td>Plus</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
If a regulated consumer lender's records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section six, article ten, chapter thirty-one of this code as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>Over</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus</th>
<th>Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0</td>
<td>$100,000</td>
<td>100</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>500,000</td>
<td>1,000,000</td>
<td>500</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>500</td>
<td>.000400</td>
<td>1,000,000</td>
<td></td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,100</td>
<td>.000200</td>
<td>5,000,000</td>
<td></td>
</tr>
<tr>
<td>10,000,000</td>
<td>-</td>
<td>3,100</td>
<td>.000100</td>
<td>10,000,000</td>
<td></td>
</tr>
</tbody>
</table>

(4) For each bank holding company, an annual assessment as provided for in section five, article eight-a of this chapter. The annual assessment shall not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the
commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

(f) The commissioner of banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-22. Reserves required of banking institutions; reports; penalties.

Each state banking institution shall at all times maintain on hand as a reserve in lawful money of the United States of America an amount equal to at least seven percent of the aggregate of all of its deposits which are sub-
5 subject to withdrawal on demand and three percent of its time
deposits. Whenever the commissioner of banking shall
determine that the maintenance of sound banking practic-
eses or the prevention of injurious credit expansion or con-
traction makes such action advisable, he may by rule from
time to time change such requirements as to reserves
against demand or time deposits, or both, but the reserves
so prescribed shall in no event be less than those specified
in this section nor more than twice those specified. When-
ever such reserve shall fall below that required, the institu-
tion shall not thereafter make any new loan or investment
until the required reserve shall be restored. For the pur-
pose of computing such reserve, all deposits requiring
notice of thirty days or more for withdrawal and time
certificates of deposit and Christmas savings shall be
deemed time deposits, and all checking accounts, certified
checks, cashier's checks, demand certificates of deposit
and balances due other banks shall be deemed demand
deposits. But in lieu of lawful money on hand, four fifths
of such reserve may consist of balances payable on de-
mand from any national or state bank doing business in
this state or solvent banking institutions in other states.
The reserve balances required herein shall be computed
on the basis of average daily net deposit balances and
average daily currency and coin during biweekly periods.
The required reserve balance of each bank shall be com-
p ted at the close of business each day based upon its net
deposit balances and currency and coin at the opening of
business on the same day. The biweekly period shall end
at the close of business on days to be fixed by the com-
missioner in his promulgated rules. When, however, the
reserve computation period ends with a nonbusiness day,
or two or more consecutive nonbusiness days, such non-
business day or days may, at the option of the banking
institution, and whether or not it had a deficiency in re-
serve balances in such computation period, be included in
the next biweekly computation period.

The commissioner shall, by rule and regulation, re-
quire regular reports from such banking institutions,
which reports shall be submitted at such times and contain
such information as will enable the commissioner to ade-
quately supervise the maintenance of reserves under this section. Penalties for any deficiencies in the required reserves of any banking institution shall be assessed monthly by the commissioner on the basis of average daily deficiencies during each of the computation periods ending in the preceding calendar month. Such penalties shall be assessed at a rate of two percent per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the state of West Virginia and credited to the general fund.

Compliance on the part of any banking institution with the reserve requirements of the federal reserve act, as amended prior to the thirty-first day of January, one thousand nine hundred eighty-one, shall be considered full compliance with the provisions of this section. No such bank may be required to carry or maintain a reserve other than such as required under terms of the federal reserve act, as amended prior to the thirty-first day of January, one thousand nine hundred eighty-one.

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-2. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of banking of West Virginia and any authorized deputy or employee thereof;

(b) "Federal law" means all the provisions of Title XII of the United States Code and all rules and regulations promulgated pursuant thereto;

(c) "Financial institution" means any bank, building and loan association, industrial bank, regulated consumer lender, credit union and any other person, firm or corporation doing business under the jurisdiction and supervision of the commissioner of banking of West Virginia;
(d) A financial institution is "about to be insolvent" when it would be unable to meet the demands of its depositors or to make adequate provision for the timely payment of its depositors if it were immediately closed for the purpose of liquidation;

(e) A financial institution is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency; and

(f) "Balance sheet insolvency" exists when the assets of a financial institution are less than its liabilities, exclusive of capital. For the purposes of ascertaining balance sheet insolvency, assets shall be valued at their book value, unless the commissioner of banking determines that the assets are insufficient to meet liabilities within a reasonable time making probable the liquidation of assets; and if any such determination is made, the assets shall be valued at fair market value.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12a. Banking from mobile units prohibited; prohibition not to include messenger services; limitation of messenger services.

It is illegal for any banking institution, building and loan association, or regulated consumer lender to conduct its business in a facility that is a mobile unit not permanently attached to the real estate upon which it is located, except that such mobile units may be used as temporary banking quarters pending construction of a permanent bank building on the same or adjacent property thereto if a charter for said bank has previously been approved. This section shall not be construed or interpreted to prohibit a financial institution from providing messenger services to its customers by which items are received by mail, armored car service or other courier or delivery service for subsequent deposit: Provided, That all such messenger services are confined to the territorial boundaries of the county in which the principal office of such
16 financial institution is located or within twenty-five miles
17 of the principal office of such financial institution.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.

Article
1. Short Title, Definitions and General Provisions.
4. Regulated Consumer Lenders.
5. Civil Liability and Criminal Penalties.
7. Administration.
8. Operative Date and Provisions for Transition.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PRO­
VISIONS.


§46A-1-103. Effect of chapter on powers of persons making consumer credit
sales and consumer loans, and others; consumer protection
generally.


1 In addition to definitions appearing in subsequent
2 articles, in this chapter:
3 (1) "Actuarial method" means the method, defined by
4 rules adopted by the commissioner, of allocating pay­
5 ments made on a debt between principal or amount fi­
6 nanced and loan finance charge or sales finance charge
7 pursuant to which a payment is applied first to the accu­
8 mulated loan finance charge or sales finance charge and
9 the balance is applied to the unpaid principal or unpaid
10 amount financed.
11 (2) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance. A "consumer credit
15 agreement" is an agreement where credit is granted.
16 (3) "Agricultural purpose" means a purpose related to
17 the production, harvest, exhibition, marketing, transporta­
18 tion, processing or manufacture of agricultural products

*Clerk's Note: This section was also amended by H. B. 4371 (Chapter
160), which passed prior to this act.
by a natural person who cultivates, plants, propagates or
nurtures the agricultural products. "Agricultural products"
includes agricultural, horticultural, viticultural and dairy
products, livestock, wildlife, poultry, bees, forest products,
fish and shellfish, and any products thereof, including
processed and manufactured products, and any and all
products raised or produced on farms and any processed
or manufactured products thereof.

(4) "Amount financed" means the total of the follow-
ing items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in
land, less the amount of any down payment whether made
in cash or in property traded in;

(b) The amount actually paid or to be paid by the
seller pursuant to an agreement with the buyer to dis-
charge a security interest in or a lien on property traded
in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or docu-
mentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller
for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for
which a sales finance charge or loan finance charge is
made is the sum of the amount unpaid each day during
that cycle divided by the number of days in that cycle.
The amount unpaid on a day is determined by adding to
the balance, if any, unpaid as of the beginning of that day
all purchases and other debits and deducting all payments
and other credits made or received as of that day.

(6) The "cash price" of goods, services or an interest in
land means the price at which the goods, services or inter-
est in land are offered for sale by the seller to cash buyers
in the ordinary course of business, and may include: (a)
Applicable sales, use, privilege, and excise and documenta-
ry stamp taxes; (b) the cash price of accessories or related
services such as delivery, installation, servicing, repairs, alterations and improvements; and (c) amounts actually paid or to be paid by the seller for registration, certificate of title or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Official fees and fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(8) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

(9) "Commercial facsimile transmission" means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.

(10) "Commissioner" means the commissioner of banking of West Virginia.

(11) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease.
(13) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;

(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed forty-five thousand dollars or the sale is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;

(ii) In which the total of payments under the lease, excluding payments for options to renew or buy, do not exceed forty-five thousand dollars or in which the lease is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code; and

(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.
(15) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed forty-five thousand dollars or the debt is secured by an interest in land or a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(16) "Cosigner" means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer's obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit obligation.

(17) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.
(19) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) "Home solicitation sale" means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the federal Truth in Lending Act (being Title I of the federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for, in whole or in part, by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

(23) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor
the privilege of using a credit card, letter of credit or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(c) The creation of debt pursuant to a lender credit card or similar arrangement; and

(d) The forbearance of debt arising from a loan.

(26) (a) "Loan finance charge" means the sum of: (i) All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of
default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(28) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) of this subdivision which would otherwise be payable.

(29) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in: (a) Two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made; (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made; or (c) two or more periodic payments with respect to a debt
arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "payable in installments".

(31) "Person" or "party" includes a natural person or an individual, and an organization.

(32) "Person related to" with respect to an individual means: (a) The spouse of the individual; (b) a brother, brother-in-law, sister or sister-in-law of the individual; (c) an ancestor or lineal descendant of the individual or his spouse; and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means: (a) A person directly or indirectly controlling, controlled by or under common control with the organization; (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; (c) the spouse of a person related to the organization; and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(33) "Precomputed loan". A loan, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance; or

(B) The loan is expressed in terms of the principal amount; the loan installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the loan or at its final payment as a result of the actual installment payment dates.

(34) "Precomputed sale". A sale, refinancing or consolidation is "precomputed" if:
(A) The debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance; or

(B) The debt is expressed in terms of the principal amount; the debt installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the debt or at its final payment as a result of the actual installment payment dates.

(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in paragraph (a) of this subdivision; and

(ii) Additional charges permitted by this chapter.

(37) "Regulated consumer lender" means a person authorized to make or take assignments of regulated consumer loans.

(38) "Regulated consumer loan" means a consumer loan, including a loan made pursuant to a revolving loan account, in which the rate of the loan finance charge exceeds eighteen percent per year as determined according to the actuarial method, except where the loan qualifies for federal law preemption from state interest rate limitations, including federal law bank parity provisions, or where the lender is specifically permitted by state law other than article four of this chapter to make the loan at that rate
without a requirement the lender hold a regulated consumer lender license.

(39) "Revolving charge account" means an agreement between a seller and a buyer by which: (a) The buyer may purchase goods or services on credit or a seller credit card; (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account; (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time; and (d) there is the privilege of paying the balances in installments.

(40) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which: (a) The lender may permit the consumer to obtain loans from time to time; (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account; (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time; and (d) there is the privilege of paying the balances in installments.

(41) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(42) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(43) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.
(44) "Sales finance charge" means the sum of: (a) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(45) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(46) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(47) "Services" includes: (a) Work, labor and other personal services; (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and (c) insurance.
"Supervised financial organization" means any organization, corporation or person, other than an insurance company or other organization primarily engaged in an insurance business, which is required under state law to register or obtain a license from the commissioner of banking before conducting business in this state; or which is authorized under federal law to make consumer loans without a license from the state commissioner of banking, provided such loans are subject to supervision and examination by an official or agency of the United States.

§46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.

(1) This chapter prescribes maximum charges for all creditors, except lessors and those excluded, making consumer credit sales and consumer loans, and sales and loans made subject to the provisions of this chapter by agreement, and except as otherwise provided by this chapter displaces any existing limitations and provisions regulating maximum interest and charges, minimum charges, additional charges, delinquency charges, deferral charges, allocation of charges and methods of computing rebates upon prepayment, refinancing or consolidation with respect to consumer credit sales and consumer loans, and the debtors' remedies and penalties provided by this chapter displace all existing provisions relating to remedies, penalties and forfeitures for usury and usurious contracts as to transactions covered by this chapter.

(2) Except as provided in subsection (1) of this section or elsewhere in this chapter, this chapter does not displace powers or limitation on powers which supervised financial organizations are authorized to exercise under the laws of the United States or other laws of this state in effect after the operative date of this chapter.

(3) This chapter also prescribes in various articles protective measures for consumers in transactions not necessarily involving consumer credit.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.
§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

1. (1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account: (a) A bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of sections five, five-a or five-b, article six, chapter forty-seven of this code, or that allowed under section sixteen, article ten, chapter thirty-one-a of this code; (b) a regulated consumer lender may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by section one hundred seven, article four, chapter forty-six-a of this code or by the provisions of sections five, five-a or five-b, article six, chapter forty-seven of this code; (c) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code; and (d) any other lender may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code.

2. (2) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section.

3. (3) If the loan is precomputed:
(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

(4) Notwithstanding subsection (1) of this section, the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

(1) When a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except as
provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78").

(2) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than one dollar need be made.

(3) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise, except where the loan is a purchase money loan secured by a first lien mortgage on residential property, or is made by a federally-insured depository institution, the creditor shall rebate to the consumer that portion of the unearned prepaid finance charges attributable to loan or credit investigations fees, origination fees or points in the manner specified in subsection (c), section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than one dollar need be made: Provided, however, That if the loan was made in furtherance of aiding or abetting a person to whom the loan is assigned, evade this rebate, then the rebate required herein shall apply.

(4) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same
rebate as if the payment had been made on the date judgment is entered and such judgment shall bear interest until paid at the rate of ten percent per annum.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.
§46A-4-102. License to make regulated consumer loans.
§46A-4-103. Revocation, suspension or forfeiture of license.
§46A-4-104. Records; annual reports.
§46A-4-105. Examinations; assessments and investigations.
§46A-4-107. Loan finance charge for regulated consumer lenders.
§46A-4-108. Use of multiple loan agreements.
§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.

§46A-4-110. Conduct of business other than making loans.
§46A-4-110a. Prohibited conduct.
§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.
§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.
§46A-4-113. Continuation of licensing.

§46A-4-101. Authority to make loans.

1 Unless a person has first obtained a license from the commissioner authorizing him to make regulated consumer loans, he shall not engage in the business of:

4 (1) Making regulated consumer loans; or

5 (2) Taking assignments of and undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner, and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant, and the find-
(2) No license shall be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state, or to one licensed under the provisions of the West Virginia secondary mortgage loan act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. No license will be granted to any office located outside this state: Provided, That the limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least ten thousand dollars in capital and has, for each specified location of operation assets of at least two thousand dollars.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if: (a) The commissioner has notified the applicant in writing that his application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.
(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license, for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

§46A-4-103. Revocation, suspension or forfeiture of license.

(1) The commissioner may issue to a person licensed to make regulated consumer loans an order to show cause why his license should not be revoked or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall revoke or suspend the license if he finds that:
(a) The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(b) The licensee has failed to remit their required annual assessment, or to maintain their status as a business in good standing with the office of the secretary of state, notwithstanding notification in writing by the commissioner sent by certified mail to the licensee's last known address providing for thirty days to rectify such failure;

(c) The licensee has forfeited their license by failing to remain open for regulated consumer lending business in conformity with the rules or order of the commissioner; or

(d) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) No revocation or suspension of a license under this article is lawful unless prior to institution of proceedings by the commissioner notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the commissioner finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, he may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

(4) Nothing in this section limits the authority of the commissioner to take action against a regulated consumer lender pursuant to chapter thirty-one-a of this code.

(5) Whenever the commissioner revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he shall mail by registered or certified mail or deliver to the licensee a copy of the order and the findings supporting the order.
46 (6) Any person holding a license to make regulated consumer loans may relinquish the license by notifying the commissioner in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

47 (7) No revocation, suspension, forfeiture or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

48 (8) The commissioner may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

2 (2) On or before the fifteenth day of February each year, every licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to all regulated consumer loans made by him. The commissioner shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.
§46A-4-105. Examinations; assessments and investigations.

1 (1) The commissioner shall examine at least every eighteen months the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the attorney general or the commissioner may at any time investigate the loans, business and records of any regulated consumer lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

2 (2) If the lender’s records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

3 (3) For the purposes of this section, the commissioner may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4 (4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the commissioner may apply to any circuit court of this state for an order compelling compliance.

5 (5) The commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable on the
first day of July, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight, article two, chapter thirty-one-a of this code.

§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of two thousand dollars or less, which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed thirty-one percent per year on the unpaid balance of the principal amount.

(3) On a loan of greater than two thousand dollars or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed twenty-seven percent per year on the unpaid balance of the principal amount: Provided, That the loan finance charge on any loan greater than ten thousand dollars may not exceed eighteen percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than two thousand dollars, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points or investigation fee. In any loan secured by real estate, such charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within twenty-four months thereof, unless these earlier charges have been rebated by payment
or credit to the consumer under the actuarial method, or
the total of the earlier and proposed charges does not
exceed five percent of the amount financed. Charges
permitted under this subsection shall be included in the
calculation of the loan finance charge. The financing of
such charges shall be permissible and shall not constitute
charging interest on interest. In a revolving home equity
loan, the amount of the credit line extended shall for pur-
poses of this subsection constitute the amount financed.
Other than herein provided, no points, origination fee,
investigation fee or other similar prepaid finance charges
attributable to the lender or its affiliates may be levied.
Except as provided for by section one hundred nine, arti-
cle three of this chapter, no additional charges may be
made; nor may any charge permitted by this section be
assessed unless the loan is made. To the extent that this
section overrides the preemption on limiting points and
other such charges on first lien residential mortgages con-
tained in Section 501 of the United States Depository
Institutions Deregulation and Monetary Control Act of
1980, the state law limitations contained in this section
shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the
assumption that all scheduled payments will be made when
due; and

(b) The effect of prepayment, refinancing or consoli-
dation is governed by the provisions on rebate upon pre-
payment, refinancing or consolidation contained in sec-
tion one hundred eleven, article three of this chapter.

(5) For the purposes of this section, the term of a loan
commences on the date the loan is made. Differences in
the lengths of months are disregarded and a day may be
counted as one thirtieth of a month. Subject to classifica-
tions and differentiations the licensee may reasonably
establish, a part of a month in excess of fifteen days may
be treated as a full month if periods of fifteen days or less
are disregarded and if that procedure is not consistently
used to obtain a greater yield than would otherwise be
permitted.

(6) With respect to a revolving loan account:
(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle. For the purpose of this subdivision a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days thereafter.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to thirty.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan of one thousand two hundred dollars or less contract for and receive interest at a rate of up to thirty-one percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: Provided, That no other finance charges are imposed on the loan.
(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive and enforce the loan finance charge and other charges, including late fees, provided in said contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

§46A-4-108. Use of multiple loan agreements.

A regulated consumer lender may not use multiple loan agreements with intent to obtain a higher loan finance charge than would otherwise be permitted by the provisions of this article. A regulated consumer lender uses multiple loan agreements if, with intent to obtain a higher loan finance charge than would otherwise be permitted, he allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the regulated consumer lender for a regulated consumer loan under this article.

The excess amount of the loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties.

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy.
1 (1) No consumer loan of two thousand dollars or less
2 may be secured by an interest in land, other than a pur-
3 chase money loan for that land, unless the lender is li-
4 censed in this state as a regulated consumer lender or as a
5 secondary mortgage lender, or is a federally insured de-
6 pository institution permitted to conduct lending in West
7 Virginia. A security interest taken in violation of this sub-
8 section is void.

9 (2) Notwithstanding the provisions of section one
10 hundred sixteen, article two of this chapter, no regulated
11 consumer lender shall take any assignment of or order for
12 payment of any earnings to secure any loan made by any
13 regulated consumer lender under this article. An assign-
14 ment or order taken in violation of this subsection is void.
15 This subsection does not prohibit a court from ordering a
16 garnishment to affect recovery of moneys owed by a bor-
17 rower to a lender as part of a judgment in favor of said
18 lender.

19 (3) Other than for a purchase money lien, no regulat-
20 ed consumer lender may take a security interest in house-
21 hold goods in the possession and use of the borrower.
22 Where federal law permits a security interest in certain
23 nonpurchase items deemed not to be household goods, the
24 security agreement creating such security interest must be
25 in writing, signed in person by the borrower, and if the
26 borrower is married, signed in person by both husband
27 and wife: Provided, That the signature of both husband
28 and wife shall not be required when they have been living
29 separate and apart for a period of at least five months
30 prior to the making of such security agreement. A securi-
31 ty interest taken in violation of this subsection is void.

32 (4) A regulated consumer lender may not renegotiate
33 the original loan, or any part thereof, or make a new con-
34 tract covering the original loan, or any part thereof, with
35 any borrower, who has received a discharge in bankruptcy
36 of the original loan or any balance due thereon at the time
37 of said discharge from any court of the United States of
38 America exercising jurisdiction in insolvency and bank-
39 ruptcy matters, unless said regulated consumer lender shall
40 pay to and deliver to the borrower the full amount of the
§46A-4-110. Conduct of business other than making loans.

(1) No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is sufficiently related to that of a financial institution and is such that the granting of such authority would not facilitate evasions of this article or of the rules lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter, or from making loans authorized under the provisions of the West Virginia secondary mortgage loan act as set forth in article seventeen, chapter thirty-one of this code, or from engaging in any business previously approved by the commissioner prior to the first day of September, one thousand nine hundred ninety-six.

(2) A licensee may purchase, hold and convey real property as follows:

(a) As shall be necessary for the convenient transaction of its business;

(b) As is mortgaged to it in good faith by way of security for loans made by or money due to such regulated consumer lender;

(c) As is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(d) As is acquired by the sale on execution or judgment or decree of any court in its favor.

(3) A licensee shall not purchase, hold or convey any real property in any other case or for any other purpose whatsoever. Real property shall be conveyed only by authority of the board of directors of any such regulated
consumer lender. No real property acquired upon foreclosure in the cases contemplated in subdivision (b), or
acquired under subdivisions (c) and (d) of this section shall be held for a longer time than ten years, unless such
period shall be extended by the commissioner of banking.

§46A-4-110a. Prohibited conduct.

(1) A regulated consumer lender shall not:

(a) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness; or

(b) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used: Provided, That nothing herein prevents a regulated consumer lender from agreeing in connection with a loan to pay a broker fee, finders fee or dealer participation fee, or to split the origination fee or points paid: Provided, however, That the fee or fee split is disclosed to the borrower and where proper is included in the finance charge.

(2) Unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any scheduled balloon payment as set forth in this chapter. Nor may any regulated consumer lender loan contain terms of repayment which result in negative amortization: Provided, That nothing herein prevents unequal payment schedules resulting from a variable rate loan or a revolving line of credit.

(3) A regulated consumer lender may not make revolving loans for the retail purchase of consumer goods and services by use of a lender credit card.

§46A-4-111. Substantial benefit upon refinancing of a loan at higher rate.

(1) Any nonrevolving consumer loan or credit that is refinanced and consolidated with a new loan under this
article after the first day of September, one thousand nine
hundred ninety-six, at a higher finance rate than allowed
merchants by section one hundred one, article three of this
chapter, must either provide the consumer with a substan-
tial benefit or provide the disclosures set forth in this sec-
tion. A substantial benefit accrues to the consumer if the
transaction:

(a) Provides the consumer at least five hundred dollars
in new funds for the consumer's own use, excluding any
charges connected with the loan; or

(b) Provides the consumer with new funds in an
amount equal to the original amount of the loan or credit.

(2) If no substantial benefit is provided, the lender
must comply with the following requirements, except
where such an agreement would violate section one hun-
dred eight of this article:

(a) The lender must in a fixed rate transaction give the
following disclosures in writing to the borrower prior to
the execution of the new agreement:

"If you do agree to consolidate your existing obliga-
tion, you will be paying an annual percentage rate of
___% on the existing balance of $____, instead of the
rate of ____% which you are now paying.

I acknowledge receipt of this information
_______ (initials of borrower).";

(b) The lender must allow the borrower the choice of
repaying his or her existing loan/credit balance at the
originally agreed upon rate and obtaining any additional
extension of credit as a separate agreement, notwithstanding
any law other than section one hundred eight of this
article which may limit the borrower's ability to have mul-
tiple loan agreements with the same lender;

(c) The lender, where it holds the prior agreement,
must refund or credit to the borrower's account any un-
earned finance charge and any returned insurance premi-
ums upon cancellation of the insurance sold in connection
with the prior agreement;
(d) The lender shall, where applicable, provide the borrower prior to the loan’s execution, conspicuous written notice of the provisions of subdivisions (a), (b) and (c) of this subsection;

(e) The commissioner may provide and require a modified disclosure form for similar transactions involving adjustable or variable rates, and where applicable, prior to the loan’s execution, the borrower must be given conspicuous written notice of the provisions of subdivisions (b) and (c) of this subsection, together with the disclosure form as may be required by this section; and

(f) Nothing in this section shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this section prohibit or pertain to any loan where the refinancing results in the consumer paying a lower finance charge rate.

§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.

All references in other chapters of this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven, chapter thirty-one of this code, shall, after the operative date of this chapter, and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to regulated consumer loans, regulated consumer lenders, regulated consumer lender licensees, and to this article.

All authority vested by this chapter in the commissioner shall be deemed to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

§46A-4-113. Continuation of licensing.

All persons licensed under the provisions of article seven, chapter thirty-one of this code, or as supervised lenders under the prior provisions of this article on the operative date of this chapter, are licensed to make regulated consumer loans under the provisions of this article
and all provisions of this article shall after the operative
date of this chapter apply to the persons so previously
licensed, including, without limitation, the provisions gov-
erning notification contained in article seven of this chap-
ter.

The commissioner may, but is not required to, deliver
evidence of licensing to the persons so previously li-
censed. Persons holding both supervised lender and in-
dustrial loan company licenses, or operating such a li-
censed business in the same office will be combined and
provided a single regulated lender license.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


§46A-5-103. Willful violations.


(1) If a creditor has violated the provisions of this
chapter applying to collection of excess charges, security
in sales and leases, disclosure with respect to consumer
leases, receipts, statements of account and evidences of
payment, limitations on default charges, assignment of
earnings, authorizations to confess judgment, illegal,
fraudulent or unconscionable conduct, any prohibited
debt collection practice, or restrictions on interest in land
as security, assignment of earnings to regulated consumer
lender, security agreement on household goods for benefit
of regulated consumer lender, and renegotiation by regu-
lated consumer lender of loan discharged in bankruptcy,
the consumer has a cause of action to recover actual dam-
ages and in addition a right in an action to recover from
the person violating this chapter a penalty in an amount
determined by the court not less than one hundred dollars
nor more than one thousand dollars. With respect to vio-
lations arising from consumer credit sales or consumer
loans made pursuant to revolving charge accounts or re-
volving loan accounts, or from sales as defined in article
six of this chapter, no action pursuant to this subsection
may be brought more than four years after the violations
occurred. With respect to violations arising from other
consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this chapter respecting authority to make regulated consumer loans, the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from regulated consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the violation occurred. With respect to violations arising from other regulated consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against the consumer arising from the debt.

(4) If a creditor has contracted for or received a charge in excess of that allowed by this chapter, the consumer may, in addition to recovering such excess charge, also recover from the creditor or the person liable in an action a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars. With respect to excess charges arising from con-
sumer credit sales or consumer loans made pursuant to
revolving charge accounts or revolving loan accounts, no
action pursuant to this subsection may be brought more
than four years after the time the excess charge was made.
With respect to excess charges arising from other consum-
er credit sales or consumer loans no action pursuant to this
subsection may be brought more than one year after the
due date of the last scheduled payment of the agreement
pursuant to which the charge was made.

(5) Except as otherwise provided, a violation of this
chapter does not impair rights on a debt.

(6) If an employer discharges an employee in viola-
tion of the provisions prohibiting discharge, the employee
may within ninety days bring a civil action for recovery of
wages lost as a result of the violation and for an order
requiring the reinstatement of the employee. Damages
recoverable shall not exceed lost wages for six weeks.

(7) A creditor has no liability for a penalty under
subsection (1) or subsection (4) of this section if within
fifteen days after discovering an error, and prior to the
institution of an action under this section or the receipt of
written notice of the error, the creditor notifies the person
concerned of the error and corrects the error. If the viola-
tion consists of a prohibited agreement, giving the con-
sumer a corrected copy of the writing containing the error
is sufficient notification and correction. If the violation
consists of an excess charge, correction shall be made by
an adjustment or refund.

(8) If the creditor establishes by a preponderance of
evidence that a violation is unintentional or the result of a
bona fide error of fact notwithstanding the maintenance of
procedures reasonably adapted to avoid any such violation
or error, no liability is imposed under subsections (1), (2)
and (4) of this section, and the validity of the transaction is
not affected.

§46A-5-103. Willful violations.

(1) A regulated consumer lender who willfully makes
charges in excess of those permitted by the provisions of
article four of this chapter, pertaining to regulated con-
sumer lenders, shall be guilty of a misdemeanor and, upon
conviction, shall be fined not more than five thousand
dollars, or imprisoned not more than one year, or both
fined and imprisoned.

(2) A person who willfully engages in the business of
making regulated consumer loans without a license in
violation of the provisions of article four of this chapter,
applying to authority to make regulated consumer loans
shall be guilty of a misdemeanor and, upon conviction,
shall be fined not more than five thousand dollars, or
imprisoned not more than one year, or both fined and
imprisoned.

(3) A person who willfully engages in the business of
making consumer credit sales or consumer loans, or of
taking assignments of rights against consumers arising
therefrom and undertakes direct collection of payments or
enforcement of these rights, without complying with the
provisions of section one hundred fifteen, article seven of
this chapter, concerning notification, shall be guilty of a
misdemeanor and, upon conviction, shall be fined not
more than one hundred dollars.

(4) Any person who willfully violates any of the provi-
sions of sections one hundred twenty-three through one
hundred twenty-eight, inclusive, article two of this chapter,
by committing any of the specifically described and enu-
merated acts contained therein, shall be guilty of a misde-
meanor and, upon conviction thereof, shall be fined not
more than one thousand dollars, or imprisoned in the
county jail not more than one year, or both fined and
imprisoned.

ARTICLE 7. ADMINISTRATION.

§46A-7-103. Division of administrative powers; investigation and adminis-

tration.

§46A-7-115. Notification.

§46A-7-103. Division of administrative powers; investigation
and administration.
1 (1) With respect to regulated consumer lenders and 2 other supervised financial organizations, the powers of 3 examination and investigation and administrative enforce- 4 ment shall be exercised by the official or agency to whose 5 supervision the organization is subject. All other powers of 6 the attorney general under this chapter may be exercised 7 by him with respect to any financial organization whether 8 or not a supervised financial organization. Notwithstand- 9 ing the first sentence of this subsection and notwithstand- 10 ing subsection (3) of this section, the attorney general may 11 pursue any investigation, prosecute any suit and take any 12 other proper action relating to the enforcement of any 13 consumer protection provision in this chapter.

14 (2) If the attorney general receives a complaint or 15 other information concerning noncompliance with this 16 chapter by any supervised financial organization, he shall 17 inform the official or agency having supervisory authority 18 over the organization concerned. The attorney general 19 may request information about financial organizations 20 from the officials or agencies supervising them.

21 (3) The attorney general and any official or agency of 22 this state having supervisory authority over a financial 23 organization are authorized and directed to consult and 24 assist one another in maintaining compliance with this 25 chapter. They may jointly pursue investigations, prose- 26 cute actions and take other official actions, as they deem 27 appropriate, if either of them otherwise is empowered to 28 take the action.

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making con- 2 sumer credit sales or consumer loans, including any per- 3 son subject to the provisions of section five-a, article 4 twenty-three, chapter eleven of this code, as a result of 5 their consumer lending or any person who regularly pur- 6 chases retail installment contracts or other consumer paper 7 from a business with which it is affiliated, and every per- 8 son having an office or place of business in this state who 9 takes assignments of and undertakes direct collection of 10 payments from or enforcement of rights against debtors 11 arising from such sales or loans, shall file notification with
the state tax department within thirty days after commencing business in this state, and, thereafter, on or before the thirty-first day of January of each year. A notification shall be deemed to be in compliance with this section if the information hereinafter required is given in an application for a business registration certificate provided for in section four, article twelve, chapter eleven of this code. The state tax commissioner shall make any information required by this section available to the attorney general or commissioner upon request. The notification shall state:

(a) Name of the person;

(b) Name in which business is transacted if different from subdivision (a) of this subsection;

(c) Address of principal office, which may be outside this state;

(d) Address of all of its offices, if any, in this state at which consumer loans are made, or in the case of a lender credit card, a description of its affiliation to any store chain, or national or regional credit card acceptance system, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer loans, including loans secured by real property, are made otherwise than at its retail store or office in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state; and

(g) Whether regulated consumer loans are made.

(2) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

(3) The provisions of this section are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller's credit card so long as the issuer of the card has fully complied with the provisions of this section, nor are the provisions of this section applicable to a per-
son whose consumer lending in West Virginia is incidental and confined to access through a nonproprietary automatic teller machine or similar electronic communication terminal.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions.

(1) Except as otherwise provided in this section, this chapter shall become operative at 12:01 a.m. on the first day of September, one thousand nine hundred seventy-four.

(2) Notwithstanding the provisions of subsection (1) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter as amended, the provisions of article four of this chapter, relating to regulated consumer lenders, and the provisions of article seven of this chapter, relating to their administration, shall, to the extent necessary, become operative for such purposes at 12:01 a.m. on the first day of September, one thousand ninety-six.

(3) Transactions entered into before this chapter becomes operative and the rights, duties and interests flowing from them thereafter may be terminated, completed, consummated or enforced as required or permitted by any statute, rule of law or other law amended, repealed or modified by this chapter as though the repeal, amendment or modification had not occurred, but this chapter applies to:

(a) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases and consumer loans whenever made;

(b) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into,
arranged or contracted for before this chapter becomes operative; and

(c) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; liability and penalties for excess charges.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the pre-paid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such finance charge attributable to any particular monthly installment period shall be that proportion of charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78"). For prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction: (i) Repayable according to its original terms over a period of thirty-six months or less; (ii) in which unequal or irregular or other than substantially equal consecutive monthly installments are payable, the commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation or rebates consistent with the Rule of 78.

(b) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction, repayable by its original terms over a period of great-
er than thirty-six months, an amount shall be rebated of not less than the unearned portion of the finance charge calculated by applying the rate of finance charge which was required by applicable law to be disclosed in the trans- action according to the actuarial method to the unpaid balance for the time remaining as originally scheduled or as extended by deferral or otherwise for the period follow- ing prepayment. In instances where no rate of finance charge was required by law or otherwise to be disclosed, the unearned portion of the finance charge shall be calcu- lated by applying the finance charge which was charged in the transaction according to the actuarial method to the unpaid balance for the time remaining as originally sched- uled or as extended by deferral or otherwise for the period following prepayment.

(c) Unearned prepaid finance charges upon prepay-
ment includes all prepaid finance charges for points, loan or credit origination fees, or loan or credit investigation fees retained by the lender or creditor or its affiliates: Provided, That: (i) In calculating the rebate for a con-
sumer loan or credit sale unsecured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of two percent of the amount financed; and (ii) in calculating the rebate for a consumer loan or credit sale secured by real property where such prepaid finance charges have been imposed, the lender or creditor may deduct such charges up to a maximum of five percent of the amount financed: Provided, however, That no such deduction totaling more than five percent of the amount financed may be made by the same lender within a twenty-four month period as a result of a refinancing. Upon prepayment in full of a consumer loan or credit sale, any unearned prepaid finance charges may be rebat- ed by using the Rule of 78 where the original loan term is thirty-six months or less. Where the original loan term is greater than thirty-six months, any such charges shall be rebated by using the actuarial method. To the extent that this section overrides the preemption on limiting points and other such charges on first lien residential mortgages for nonpurchase money loans contained in Section 501 of
the United States Depository Institutions Deregulation and
Monetary Control Act of 1980, the state law limitations
contained in this section shall apply: Provided further,
That this subsection does not apply to loans made by
federally-insured depository institutions.

(d) For purposes of the rebate of unearned finance
charges as required by this section, a prepayment in full
shall include repayment by a new loan, extension of credit,
refinancing, consolidation, forbearance or otherwise. The
term "loan or credit investigation fees" does not include
the reasonable costs of credit reports paid to third parties
as part of the bona fide closing costs in real estate transac-
tions, where such costs are not included as part of the
finance charge.

(e) As an alternative to the Rule of 78 method of re-
bate of determining the unearned finance charge required
by this section, a creditor may rebate unearned finance
charges under any other method which gives a greater
rebate to the debtor than the rebate determined by the
Rule of 78.

(f) The provisions governing rebates as set forth in this
section shall apply to all transactions entered into on or
after the first day of September, one thousand nine hun-
dred ninety-six. For transactions entered into prior to the
first day of September, one thousand nine hundred
ninety-six, the provisions in effect prior to the effective
date of this section of the respective chapters of this code
shall be utilized to determine the rebate of unearned fi-
inance charges.

(g) For consumer credit sales or consumer loans sub-
ject to the provisions of chapter forty-six-a of this code,
the provisions of article five of said chapter, govern the
imposition of liability and penalties for charging interest
or a finance charge in excess of the maximum rate al-
lowed under the provisions of this section. In all other
instances, the provisions of this article govern the imposi-
tion of liability and penalties for charging interest or a
finance charge in excess of the maximum allowed under
this section.
CHAPTER 74

(H. B. 4657—By Delegates Thompson, Faircloth, Amores, Hunt, Trump, Hutchins and Clements)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; assessing costs of record production; and record production generally.

Be it enacted by the Legislature of West Virginia:

That section thirty-five, 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-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the commissioner of banking, all or any number of its checks, and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings, in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof, shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as
the original thereof and shall be admissible in evidence in
courts and administrative agencies in this state, to the
same extent, and for the same purposes as the original
thereof, and the banking institution may destroy or other-
wise dispose of the original, but every banking institution
shall retain either the originals or such copies or reproduc-
tions of its records of final entry, including, without limit-
ing the generality of the foregoing, cards used under the
card system and deposit tickets for deposits made, for a
period of at least six years from the date of the last entry
on such books or the date of making of such deposit tick-
ets and card records, or, in the case of a banking institu-
tion exercising trust or fiduciary powers, until the expira-
tion of six years from the date of termination of any trust
or fiduciary relationship by a final accounting, release,
court decree or other proper means of termination.

All circumstances surrounding the making or issuance
of such checks, documents, books, records, correspon-
dence and other instruments, papers or writings, or the
photographic, photostatic or microphotographic copies or
optical disks or other permissible reproductions thereof,
when the same are offered in evidence, may be shown to
affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such docu-
ments and records shall be one which correctly and accu-
rately reproduces the original thereof in all details and any
disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a
custodian of records of any bank in an action or proceed-
ing in which the bank is neither a party nor the place
where any cause of action is alleged to have arisen and the
subpoena requires the production of all or any part of the
records of the bank relating to the conduct of its business
with its customers, the bank shall be entitled to a search fee
not to exceed ten dollars, together with reimbursement for
costs incurred in the copying or other reproduction of any
such record or records which have already been reduced
to written form, in an amount not to exceed seventy-five
cents per page. Any and all such costs shall be borne by
the party requesting the production of the record or re-
cords.
CHAPTER 75

(H. B. 4644—By Delegates Hunt, Tomblin, Tillis, Seacrist and Amores)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-five, relating to authorizing banking institutions to refuse to open checking accounts for potential customers convicted of violations involving worthless checks; authorizing specific criminal background investigation; civil immunity; and confidentiality.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-45. Refusal of banking institutions to open checking accounts for certain individuals convicted of worthless check violations; authorizing criminal background investigation by banking institutions; civil immunity; and confidentiality.

(a) Any banking institution may refuse to open an account with a potential customer based on its actual or constructive knowledge, or when through background investigation it has acquired information or knowledge, that the customer has previously been convicted of two or more violations of section thirty-nine or section thirty-nine-a, article three, chapter sixty-one of this code, involving obtaining property in return for a worthless check or issuance of a worthless check within five years prior to the request to open the account, or during that period has been convicted of two violations of such activity under federal law or the laws of another state. This
provision shall not impair the bank’s ability to refuse to
open an account for a potential customer for any other
lawful reason, including, but not limited to, past
experience with that customer involving overdrawn
accounts of checks returned for insufficient funds.

(b) Any banking institution acting pursuant to
subsection (a) of this section shall be immune from civil
liability for refusing to open an account based on the
potential customer’s past conviction for obtaining property
in return for a worthless check or issuance of a worthless
check: Provided, That this immunity shall not apply to
any violations of subsection (c) of this section.

(c) Any and all nonpublic records or credit
information obtained by the bank, its employees or agents
in conducting a background investigation on a customer’s
or potential customer’s previous convictions for violation
of section thirty-nine or section thirty-nine-a, article three,
chapter sixty-one of this code, or convictions under
federal law or the laws of another state involving obtaining
property in return for a worthless check or issuance of a
worthless check, shall remain confidential and no agent or
employee of the banking institution shall publicly disclose
or publish any such information obtained.

CHAPTER 76

(Com. Sub. for S. B. 89—By Senators Oliverio, Minear, Chafin and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
failure to wear helmet not admissible in civil actions; providing for penalties including a fine and community service for a violation; waiver for first offense; financial affidavit to be filed as evidence of inability to pay for a helmet; permitting municipalities to enact ordinances; and bicycle safety program.

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

That chapter seventeen-c 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-a, to read as follows:

**ARTICLE 11A. CHILD BICYCLE SAFETY ACT.**

§17C-11A-1. Short title.

This article shall be known and may be cited as the "Child Bicycle Safety Act".

§17C-11A-2. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) Disability and death of children resulting from injuries sustained in bicycling accidents are a serious threat to the public health, welfare and safety of the people of this state, and the prevention of such disability and death is a goal of such people;

(2) Head injuries are the leading cause of disability and death from bicycling accidents; and

(3) The risk of head injury from bicycling accidents is significantly reduced for bicyclists who wear proper protective bicycle helmets; yet helmets are worn by fewer than five percent of child bicyclists nationwide.
(b) The purpose of this article is to reduce the incidence of disability and death resulting from injuries incurred in bicycling accidents by requiring that while riding on a bicycle on public roads, public bicycle paths and other public rights-of-way of this state, all bicycle operators and passengers under fifteen years of age wear approved protective bicycle helmets.

§17C-11A-3. Definitions.

As used in this article:

(a) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.

(b) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

(c) "Public roadway" means a right-of-way under the jurisdiction and control of this state or a local political subdivision thereof for use primarily by motor vehicles.

(d) "Public bicycle path" means a right-of-way under the jurisdiction and control of this state or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(e) "Other public right-of-way" means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this state or a local political subdivision thereof and is designed for use and used by vehicular or pedestrian traffic.

(f) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American national standards institute (ANSI) or the snell memorial
foundation's standards for protective headgear or American society for testing and materials (ASTM) for use in bicycling.

(g) "Passenger" means any person who travels on a bicycle in any manner except as an operator.

(h) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

§17C-11A-4. Requirements for helmet use.

(a) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

(b) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

§17C-11A-5. Sale of bicycle helmets.

Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (f), section three of this article, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards.

§17C-11A-6. Civil actions.

A violation of section four of this article is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages.

§17C-11A-7. Penalties.
(a) Notwithstanding the provisions of section one, article eighteen of this chapter, any parent or legal guardian violating any requirement set forth in section four of this article shall be fined ten dollars or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of section one, article eleven, chapter eight of this code, no court costs may be assessed to any person violating the requirements of section four of this article.

(b) In the case of a first violation of section four of this article, the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.

(c) It is an absolute defense to a charge for a violation of this article that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of subsection (c), section one, article two, chapter fifty-nine of this code. Any person who demonstrates inability to pay shall be referred to the governor's highway safety program for assistance in obtaining the appropriate helmet or helmets.

§17C-11A-8. Ordinances.

Nothing in this article shall limit the right of any municipality to enact an ordinance on the use of bicycle helmets.


(a) Commenc ing on the first day of July, one thousand nine hundred ninety-six, the governor's highway safety program shall initiate and conduct an educational and public awareness program designed to encourage people to comply with the requirements of this article.

(b) The governor's highway safety program shall make application for grants or any other funding to subsidize the costs of purchasing helmets for people who qualify under the provisions of subsection (c), section seven of this article.
AN ACT to amend and reenact sections two, three, six-a, ten, eleven, twelve-a, thirteen, fifteen and twenty-four, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section five-a; and to amend and reenact sections four, eleven, twelve, fifteen and twenty-two, article twenty-one of said chapter, all relating to charitable bingo and raffles; establishing venue requirements for bingo and raffle occasions; same, exceptions; providing bingo and raffle license application procedures and time periods; increasing amount of prizes which may be awarded at a super bingo and regular bingo occasions; restricting eligibility for bingo and raffle license; exception for junior fire fighters to general rule that persons under eighteen years of age may not participate in conduct of bingo games; changing allowable compensation and number of employees; compensation for bingo concessionaire and concession workers only if net proceeds are donated for charitable or public service purposes; tax commissioner authorized to disapprove certain contracts and leases; disapproved contracts and leases void; same, attempt by licensee to complete grounds for revocation or suspension of license; limitations on super bingo occasions; clarifying reporting requirements; bingo and raffle licensee may file compilation or review instead of both; removing cap on raffle prizes allowed; amending compensation provisions for persons conducting raffles; and prohibiting commingling of funds in cases of joint bingo and raffle occasions conducted simultaneously.

Be it enacted by the Legislature of West Virginia:

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

Article


ARTICLE 20. CHARITABLE BINGO.

§47-20-2. Definitions.
§47-20-3. Who may hold bingo games; application for license; licenses not transferable.
§47-20-5a. Venue.
§47-20-6a. Super bingo license.
§47-20-10. Limits on prizes awarded—General provisions.
§47-20-12a. Compensation of bingo operator, number of employees.
§47-20-13. Concessions exception.
§47-20-15. Payment of reasonable expenses from proceeds; net proceeds disbursement.
§47-20-24. Filing of reports.

§47-20-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Bingo" means the game wherein participants pay consideration for the use of one or more cards bearing several rows of numbers in which no two cards played in any one game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one by one, and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he or she has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification that he or she has covered the predetermined sequence or pattern, declared the winner of that game.

(b) "Bingo occasion" or "occasion" means a single gathering or session at which a series of one or more successive bingo games is conducted by a single licensee.
(c) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Assisting them to establish themselves in life as contributing members of society through education or religion;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office;

(5) By lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

(7) Providing or supporting nonprofit cultural or artistic activities.

(d) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office.

An organization or association is tax-exempt if it is, and has received from the Internal Revenue Service a
determination letter that is currently in effect stating that
the organization is, exempt from federal income taxation
under subsection 501(a) and described in subsection
501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19) or
501(d) of the Internal Revenue Code.

(e) "Commissioner" means the state tax commissioner.

(f) "Concession" means any stand, booth, cart, counter
or other facility, whether stationary or movable, where
beverages, both alcoholic and nonalcoholic, food, snacks,
cigarettes or other tobacco products, newspapers, souvenirs
or any other items are sold to patrons by an individual
operating the facility. Notwithstanding anything con-
tained in subdivision (2), subsection (a), section twelve,
article seven, chapter sixty of this code to the contrary,
"concession" includes beverages which are regulated by
and are subject to the provisions of chapter sixty of this
code: Provided, That in no case may the sale or the con-
sumption of alcoholic beverages or nonintoxicating beer
be permitted in any area where bingo is conducted.

(g) "Conduct" means to direct the actual playing of a
bingo game by activities including, but not limited to,
handing out bingo cards, collecting fees, drawing the
numbers, announcing the numbers, posting the numbers,
verifying winners and awarding prizes.

(h) "Expend net proceeds for charitable or public
service purposes" means to devote the net proceeds of a
bingo occasion or occasions to a qualified recipient orga-
nization or as otherwise provided by this article and ap-
proved by the commissioner pursuant to section fifteen of
this article.

(i) "Gross proceeds" means all moneys collected or
received from the conduct of bingo at all bingo occasions
held by a licensee during a license period; this term shall
not be considered to include any moneys collected or
received from the sale of concessions at bingo occasions.

(j) "Joint bingo occasion" means a single gathering or
session at which a series of one or more successive bingo
games is conducted by two or more licensees.
(k) "Licensee" means any organization or association granted an annual, limited occasion or state fair bingo license pursuant to the provisions of this article.

(l) "Net proceeds" means all moneys collected or received from all the conduct of bingo at bingo occasions held by a licensee during a license period after payment of expenses authorized by sections ten, thirteen, fifteen and twenty-two of this article; this term shall not be considered to include moneys collected or received from the sale of concessions at bingo occasions.

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

(n) "Patron" means any individual who attends a bingo occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or plays any bingo games.

(o) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (d) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in subparagraphs (1) through (7), subdivision (c) of this section. "Qualified recipient organization" includes without limitation any licensee which is organized and functions exclusively as provided in this subdivision.

(p) "Venue" means the location in which bingo occasions are held.

§47-20-3. Who may hold bingo games; application for license; licenses not transferable.

Any charitable or public service organization which has been in existence in this state two years prior to filing an application for a bingo license issued pursuant to section four or five of this article may hold bingo occasions in accordance with the provisions of this article during the time it holds a valid license.
Application for a bingo license shall be made to the tax commissioner and shall be on a form which shall be supplied by him or her. The application shall contain the information required by section seven 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 bingo occasion.

No bingo occasion may be held until an application filed in accordance with this article has been approved by the tax commissioner, and the bingo license has been received: Provided, That under no circumstances may a licensee organization conduct a bingo occasion before the sixty day filing period between the filing of the application and date of the first bingo occasion has elapsed: Provided, however, That the date the application is received by the tax commissioner shall begin the sixty day filing period. The tax commissioner shall send the applicant its license within five days after approval of the bingo application. If the filing period has elapsed, and the application has not been denied by the tax commissioner, and the license has not been received by the applicant, the applicant may consider the application approved and begin to hold bingo occasions. The tax commissioner shall send a bingo license to the applicant within five days after the expiration of the filing period if the application has not been otherwise denied.

No bingo license issued pursuant to this article may be transferred.

§47-20-5a. Venue.

Any charitable or public service organization or any of its auxiliaries or other organizations otherwise affiliated with it possessing an annual or limited occasion bingo license or a super bingo license shall conduct a bingo occasion only in the county within which the organization is principally located.

Any licensee which, in good faith, finds itself unable to comply with this requirement shall apply to the tax commissioner for permission to conduct a bingo occasion in a location other than the county within which the organization is principally located: Provided, That the location
shall be in a contiguous county, or, if not in a contiguous county, and not in the county where the licensee organization has its principal location, the location of the proposed bingo occasion may be no more than thirty air miles from the county within which the organization is principally located. The application shall be made on a form provided by the tax commissioner and shall include the particulars of the requested change and the reasons for the change. The application shall be filed no later than sixty days before any scheduled bingo occasion.

For purposes of this section, the principal location of a licensee is the address of the licensee shown on the licensee's West Virginia business registration certificate.

§47-20-6a. Super bingo license.

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

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

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

§47-20-10. Limits on prizes awarded — General provisions.

Except as otherwise provided in section twenty-two of this article, 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 ten thousand 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 and who have been active members in good standing of the licensee organization or its authorized auxiliary for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license 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 except for junior firefighters, in accordance with the provisions of this article.

§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, the minimum of which shall be established at the federal minimum wage, and the maximum being six dollars and fifty cents per hour, to operators of bingo games who are active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable bingo license or the most recent filing of an application for renewal of the license.
(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 eight 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 five 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 not more than three operators.

(e) If the licensee also possesses a super bingo license, it may pay a salary to not more than fifteen operators during the super bingo occasion.

(f) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable bingo operator employees allowed under this limitation for bingo licensees shall be in addition to the number of charitable raffle operator employees allowed under section fifteen, article twenty-one of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations, and the charitable bingo fund and the charitable raffle fund and payments from the funds shall not be commingled.

(g) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle operator" shall not include concession stand workers. Wages paid to concession workers shall not exceed six dollars and fifty cents per hour.

§47-20-13. Concessions exception.

A licensee may allow any individual, firm, partnership or corporation to operate concessions in conjunction with bingo occasions, and to be compensated for the operation, only if the individual, firm, partnership or corporation
agrees to donate all net proceeds received from the sale of
the concessions and all compensation received from the
licensee organization to charitable or public service pur-
poses as specified under section two, subsection (c) of this
article.

§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 occa-
sions, not to exceed twenty-five percent of the gross pro-
ceeds collected during a license period, may be paid out
of the gross proceeds of the conduct of bingo, including,
but not limited to:

(1) Rent paid for the use of the premises: Provided,
That a copy of the rental agreement was filed with the
bingo license application and any changes to the rental
agreement 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 the premises;

(2) The cost of custodial services;

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

(4) The cost to the licensee organization for advertis-
ing 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
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 ten of this arti-
cle, 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 on the proceeds 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) The tax commissioner has the authority to disapprove any contract for sale of goods or services to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, or any lease of real or tangible personal property to any charitable bingo licensee for use in or with relation to any charitable bingo operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Contracts or leases which are disapproved shall be considered to be in contravention of this article, and are void. Any attempt by any charitable bingo licensee to engage in transactions under the terms of any lease or contract that has been disapproved is grounds for revocation or suspension of the charitable bingo license and for refusal by the tax commissioner to renew the charitable bingo license.

(f) If a property owner or lessee, including his or her agent, has entered into a rental contract to hold super bingo occasions on his or her premises, the premises shall be rented, for super bingo occasions, to not more than
four super bingo licensees during any period of four consecutive calendar weeks: Provided, That each of the charitable or public service organizations desiring to hold a super bingo occasion must possess its own super bingo license. Subject to this limitation, the premises may be used for super bingo occasions during two consecutive days during a conventional weekend. For purposes of this subsection, the term "conventional weekend" means Saturday and Sunday: Provided, however, That the super bingo occasions may occur at the same facility no more often than alternating weekends during a calendar month.

(g) 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 expended.

§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
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 the report when due is liable for a penalty of twenty-five dollars for each month or fraction of a month during which the failure continues, the penalty not to exceed one hundred dollars: Provided, however, That annual financial reports must contain either a compilation or review of the 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 two years 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 the
time it holds a valid license.

(b) Application for a raffle license shall be made to
the tax commissioner and shall be on a form supplied by
him or her. The application shall contain the information
required by section eight of this article and any other
information which the commissioner considers necessary.
No raffle may be held and no tickets may be sold pursu-
ant to this article until the raffle application has been ap-
proved by the tax commissioner and the license has been
received by the applicant: Provided, That no raffle occa-
sion may be held and no raffle tickets may be sold until a
sixty day filing period, which is that time period between
the receipt of that application by the tax commissioner
and the first raffle occasion, has expired: Provided, how-
ever, That the tax commissioner shall send the applicant its
license within five days after the application is approved.
If the sixty day filing period has expired and the applica-
tion has not been denied and the raffle license has not
been received by the applicant, the applicant may consider
the application approved and begin to sell tickets for the
raffle or hold the raffle occasion. The tax commissioner
shall send the applicant its license within five days after the
expiration of the filing period if the application has not
been otherwise denied.

(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
the effective date.

(d) No raffle license issued pursuant to this article may
be transferred.

§47-21-11. Limits on prizes awarded — General provisions.

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-
et value at the time of acquisition for the raffle or at the
time of purchase.

(a) A licensee may pay a salary, the minimum of which shall be established at the federal minimum wage, and the maximum which shall be six dollars and fifty cents per hour, to operators of charitable raffle games who are active members of the licensee organization and who have been active members in good standing for at least two years prior to the date of filing of the application for a charitable raffle license or the most recent filing of an application for renewal of the license.

(b) If the licensee's gross receipts from raffle 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 eight operators.

(c) If the licensee's gross receipts from charitable raffle 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 five operators.

(d) If the licensee's gross receipts from charitable raffle 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 three operators.

(e) In the case of a licensee lawfully holding a charitable bingo occasion simultaneously with a charitable raffle occasion, the number of paid charitable raffle operator employees allowed under this limitation for charitable raffle licensees is in addition to the number of charitable bingo operator employees allowed under section twelve-a, article twenty of this chapter. Licensees holding simultaneous occasions shall pay bingo operators from the proceeds of bingo operations and shall pay raffle operators from the proceeds of raffle operations, and the charitable bingo fund and the charitable raffle fund and payments from the funds shall not be commingled.

(f) For purposes of the limitations set forth in this section, the term "operator" or "bingo operator" or "raffle
operator" shall not include concession stand workers. Wages paid to concession workers shall not exceed six dollars and fifty cents per hour.

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

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

(1) Rent paid for the use of the premises: Provided, that a copy of the rental agreement was filed with the raffle license application with any modifications to the rental agreement 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 the 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 on the net raffle proceeds 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, or improvement, 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) The tax commissioner has the authority to disapprove any contract for sale of goods or services to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, or any lease of real or tangible personal property to any charitable raffle licensee for use in or with relation to any charitable raffle operation or occasion, if the contract or lease is unreasonable or not representative of fair market value. Disapproved contracts or leases shall be considered to be in contravention of this article, and are void. Any attempt by any charitable raffle licensee to engage in transactions under the terms of any disapproved lease or contract is grounds for revocation or suspension of the charitable raffle license and for refusal by the tax commissioner to renew the charitable raffle license.

(f) Any licensee which, in good faith, finds itself unable to comply with the requirements of the subsections
(a) through (e) of this section shall apply to the commis-
soner 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 peri-
od 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 com-
missioner directs until the proceeds are 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 the license. The time period covered
by an annual report is the full license year or, at the elec-
tion 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 individu-
al 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 commis-
sioner: Provided, That any licensee failing to file the re-
port when due is liable for a penalty of twenty-five dollars
for each month or fraction of a month during which the
failure continues, the penalty not to exceed one hundred
dollars: Provided, however, That annual financial reports
must contain either a compilation or review of such finan-
cial report by a certified or licensed public accountant, or
may be audited by a certified or licensed public accoun-
tant, if a licensee's gross receipts exceed fifty thousand
dollars.
CHAPTER 78

(Com. Sub for S. B. 449—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, eight and ten, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section eleven-a; to amend article six, chapter twelve of said code by adding thereto a new section, designated section nineteen; and to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of said code; all relating to authorizing the state building commission to borrow funds; clarifying the deposit and disbursement of funds by the commission; authorizing the issuance of revenue bonds; setting forth the terms and conditions of the issuance of bonds; authorizing the acquisition of specified property; clarifying the trust provisions for existing bondholders; requiring the expenditure of bond proceeds for capital expenditures at state institutions of higher education; establishing a committee to certify arts and sciences projects by a date certain; requiring notice and public hearings to be conducted by the committee; authorizing the committee to certify whether a portion of bond proceeds will be expended for constructing and equipping an arts and sciences center in West Virginia; setting forth the conditions upon which proceeds may be used for an arts and sciences center; requiring the committee to determine whether projects will be funded by a date certain; authorizing the balance of bond proceeds to be expended for capital projects at the state parks, the capitol complex or other tourism sites in this state; establishing a committee to certify capital improvement projects by a date certain; requiring notice and public hearings to be conducted by the committee; creating a special account in the state treasury for debt service; authorizing the state board of investments to loan money to the state building commission for acquisition of specified property, to refinance projects and for construction and improvements of regional jails and correctional facilities; setting forth an interest rate for the loans; establishing method of repayment of loans; authoriz-
Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.


29. Miscellaneous Boards and Officers.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-4. Powers of commission.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

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

§5-6-10. Trust existing in favor of existing bondholders.

§5-6-11a. Special power of commission to transfer or expend bond proceeds for capital improvements at institutions of higher education,
state parks and the capitol complex and to construct and lease a center for arts and sciences of West Virginia; limitations; state building commission authorized to issue revenue bonds; fund created; use of funds to pay for development of education, arts, sciences and tourism projects.

§5-6-4. Powers of commission.

The commission has the power:

1. To sue and be sued, plead and be impleaded;

2. To have a seal and alter the same at pleasure;

3. To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase or otherwise, real property or rights or easements necessary or convenient for its corporate purposes and to exercise the power of eminent domain to accomplish those purposes;

4. To acquire, hold and dispose of personal property for its corporate purposes;

5. To make bylaws for the management and regulation of its affairs;

6. With the consent of the attorney general of the state of West Virginia, to use the facilities of his or her office, assistants and employees in all legal matters relating to or pertaining to the commission;

7. To appoint officers, agents and employees, and fix their compensation;

8. To make contracts, and to execute all instruments necessary or convenient to effectuate the intent of, and to exercise the powers granted to it by this article;

9. To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the commission that its interests will be best served;

10. To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to
the consent and approval of the city of Charleston in any
case as may be necessary; and, in addition, to acquire or
construct a warehouse, including office space in the ware-
house, in Kanawha County for the West Virginia alcohol
beverage control commissioner, and equip and furnish the
office space; and to acquire or construct, through lease,
purchase, lease-purchase or bond financing, hospitals or
other facilities, buildings, or additions or renovations to
buildings as may be necessary for the safety and care of
patients, inmates and guests at facilities under the jurisdic-
tion of and supervision of the division of health and at
institutions under the jurisdiction of the division of correc-
tions or the regional jail and correctional facilities author-
y; and to formulate and program plans for the orderly
and timely capital improvement of all of the hospitals and
institutions and the state capitol buildings; and to construct
a building or buildings in Kanawha County to be used as a
general headquarters by the division of public safety to
accommodate that division's executive staff, clerical offic-
es, technical services, supply facilities and dormitory ac-
accommodations; and to develop, improve and expand state
parks and recreational facilities to be operated by the
division of natural resources; and to establish one or more
systems or complexes of buildings and projects under
control of the commission; and, subject to prior agree-
ments with holders of bonds previously issued, to change
the systems, complexes of buildings and projects from
time to time, in order to facilitate the issuance and sale of
bonds of different series on a parity with each other or
having such priorities between series as the commission
may determine; and to acquire by purchase, eminent do-
main or otherwise all real property or interests in the real
property necessary or convenient to accomplish the pur-
poses of this subdivision. The rights and powers set forth
in this subdivision shall not be construed as in derogation
of any rights and powers now vested in the West Virginia
alcohol beverage control commissioner, the department of
health and human resources, the division of corrections or
the division of natural resources;

(11) To maintain, construct and operate a project
authorized under this article;
(12) To charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved in whole or in part with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as provided in this article: Provided, That on and after the effective date of the amendments to this section, to charge rentals for the use of all or any part of a project or buildings at any time financed, constructed, acquired, maintained or improved in whole or in part with the proceeds of sale of bonds issued pursuant to this article, subject to and in accordance with such agreements with bondholders as may be made as in this section provided, or with any funds available to the state building commission, including, but not limited to, all buildings and property owned by the state of West Virginia or by the state building commission, but no rentals shall be charged to the governor, attorney general, secretary of state, state auditor, state treasurer, the Legislature and the members of the Legislature, the supreme court of appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders of the negotiable bonds;

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

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

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects;

(17) To issue revenue bonds in accordance with the applicable provisions of this article for the purposes set forth in section eleven-a of this article; and
§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

Except as provided in sections five-a and eleven-a of this article, all moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia who shall not commingle the moneys, but shall deposit them to a special revenue fund to be known as the "state building commission fund". The moneys in the account shall be impressed with and subject to the lien or liens on the moneys in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in the account shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make the requisition. All deposits of the moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, and all banking institutions are authorized to give such security for the deposits. The legislative auditor and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

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

(a) The commission is hereby empowered to raise the cost of a project, as defined in this article, by the issuance of state building revenue bonds of the state, the principal of and interest on which shall be payable solely from the special revenue fund provided in section five of this article for the payment. Subject to the proceedings pursuant to which any bonds outstanding were authorized and issued
pursuant to this article, the commission shall pledge the 
moneys in the special revenue fund, except that part of the 
proceeds of sale of any bonds to be used to pay the cost 
of a project and for the payment of the principal of and 
interest on bonds issued pursuant to this article. The 
pledge shall apply equally and ratably to separate series of 
bonds or upon the priorities as the commission shall deter-
mine. The bonds shall be authorized by resolution of the 
commission. The resolution shall recite an estimate by the 
commission of the cost, and shall provide for the issuance 
of bonds in an amount sufficient, when sold as provided in 
this section, to produce the cost, less the amount of any 
funds, grant or grants, gift or gifts, contribution or contribu-
tions received, or in the opinion of the commission 
expected to be received, from the United States of Ameri-
ca or from any other source. The acceptance by the com-
mision of any and all funds, grants, gifts and contribu-
tions, whether in money or in land, labor or materials, is 
hereby expressly authorized. All bonds shall have and are 
hereby declared to have all the qualities of negotiable 
instruments. The bonds shall bear interest at not more 
than twelve percent per annum, payable semiannually, and 
shall mature in not more than forty years from their date 
or dates, and may be made redeemable at the option of the 
state, to be exercised by the commission, at the price and 
under the terms and conditions, all as the commission may 
fix prior to the issuance of the bonds. The commission 
shall determine the form of the bonds, including coupons, 
if any, to be attached to the bonds to evidence the right of 
interest payments. The bonds shall be signed by the 
chairman and secretary of the commission, under the great 
seal of the state, attested by the secretary of state, and the 
coupons, if any, attached to the bonds shall bear the fac-
simile signature of the chairman of the commission. In 
case any of the officers whose signatures appear on the 
bonds or coupons issued as authorized by this section 
shall cease to be officers before the delivery of the bonds, 
the signatures are nevertheless valid and sufficient for all 
purposes the same as if they had remained in office until 
the delivery. The commission shall fix the denominations 
of the bonds, the principal and interest of which shall be 
payable at the office of the treasurer of the state of West
Virginia, at the capitol of the state, or, at the option of the
holder, at some bank or trust company within or without
the state of West Virginia to be named in the bonds, in
such medium as may be determined by the commission.
The bonds and interest on the bonds are exempt from
taxation by the state of West Virginia, or any county or
municipality in the state. The commission may provide
for the registration of the bonds in the name of the owners
as to principal alone, and as to both principal and interest
under the terms and conditions as the commission may
determine, and shall sell the bonds in the manner as it may
determine to be for the best interest of the state, taking
into consideration the financial responsibility of the pur-
chaser, and the terms and conditions of the purchase, and
especially the availability of the proceeds of the bonds
when required for payment of the cost of the project. The
sale shall be made at a price not lower than a price which,
computed upon standard tables of bond values, will show a
net return of not more than thirteen percent per annum to
the purchaser upon the amount paid for the bonds. The
proceeds of the bonds shall be used solely for the pay-
ment of the cost of the project for which bonds were is-
sued, and shall be deposited and checked out as provided
by section five of this article, and under further restric-
tions, if any, as the commission may provide. If the pro-
cceeds of bonds issued for a project or a specific group of
projects exceeds the cost of the project or projects, the
surplus shall be paid into the fund provided for in section
five of this article for payment of the principal and interest
of the bonds. The fund may be used for the purchase of
any of the outstanding bonds payable from the fund at the
market price, but at not exceeding the price, if any, at
which the bonds are in the same year redeemable, and all
bonds redeemed or purchased shall be canceled immedi-
ately, and shall not again be issued. Prior to the prepara-
tion of definitive bonds, the commission may, under like
restrictions, issue temporary bonds with or without cou-
pons, exchangeable for definitive bonds upon the issuance
of the latter. Notwithstanding the provisions of sections
nine and ten, article six, chapter twelve of this code, reve-
nue bonds issued under the authority granted in this sec-
tion are eligible as investments for the workers' compensta-
tion fund, teachers retirement fund, division of public
safety, death, disability and retirement fund, West Virginia
public employees retirement system and as security for the
deposit of all public funds. The revenue bonds may be
issued without any other proceedings or the happening of
any other conditions or things other than those proceed­
ings, conditions and things which are specified and re­
quired by this article, or by the constitution of the state.
For all projects authorized under the provisions of this
article, other than projects to be leased by the commission
to the regional jail and correctional facilities authority or
projects authorized pursuant to section eleven-a of this
article, the aggregate amount of all issues of bonds out­
standing at one time shall not exceed sixty-two million
five hundred thousand dollars, including the renegotiation,
reissuance or refinancing of any bonds, and no project in
connection with which bonds are to be issued shall be
initiated by the commission unless and until the Legisla­
ture, through enactment of general law, approves the pur­
pose, the amount of bonds to be issued and the total cost
for the project, construction or acquisition.

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

(b) Notwithstanding anything in this article to the
contrary, the commission is authorized to issue bonds, or
otherwise finance or refinance the following projects,
including the costs of issuance and sale of the bonds or
financing, all necessary financial and legal expenses and
creation of debt service reserve funds, in an amount not to
exceed twenty-one million dollars:
(1) Any or all of the state office buildings and adjoining real property being lease-purchased in Beckley, Charleston, Clarksburg, Fairmont, Huntington and Parkersburg;

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

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

(c) Notwithstanding any other provision of this section, the commission is authorized to issue bonds for the purposes set forth in section eleven-a of this article in the aggregate amount of one hundred million dollars, including the renegotiation, reissuance or refinancing of any bonds issued for that purpose. If the proceeds of bonds issued under this subsection exceeds the cost of the project or projects, the surplus shall be paid into the education, arts, sciences and tourism fund established in section eleven-a of this article.

(d) The commission shall acquire the property being lease-purchased in the city of Charleston, located at 601 Morris Street, through a loan from the consolidated fund. The loan shall be under the terms and conditions set forth in section nineteen, article six, chapter twelve of this code.

§5-6-10. Trust existing in favor of existing bondholders.

The properties and interests in properties, real, personal and mixed, tangible and intangible, standing or held in the name of or for and in behalf of, or for the benefit of, the commission, or the state of West Virginia to the extent that the properties and interests in properties were acquired or improved by the expenditure of the proceeds of bonds previously issued by the commission, and the moneys, deposits, securities and choses in action and other rights held in the name of or for and in behalf of, or for the benefit of, the commission, other than moneys, deposits, securities, choses in action and other rights, or which are investments of: (1) Proceeds of bonds previously issued by the commission held for expenditure for com-
pletion of now existing projects of the commission; or (2) revenues of the commission from existing projects of the commission which, after provision for operation and maintenance expenses and coverage requirements not otherwise provided for, are in excess of sums required to pay the principal of and interest on the bonds of the commission previously issued, as and when due and payable; or (3) proceeds of bonds of the commission issued after the effective date of this section; or (4) revenues pledged for the repayment of bonds issued pursuant to section eleven-a of this article; or (5) revenues of the commission from projects acquired after the effective date of this section or constructed by the commission, are declared to be subject to and shall be held by the commission in trust for the satisfaction of the obligations evidenced by the bonds previously issued by the commission and the interest coupons on the bonds: Provided, That nothing in this article shall be taken to validate or to attempt to validate rights under any existing lease or other agreement entered into under the former provisions of this article between the commission and the state of West Virginia or any officer, department or agency of this state to the extent that the lease or agreement provides for payments from general tax revenues of the state. Until the satisfaction in full of the obligations evidenced by bonds previously issued by the commission, the commission shall hold, manage and operate the trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights, separate from all other properties and interests in properties, moneys, deposits, securities and choses in action and other rights that may after the effective date of this section be held and owned by the commission. Upon the satisfaction of all of the obligations of the commission, all of the trust properties and interests in properties, moneys, deposits, securities and choses in action and other rights shall become and be free and clear of the trust.

§5-6-11a. Special power of commission to transfer or expend bond proceeds for capital improvements at institutions of higher education, state parks and the capitol complex and to construct and lease a center for arts and sciences of West Virginia;
limitations; state building commission authorized to issue revenue bonds; fund created; use of funds to pay for development of education, arts, sciences and tourism projects.

(a) The Legislature finds and declares that in order to attract new business and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity and economic welfare of this state it is necessary to promote adequate higher education, arts, sciences and tourism facilities, including infrastructure, for: (1) State-of-the-art educational opportunities for all citizens of this state; (2) tourism enhancements at state parks, the capitol complex or other tourism sites throughout the state; (3) hands-on arts and sciences training for the youth of West Virginia; and (4) programs using the performing arts as an educational tool. Therefore, in order to promote education, arts, sciences and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving and maintaining capital improvement projects which promote education, arts, sciences and tourism in this state.

(b) The state building commission shall, by resolution, in accordance with the provisions of this article, issue revenue bonds of the commission from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining capital improvement projects under this section or to refund the bonds, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate, one hundred million dollars. Any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-six, which are secured by lottery proceeds shall mature at a time or times not exceeding twenty-five years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(c) There is hereby created in the state treasury a special revenue fund named the "education, arts, sciences and
tourism debt service fund" into which shall be deposited on and after the first day of July, one thousand nine hundred ninety-six, the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The commission may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the education, arts, sciences and tourism debt service fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of this article. The education, arts, sciences and tourism debt service fund shall be pledged solely for the repayment of bonds issued pursuant to this section. On or prior to the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-six, the commission shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the education, arts, sciences and tourism debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the commission has issued bonds authorized by this section, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this section, any balance remaining in the education, arts, sciences and tourism debt service fund may be used for the redemption of any of the outstanding bonds issued under this section which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.
(d) The commission shall expend twenty-five million dollars of the bond proceeds for certified capital improvement projects at state institutions of higher education. For the purposes of certifying the projects which will receive funds from the bond proceeds, a committee shall be established and comprised of the governor, or his or her designee, the secretary of the department of administration, the secretary of the department of education and the arts, the chancellor of the university of West Virginia board of trustees and the chancellor of the board of directors of the state college system. The committee shall meet as often as necessary and take recommendations from any source whatever regarding the capital improvement projects at state institutions of higher education. The committee shall meet within forty-five days of the effective date of this section. Prior to making its recommendations, the committee shall conduct at least two public hearings, one of which must be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing. On or before the fifteenth day of September, one thousand nine hundred ninety-six, the committee shall certify to the commission a list of those capital improvement projects at state institutions of higher education which will receive funds from the proceeds of bonds issued pursuant to this section. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(e) The commission shall expend up to twenty-six million dollars from the proceeds of the bonds authorized by this section to pay a portion of the costs of projects certified under this subsection for development, maintenance or promotion of arts and sciences or constructing and equipping a center for arts and sciences of West Virginia located on a site acquired for that purpose. Any proceeds expended to pay a portion of project costs to construct and equip a center for arts and sciences of West Virginia shall not exceed forty percent of the total cost of the project and permanent endowments for operation and maintenance, and bond proceeds shall not be expended.
until sixty percent of the total cost has been committed from sources other than bond proceeds. For the purposes of certifying the projects which will receive funds from the bond proceeds under this subsection, a committee shall be established and comprised of the governor, or his or her designee, the secretary of the department of administration, the director of the division of natural resources, the director of the West Virginia development office and a representative of the capitol building commission, other than the secretary of the department of administration, who shall be selected by the capitol building commission. The capitol building commission shall select its representative within thirty days of the effective date of this section. The committee shall meet as often as necessary and take recommendations from any source whatever regarding which projects should be certified. The committee shall meet within forty-five days of the effective date of this section. Prior to making its determination, the committee shall conduct one public hearing on the projects to be certified under this subsection. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing. The committee shall make its determination as to whether bond proceeds will be expended for the purposes set forth in this subsection and the amount to be expended for each project, on or before the fifteenth day of June, one thousand nine hundred ninety-six. Thereafter, the decision may not be altered or amended other than by legislative enactment. The commission is authorized to acquire by purchase or lease real property to be used as the site for a center for arts and sciences of West Virginia; and notwithstanding the provisions of section seven of this article, enter into a long-term lease agreement with a nonprofit corporation organized under the laws of this state for operation and maintenance of the center. The nonprofit corporation shall, as consideration for any long-term lease agreement, complete the construction and equipping of the center and demonstrate to the satisfaction of the commission its financial ability to operate and maintain the center during the term of the lease agreement. The nonprofit corporation shall have at least nine
members on its board of directors which are appointed by
the governor with the advice and consent of the Senate.
Of the nine appointed members, three shall be selected
from each congressional district: Provided, That none of
the appointed members shall be a resident of Kanawha
County. The members appointed by the governor with
the advice and consent of the Senate shall serve on the
board for three-year staggered terms. Of the members
first appointed by the governor, one from each congres-
sional district will serve a three-year term, one from each
congressional district will serve a two-year term and one
from each congressional district shall serve a one-year
term.

(f) The commission shall expend the balance of the
bond proceeds for certified projects at state parks, the
capitol complex or other tourism sites. The committee
established in subsection (e) of this section shall certify to
the commission on or before the fifteenth day of Septem-
ber, one thousand nine hundred ninety-six, a list of those
capital improvement projects at state parks, the capitol
complex or other tourism sites which will receive funds
from the proceeds of bonds issued pursuant to this sec-
tion. The committee shall meet as often as necessary and
take recommendations from any source whatever regard-
ing the capital improvement projects at state parks, the
capitol complex or other tourism sites in this state. The
committee shall meet within forty-five days of the effec-
tive date of this section. Prior to making its recommenda-
tions, the committee shall conduct at least two public hear-
ings on the projects to be certified under this subsection,
one of which must be held outside of Kanawha County.
Notice of the time, place, date and purpose of the hearing
shall be published in at least one newspaper in each of the
three congressional districts at least fourteen days prior to
the date of the public hearing. Once certified, the list may
not thereafter be altered or amended other than by legisla-
tive enactment.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVEST-
MENTS.
§12-6-19. Authorization for loans by the state board of investments.

(a) The state board of investments, upon request of the state building commission, shall transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate twenty-one million dollars for the purposes of financing or refinancing the projects specified in subsections (b) and (d), section eight, article six, chapter five of this code. The money borrowed shall bear interest during the term of the loan at a fixed rate not to exceed the interest rate on treasury notes, bills or bonds of the same term as the term of the loan the week of closing on the loan as reported by the treasury of the United States. Loans made under this subsection shall be repaid in regular monthly or semiannual payments and shall be paid in full not later than twenty-five years from the date the loans are made with terms and conditions mutually agreed upon by the state building commission and the state board of investments.

(b) The state board of investments shall upon request of the state building commission transfer moneys as a loan to the state building commission in an amount not to exceed in the aggregate eighty million dollars for the purposes of financing construction of regional jails, correctional facilities, or building extensions or improvements to regional jails and correctional facilities. Prior to the expenditure of any loan proceeds, the regional jail and correctional facility authority shall certify a list of projects to the state building commission and the joint committee on government and finance that are to be funded from loan proceeds. This certified list cannot thereafter be altered or amended other than by legislative enactment. Upon receipt of the certified list of projects, the state building commission shall transfer the loan proceeds to the regional jail and correctional facility authority. The money borrowed shall bear interest during the term of the loan at a fixed rate not to exceed the interest rate on treasury notes, bills or bonds of the same term as the term of the loan the week of closing on the loan as reported by the treasury of the United States.
(c) Loans made under this section for the projects specified in subsection (b) of this section and in subsection (d), section eight, article six, chapter five of this code, shall be repaid in annual payments of not less than twelve million dollars per year by appropriation of the Legislature to the board of investments. The amount transferred for loans under subsection (a) or (b) of this section shall not exceed that amount which the board of investments determines is reasonable given the cash flow needs of the consolidated fund. The board shall make transfers for loans first for the project specified in subsection (d), section eight, article six, chapter five of this code, second for the projects specified in subsection (b) of this section and third for projects specified in subsection (b), section eight, article six, chapter five of this code, which are in imminent danger of default in payment. The board shall take the steps necessary to increase the liquidity of the consolidated fund over a period of the next five years to allow for the loans provided in this section without increasing the risk of loss in the consolidated fund.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "state lottery fund". The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund". The revenue shall be disbursed in the manner
provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the ten-year bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, the Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery edu-
cation fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section four, article five, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority and the state building commission which are secured by lottery proceeds. No additional transfer shall be made to any account other than the school building debt service account and the education, arts, sciences and tourism debt service fund when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the school building authority and the state building commission which are secured by net profits.

(g) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery education fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for such educational programs as it considers beneficial to the citizens of this state.
(h) On or before the twenty-eighth day of each month through the twentieth day of June, two thousand five, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor shall the total allocation of the net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the school building authority in favor of the bonds it issues which are secured by the net lottery profits.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter through the twenty-eighth day of June, two thousand twenty-one, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected
annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-six, as certified to the lottery director in accordance with the provisions of that section. In no event shall the monthly amount allocated exceed one million dollars nor shall the total allocation paid into the education, arts, sciences and tourism debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or ten million dollars. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the education, arts, sciences and tourism debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed fifteen million dollars annually, may be granted by the state building commission in favor of the bonds it issues which are secured by the net lottery profits.

(j) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery senior citizens fund". The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be disbursed in the manner provided below and shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.
(k) The division of natural resources and the West Virginia development office, as appropriated by the Legislature, may use the amounts allocated to it pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the authority granted to it under article five, chapter twenty of this code; (2) the payment, funding or refunding of the principal of, interest on or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the division of natural resources under article five, chapter twenty of this code; or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

CHAPTER 79

(Com. Sub. for H. B. 2353—By Delegates Hunt, Seacrist, Amores, Farris, Greear, Trump and Tillis)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to prohibiting courts from ordering a name change for certain felons; prohibiting certain felons from applying for a name change; and providing for penalties including fines or incarceration for violations of the provision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. CHANGE OF NAME.

§48-5-3. When court may order change of name.

§48-5-7. Unlawful change of name by certain felons.

§48-5-3. When court may order change of name.

1 Upon the filing of such petition, and upon proof of
2 the publication of such notice and of the matters set forth
3 in the petition, and being satisfied that no injury will be
4 done to any person by reason of such change, that
5 reasonable and proper cause exists for changing the name
6 of petitioner, and that such change is not desired because
7 of any fraudulent or evil intent on the part of the
8 petitioner, the court or judge thereof in vacation may
9 order a change of name as applied for except as provided
10 by the provisions of this section. The court may not grant
11 any change of name for any person convicted of any
12 felony during the time that the person is incarcerated.
13 The court may not grant any change of name for any
14 person required to register with the state police pursuant to
15 the provisions of article eight-f, chapter sixty-one of this
16 code during the period that such person is required to
17 register. The court may not grant a change of name for any
18 persons convicted of first degree murder in violation of
19 section one, article two, chapter sixty-one of this code for
20 a period of ten years after the person is discharged from
21 imprisonment or is discharged from parole, whichever
22 occurs later. The court may not grant a change of name
23 of any person convicted of violating any provision of
24 section fourteen-a, article two, chapter sixty-one of this
25 code for a period of ten years after the person is
26 discharged from imprisonment or is discharged from
27 parole, whichever occurs later.

§48-5-7. Unlawful change of name by certain felons.

1 (a) It is unlawful for any person convicted of first
2 degree murder in violation of section one, article two,
3 chapter sixty-one of this code, and for any person
4 convicted of violating any provision of section fourteen-a,
5 article two, chapter sixty-one of this code, for which a
6 sentence of life imprisonment is imposed, to apply for a
change of name for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

(b) It is unlawful for any person required to register with the state police pursuant to the provisions of article eight-f, chapter sixty-one of this code to apply for a change of name during the period that the person is required to register.

(c) It is unlawful for any person convicted of a felony to apply for a change of name during the period that such person is incarcerated.

(d) A person who violates the provisions of subsections (a), (b) or (c) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in the county or regional jail for not more than one year, or both fined and incarcerated.

CHAPTER 80

(Com. Sub. for H. B. 4170—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one through eleven, inclusive, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen of said article, all relating to duties of the department of human services for the welfare of children; definitions; creating a three-tiered regulatory structure for child care; creating a new classification for family day care facilities serving seven through twelve children and providing for less stringent certification requirements to be established by rule; and changing penalties.

Be it enacted by the Legislature of West Virginia:
That sections one through eleven, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen of said article be amended and reenacted, all to read as follows:

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

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.


§49-2B-3. Licensure, certification, approval and registration requirements.


§49-2B-5. Penalties; injunctions.

§49-2B-6. Conditions of licensure, certification approval and registration.

§49-2B-7. Waivers and variances to rules.

§49-2B-8. Application for license, certification or approval.


§49-2B-10. Investigative authority.

§49-2B-11. Revocation; provisional licensure, certification and approval.

§49-2B-14. Annual reports; directory; licensing reports and recommendations.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

(a) It is the policy of the state to assist a child and the child's family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of a temporary or permanent absence of parents or the separation of a child from the family unit for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing as close as possible to society's expectations of a family's care and nurturing of its child. The state has a duty to assure that proper and appropriate care is given and maintained.

(b) It is also the policy of this state to ensure that those persons and entities offering quality child care services are not over-encumbered by licensure, certification and registration requirements and that the extent of regulation of child care facilities be moderately proportionate to the size of the facility.

(c) Through licensure, approval, certification and registration of child care facilities and child welfare
agencies, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensure, approval, certification and registration processes shall therefore continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

(d) In order to carry out the above policy, the Legislature enacts this article to protect and prevent harm to children separated from their families and to enhance their continued growth and well-being while in care.

(e) The purposes of this article are:

(1) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care;

(2) To establish statewide rules for regulating programs as defined in this article;

(3) To encourage and assist in the improvement of child care programs;

(4) To ensure that persons and entities offering child care services are not unduly burdened by licensure, certification and regulation requirements; and

(5) To ensure that all child care programs be safe, reliable and geared to the ages and needs of the children they serve, meet basic health and safety standards, and employ people who have the training and experience needed to work with children.

(f) In order to carry out these purposes, the powers of the child welfare licensing board created by chapter nineteen, acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of human services, along with the other powers granted by this article.


As used in this article, unless the context otherwise requires:
(a) "Approval" means a finding by the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(b) "Certificate of approval" means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(c) "Certificate of license" means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

(d) "Certificate of registration" means a statement issued by the commissioner to a family day care home upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

(e) "Certification" means a statement issued by the commissioner to a family day care facility upon satisfactory inspection, approval and certification that the facility has complied with the applicable rules promulgated by the commissioner.

(f) "Child" means any person under eighteen years of age.

(g) "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements.

(h) "Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include
the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

(i) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including without limitation, private homes, or any facility that provides care for unmarried mothers and their children;

(j) "Commissioner" means the commissioner of human services.

(k) "Day care center" means a facility operated by a child welfare agency for the care of thirteen or more children on a nonresidential basis.

(l) "Department" means the state department of human services.

(m) "Facility" means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

(n) "Family day care home" means a facility which is used to provide nonresidential child care for compensation in other than the child's own home. The provider may care for four to six children, including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

(o) "Family day care facility" means any facility which is used to provide nonresidential child care for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age.

(p) "Foster family group home" means a private residence which is used for the care on a residential basis
of six, seven or eight children who are unrelated by blood, marriage, or adoption to any adult member of the household.

(q) "Foster family home" means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

(r) "Group home" means any facility, public or private, which is used to provide residential care for ten or fewer children.

(s) "Group home facility" means any facility, public or private, which is used to provide residential care for eleven or more children.

(t) "License" means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

(u) "Registration" means the process by which a family day care home self-certifies compliance with the rules promulgated pursuant to this article.

(v) "Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.

(w) "Rule" means a statement issued by the commissioner of the standard to be applied in the various areas of child care.

(x) "Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

(y) "Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

§49-2B-3. Licensure, certification, approval and registration requirements.
(a) Any person, corporation, or child welfare agency other than a state agency, which operates a residential child care facility, a child placing agency or a day care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child placing agency operated by the state shall obtain approval of its operations from the commissioner. Such facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state department of education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

(5) Persons providing family day care solely for children related to them.

(a) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article.

(b) The commissioner shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient.

§49-2B-5. Penalties; injunctions.

(a) Any individual or corporation which operates a child welfare agency, residential child care facility or day care center without a license when a license is required is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in jail not exceeding one year, or a fine of not more than five hundred dollars, or both fined and imprisoned.

(b) Any family day care facility which operates without certification when certification is required is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

(c) Where a violation of this article or a rule promulgated by the commissioner may result in serious harm to children under care, the commissioner may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, day care center, family day care facility, family day care home or governmental official through proceedings instituted by the attorney general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County or in the circuit court of any county where the children are residing or may be found.

§49-2B-6. Conditions of licensure, certification approval and registration.

(a) A license or approval is effective for a period of two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The license or
approval shall be reinstated upon application to the commissioner and a determination of compliance.

(b) A statement of certification is effective for a period of two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The statement of certification shall be reinstated upon application to the commissioner and a determination of compliance.

(c) A certificate of registration is effective for a period of two years from the date of issuance, unless revoked based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the commissioner, including a statement of assurance of continued compliance with the rules promulgated pursuant to this article.

(d) The license, approval, certification or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license, approval or certification shall be publicly displayed: Provided, That family day care homes, foster family homes, foster family group homes and group homes shall be required to display licenses, statements of certification or registration certificates upon request rather than by posting.

(e) A provisional license, certification or approval may be issued as:

(1) An initial license, certification or approval to a new facility which has been unable to demonstrate full compliance because the facility is not fully operational; or

(2) A temporary license, certification or approval to an established licensed or certified facility which is temporarily unable to conform to the provisions of this article or the rules promulgated hereunder.

(f) A provisional license, certification or approval shall expire six months from the date of issuance and may be
reinstated no more than two times. The issuance of a provisional license, certification or approval shall be contingent upon the submission to the commissioner of an acceptable plan to overcome identified deficiencies within the period of the provisional license or approval.

(g) Provisional certificates of registration shall be issued to family day care homes.

(h) The commissioner, as a condition of issuing a license, certification, registration or approval, may:

1) Limit the age, sex or type of problems of children allowed admission to a particular facility;

2) Prohibit intake of any children; or

3) Reduce the number of children which the agency, facility or home operated by the agency is licensed, approved, certified or registered to receive.

§49-2B-7. Waivers and variances to rules.

Waivers or variances of rules may be granted by the commissioner if the health, safety or well-being of a child would not be endangered thereby. The commissioner shall promulgate by rule criteria and procedures for the granting of waivers or variances so that uniform practices may be maintained throughout the state.

§49-2B-8. Application for license, certification or approval.

(a) Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license, statement of certification, approval or registration certificate to operate child care facilities regulated by this article. Applications for licensure, certification, approval or registration shall be made separately for each child care facility to be licensed, approved, certified or registered.

(b) The commissioner may prescribe forms and reasonable application procedures.

(c) Before issuing a license, certification or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The
investigation shall include, but not be limited to, review of
resource need, reputation, character and purposes of
applicants, a check of personnel criminal records, if any;
and personnel medical records, the financial records of
applicants, and consideration of the proposed plan for
child care from intake to discharge.

(d) Before a family day care home registration is
granted, the commissioner shall make inquiry as to the
facility, program and persons responsible for the care of
children. The inquiry shall include self-certification by
the prospective family day care home of compliance with
standards including, but not limited to:

1. Physical and mental health of persons present in
the home while children are in care;

2. Criminal and child abuse or neglect history of
persons present in the home while children are in care;

3. Discipline;

4. Fire and environmental safety;

5. Equipment and program for the children in care;

6. Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as
the commissioner may direct.

(f) The commissioner shall make a decision on each
application within sixty days of its receipt and shall
provide to unsuccessful applicants written reasons for the
decision.


(a) The commissioner shall provide supervision to
ascertain compliance with the rules promulgated pursuant
to this article through regular monitoring, visits to
facilities, documentation, evaluation and reporting. The
commissioner shall be responsible for training and
education, within fiscal limitations, specifically for the
improvement of care in family day care homes and
facilities. The commissioner shall consult with applicants,
the personnel of child welfare agencies, and children
under care to assure the highest quality child care possible.

(b) The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of this article by providing such reports and assistance as may be requested by the commissioner.

§49-2B-10. Investigative authority.

(a) The commissioner shall enforce the provisions of this article.

(b) An on-site evaluation of every facility regulated pursuant to this article, except certified family day care facilities and registered family day care homes, shall be conducted no less than once per year by announced or unannounced visits.

(c) Every certified family day care facility shall be satisfactorily inspected by the department prior to issuance of certification. Future inspections shall occur at not longer than two year intervals or upon receipt by the department of a complaint about the facility.

(d) A random sample of not less than five percent of registered family day care homes shall be monitored annually through on-site evaluations.

(e) The commissioner shall have access to the premises, personnel, children in care and records of each facility subject to inspection, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses, approvals, certifications and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval, certification or registration.

(f) When a complaint is received by the commissioner alleging violations of licensure, approval, certification or registration requirements, the commissioner shall investigate the allegations. The commissioner may notify the facility's director before or after a complaint is
investigated and shall cause a written report of the results of the investigation to be made.

(g) The commissioner may enter any unlicensed, uncertified, unregistered or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present. The commissioner may enter upon the premises of any unregistered residence only after two attempts by the commissioner to bring this facility into compliance.

§49-2B-11. Revocation; provisional licensure, certification and approval.

(a) The commissioner may revoke or make provisional the licensure or certification of any facility or child welfare agency regulated pursuant to this article if a facility materially violates any provision of this article, or any terms or conditions of the license, certification or approval issued, or fails to maintain established requirements of child care: Provided, That the provisions of this section shall not apply to family day care homes.

(b) The commissioner may revoke the certificate of registration of any family day care home if a facility materially violates any provision of this article, or any terms or conditions of the registration certificate issued, or fails to maintain established requirements of child care.

§49-2B-14. Annual reports; directory; licensing reports and recommendations.

(a) The commissioner shall submit on or before the first day of January of each year a report to the governor, and upon request to members of the Legislature, concerning the regulation of child welfare agencies, child placing agencies, day care centers, family day care facilities, family day care homes and child care facilities during the year. The report shall include, but not be limited to, data on the number of children and staff at each facility (except family day care homes), applications received, types of licenses, certifications, approvals and registrations granted, denied, made provisional or revoked and any injunctions obtained or facility closures ordered.
(b) The commissioner also shall compile annually a directory of licensed, certified and approved child care providers including a brief description of their program and facilities, the program's capacity and a general profile of children served. A listing of family day care homes shall also be compiled annually.

(c) Licensing reports and recommendations for licensure and certification which are a part of the yearly review of each licensed facility shall be sent to the facility director. Copies shall be available to the public upon written request to the commissioner.

CHAPTER 81

(S. B. 562—By Senators Walker, Anderson, Bailey, Ross, Wooton, Jackson, Plymale, Blatnik, Sharpe, Dittmar, Bowman, Oliverio, Minear, Kimble, Yoder, Whitlow, Helmick and Tomblin, Mr. President)

[Passed March 2, 1996; is effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five and six, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to children with special health care needs.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and six, article four, 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 4. CHILDREN WITH SPECIAL HEALTH CARE NEEDS.

§49-4-1. Purpose.
§49-4-2. Children to whom article applies.
§49-4-3. Powers of state bureau.
§49-4-4. Report of birth of special health care needs child.
§49-4-5. Assistance by other agencies.
§49-4-1. Purpose.

The purpose of this article is to provide for the continuation and development of services for children with special health care needs. The state bureau of public health within the department of health and human resources shall formulate and apply administrative policies concerning the care and treatment of children with special health care needs and shall cooperate with other agencies responsible for such care and treatment.

In the development of administrative policies, the state bureau shall cooperate with the United States department of health and human services and shall comply with the regulations that agency prescribes under the authority of the "Social Security Act", and is hereby authorized to receive and expend federal funds for these services.

§49-4-2. Children to whom article applies.

It is the intention of this article that services for children with special health care needs shall be extended only to those children for whom adequate care, treatment and rehabilitation are not available from other than public sources.

§49-4-3. Powers of state bureau.

In the care and treatment of children with special health care needs the state bureau of public health shall, so far as funds are available for the purpose:

1. Locate children with special health care needs requiring medical, surgical or other corrective treatment and provide competent diagnosis to determine the treatment required.

2. Supply to children with special health care needs treatment, including hospitalization and aftercare leading to correction and rehabilitation.


§49-4-4. Report of birth of special health care needs child.
Within thirty days after the birth of a child with a congenital deformity, the physician, midwife or other person attending the birth shall report to the state bureau of public health, on forms prescribed by them, the birth of such child.

The report shall be solely for the use of the state department of health and human resources and shall not be open for public inspection.

§49-4-5. Assistance by other agencies.

So far as practicable, the services and facilities of the state departments of health and human services, education, vocational rehabilitation and corrections or their successors shall be available to the state bureau of public health for the purposes of this article.


All payments from any corporation, association, program or fund providing insurance coverage or other payment for medicine, medical, surgical and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required for a child with special health care needs, shall be applied toward the total cost of treatment.

CHAPTER 82

(Com. Sub. for H. B. 2500—By Delegates Thompson, Ryan, J. Martin, Stalnaker, Tillis, Amores and Pulliam)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
to juvenile proceedings; definitions which are used in this article; jurisdiction of courts in juvenile proceedings; constitutional guarantees for juveniles; hearings, evidence and transcripts of juvenile proceedings; waiver and transfer of juvenile proceedings from the juvenile jurisdiction to the criminal jurisdiction of the courts; confidentiality of juvenile records; expungement of juvenile records; prohibiting discrimination against persons who have been involved in juvenile proceedings whose records have been expunged; juvenile after-care plans; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Definitions.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

§49-5-10. Waiver and transfer of jurisdiction.

§49-5-17. Confidentiality of juvenile records.

§49-5-18. Expungement of juvenile records.


§49-5-20. After-care plans.

§49-5-1. Definitions.

(a) As used in this article, the term "adult" means a person who is at least eighteen years of age.

(b) As used in this article, the term "child" means a person who has not attained the age of eighteen years, or a person who is otherwise subject to the juvenile jurisdiction of a court pursuant to this article.

(c) As used in this article, the term "extrajudicial statement" means any utterance, written or oral, which was made outside of court.
(d) As used in this article, the term "juvenile" shall have the same meaning as the term "child."

(e) As used in this article, the term "res gestae" means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.

(f) As used in this article, the term "violation of a traffic law of West Virginia" means a violation of any provision of chapters seventeen-a, seventeen-b, seventeen-c or seventeen-d of this code except a violation of chapter seventeen-c, article four, sections one and two (hit and run) or of chapter seventeen-c, article five, sections one (negligent homicide), two (driving under the influence of alcohol, controlled substances or drugs) or three (reckless driving).

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

(a) The circuit court shall have original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court, it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts shall have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia or for any violation of chapter twenty of this code. Juveniles shall be liable for punishment for violations of such laws in the same manner as adults except that magistrate courts shall have no jurisdiction to impose a sentence of incarceration for the violation of such laws.
(d) Notwithstanding any other provision of this article, municipal courts shall have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic or for any municipal curfew ordinance which is enforceable. Municipal courts may impose the same punishment for such violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts shall have no jurisdiction to impose a sentence of incarceration for the violation of such laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudged neglected or delinquent;

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia; or

(3) By a warrant, capias or attachment which charges a juvenile with an act of delinquency, is issued by a judge, referee or magistrate, and is returnable to the circuit court.

(f) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudged a delinquent for such act, the jurisdiction of the court which adjudged the juvenile a delinquent shall continue until the juvenile becomes twenty-one years of age. The court shall have the same power over the person that it had before he or she became an adult, and shall have the further power to sentence the person to a term of incarceration which cannot exceed six months. This authority shall not preclude the court from exercising criminal jurisdiction over the person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten of this article.

(g) A juvenile shall be entitled to be admitted to bail or recognizance in the same manner as an adult and shall
have the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile shall have the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile's parents or custodian executes an affidavit showing that the juvenile cannot afford an attorney the court shall appoint an attorney, who will be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall have a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all such proceedings except persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal proceedings shall be applicable unless specifically provided otherwise in this chapter.

(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports based upon hearsay.

(l) Extradjudicial statements, other than res gestae, which were made by a juvenile under fourteen years of age to law-enforcement officials or while in custody shall not be admissible unless such statements were made in the presence of the juvenile's counsel. Extradjudicial statements, other than res gestae, which were made by a juvenile who is at least fourteen years of age to law-enforcement officials or while in custody shall not be admissible unless such statements were made in the presence of the juvenile's counsel or in the presence of, and with the consent of, the juvenile's parent or custodian who has been fully informed regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including
appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings. At the conclusion of any hearing, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.

§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, guardians 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 convincing 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; 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 attitude, 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 attitude, 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 previously 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 during the commission of a felony; or

(4) The child has committed a violation of the provisions 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 possession 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.
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 reextend 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. In the event any such notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court shall be stayed upon motion of the defendant pending final action of the supreme court of appeals thereon.

§ 49-5-17. Confidentiality of juvenile records.

(a) Records of a juvenile proceeding conducted under this chapter are not public records, and therefore they shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only certain types of juvenile records shall be disclosed. These include and are limited to cases in which:
(A) The juvenile has been charged with an offense which would be a crime if it was committed by an adult; and

(i) The offense involves violence against another person;

(ii) The offense involves possession of a dangerous or deadly weapon; or

(iii) The offense involves possession or delivery of a controlled substance as that term is defined in chapter 60A-1-101(d) of this code; and

(B) The juvenile case has proceeded to a point where one or more of the following has occurred:

(i) A judge, magistrate or referee has determined that there is probable cause to believe that the juvenile committed the offense as charged;

(ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;

(iii) A judge, magistrate or referee has placed the juvenile into an improvement period in accordance with section nine, article five, chapter forty-nine of this code; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of a juvenile case to the county superintendent of schools in the county in which the juvenile attends school. The person designated by the circuit court shall also automatically disclose all records of a juvenile case to the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at
(5) If the juvenile does not attend school at the time the juvenile's case is pending, the person designated by the circuit court shall not transmit the juvenile's records to any school. However, the person designated by the circuit court shall transmit the juvenile's records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court shall not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist, and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine whether the juvenile records should be disclosed to the out-of-state school. The circuit judge shall have discretion in determining whether to disclose the juvenile records, and shall consider whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with the provisions of subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile's records to the appropriate school official under cover of a letter emphasizing the confidentiality of such records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile's records and cover letter.

(8) Juvenile records must be treated as absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile's records shall be noted on the juvenile's permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a
school to whom the records are transmitted shall have the
duty to disclose the contents of those records to any
teacher who teaches a class in which the subject juvenile is
enrolled and to the regular driver of a school bus in which
the subject juvenile is regularly transported to or from
school. Furthermore, any school official to whom the
juvenile's records are transmitted may disclose the contents
of such records to any adult within the school system who,
in the discretion of the school official, has the need to be
aware of the contents of those records.

(9) If for any reason a juvenile ceases to attend a
school which possesses that juvenile's records, the
appropriate official at that school shall seal the records
and return them to the circuit court which sent them to
that school. If the juvenile has changed schools for any
reason, the former school shall inform the circuit court of
the name and location of the new school which the
juvenile attends or will be attending. If the new school is
located within West Virginia, the person designated by the
circuit court shall forward the juvenile's records to the
juvenile's new school in the same manner as provided in
subdivision (7) of this subsection. If the new school is not
located within West Virginia, the person designated by the
circuit court shall handle the juvenile records in
accordance with subdivision (6) of this subsection.

If the juvenile has been found to be not guilty of an
offense for which records were previously forwarded to
the juvenile's school on the basis of a finding of probable
cause, the circuit court shall not forward those records to
the juvenile's new school. However, this shall not affect
records related to other prior or future offenses. If the
juvenile has graduated or quit school, or will otherwise not
be attending another school, the circuit court shall retain
the juvenile's records and handle them as otherwise
provided in this article.

(10) Under no circumstances shall one school transmit
a juvenile's records to another school.

(11) Under no circumstances shall juvenile records be
automatically transmitted to a college, university or other
post-secondary school.
(12) No one shall suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, such person shall have the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties, in accordance with subsection (d) of this section.

(13) If a judge, magistrate or referee has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold print that there has been no determination of delinquency and that our legal system requires a presumption of innocence.

(c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may be disclosed, subject to the following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court, the juvenile records of that particular case may be disclosed if the juvenile who is transferred fails to timely file an appeal of the transfer order; files a timely appeal of the transfer order but the Supreme Court of Appeals of West Virginia refuses to hear the appeal; or files a timely appeal of the transfer order which is affirmed by the Supreme Court of Appeals of West Virginia. All records of the case shall be open to public inspection following any of these occurrences. These records shall be handled pursuant to all of the same strictures, guidelines and requirements of law which exist regarding disclosure of records for adults.

(2) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;
(B) A court exercising criminal jurisdiction over the juvenile which requests such records for the purpose of a presentence report or disposition proceeding;

(C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

(D) The officials of a public institution to which the juvenile is committed if they require such records for transfer, parole or discharge; or

(E) A person who is conducting research. However, juvenile records shall be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile's family shall not be disclosed.

(d) 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, incarcerated not more than six months, or be both fined and incarcerated. Furthermore, a violator of this section shall be liable for damages in the amount of three hundred dollars or the actual amount of damages, whichever is greater.

§49-5-18. Expungement of juvenile records.

(a) One year after the juvenile's eighteenth birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, shall be expunged by operation of law.

(b) To expunge juvenile records they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they have been expunged and shall be securely sealed and filed in such a manner that no one can determine the identity of the juvenile.

(c) Expunged records cannot be opened except upon order of the circuit court.
(d) Expungement of juvenile records has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to subdivision (1), subsection (d), section ten of this article shall not be expunged.

(f) 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, incarcerated not more than six months, or be both fined and incarcerated. Furthermore, a violator of this section shall be liable for damages in the amount of three hundred dollars or the actual amount of damages, whichever is greater.


(a) No individual, firm, corporation or other entity shall discriminate against any person in any manner due to that person's prior involvement in a proceeding under this article if that person's records have been expunged pursuant to the provisions of this article. This includes, but is not limited to, discrimination relating to employment, housing, education, obtaining credit, and contractual rights.

(b) 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, incarcerated not more than six months, or be both fined and incarcerated. Furthermore, a violator of this section shall be liable to the person who has been discriminated against for damages in the amount of three hundred dollars or the actual amount of damages, whichever is greater.

§49-5-20. After-care plans.

(a) At least forty-five days prior to the discharge of a juvenile from any institution or facility to which the juvenile was committed pursuant to subdivision (5), (6) or (7) of subsection (b), section thirteen of this article, the director of the institution or facility shall forward a copy
of the juvenile's proposed after-care plan to the circuit court which committed the juvenile. A copy of the plan shall also be sent to: (1) The juvenile's parents or legal guardian; (2) the juvenile's lawyer; (3) the juvenile'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 which the juvenile will attend. The plan shall have a list of the names and addresses of these persons attached to it.

(b) The after-care plan shall contain a detailed description of the education, counseling and treatment which the juvenile received while at the institution or facility and it shall also propose a plan for education, counseling and treatment for the juvenile upon the juvenile's discharge. The plan shall also contain a description of any problems the juvenile has, including the source of those problems and it shall propose a manner for addressing those problems upon discharge.

c) Within twenty-one days of receiving the plan, the juvenile's probation officer or community mental health center professional shall submit written comments upon the plan to the circuit court which committed the juvenile. Any other person who received a copy of the plan pursuant to subsection (a) of this section may submit written comments upon the plan to the circuit court which committed the juvenile. Any person who submits comments upon the plan shall send a copy of those comments to every other person who received a copy of the plan.

d) Within twenty-one days of receiving the plan, the juvenile's probation officer or community mental health center professional shall contact all persons, organizations and agencies which are to be involved in executing the plan to determine whether they are capable of executing their responsibilities under the plan and to further determine whether they are willing to execute their responsibilities under the plan.

e) If adverse comments or objections regarding the plan are submitted to the circuit court, it shall, within forty-five days of receiving the plan, hold a hearing to
consider the plan and the adverse comments or objections. Any person, organization or agency which has responsibilities in executing the plan, or their representatives, may be required to appear at the hearing unless they are excused by the circuit court. Within five days of the hearing, the circuit court shall issue an order which adopts the plan as submitted or as modified in response to any comments or objections.

(f) If no adverse comments or objections are submitted, a hearing need not be held. In that case, the circuit court shall consider the plan as submitted and shall within forty-five days of receiving the plan, issue an order which adopts the plan as submitted.

(g) Notwithstanding the provisions of subsections (e) and (f) of this section, the plan which is adopted by the circuit court shall be in the best interests of the juvenile and shall also be in conformity with West Virginia's interest in youth as embodied in subsection (b), section thirteen of this article.

(h) The circuit court which committed the juvenile shall appoint the juvenile's probation officer or a community mental health center professional to act as supervisor of the plan. The supervisor shall report the juvenile's progress under the plan to the circuit court every sixty days, or until the circuit court determines that no report or no further care is necessary.

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CHAPTER 83

(Com. Sub. for H. B. 4138—By Delegates Douglas and Givens)

[Passed March 9, 1996; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one and three, article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, five and eleven, article six of said chapter; to further amend said article by adding thereto...
a new section, designated section twelve; to amend and reenact section three, article six-d of said chapter; to amend and reenact section eleven-a, article eight-b, chapter sixty-one of said code; and to amend and reenact section nine, article eight-d of said chapter, all relating to abuse and neglect of children; restricting requirement of meetings for certain cases; requiring that prior to temporary custody person found to be fit to receive custody; requiring that hearing be held within sixty days of expiration of improvement period; changing provisions relating to length and terms of improvement period; requiring respondent to move for improvement period and restricting the ability of the court to grant an improvement period prior to finding that child is abused or neglected; limiting length of improvement period; requiring release of information; termination of improvement period; extension of improvement period; family case plans; and convictions for offenses against children to require adjudication of status as abusing parent.

Be it enacted by the Legislature of West Virginia:

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

Chapter
61. Crimes and Their Punishment.

CHAPTER 49. CHILD WELFARE.

Article
5D. Multidisciplinary Teams.
6. Procedure in Cases of Child Neglect or Abuse.
6D. West Virginia Child Protective Services Act.

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.
§49-5D-1. Purpose; additional cases and teams.

§49-5D-3. Multidisciplinary treatment planning process.

§49-5D-1. Purpose; additional cases and teams.

(a) The purpose of this article is to provide a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing delinquency proceedings. It is the further purpose of this article to establish, as a complement to other programs of the department of health and human resources, a multidisciplinary screening, advisory and planning system to assist courts in facilitating permanency planning, following the initiation of judicial proceedings, to recommend alternatives and to coordinate evaluations and in-community services. It is the further purpose of this article to ensure that children are safe from abuse and neglect and to coordinate investigation of alleged child abuse offenses and competent criminal prosecution of offenders to ensure that safety, as determined appropriate by the prosecuting attorney.

(b) Nothing in this article precludes any multidisciplinary team from considering any case upon the consent of the members of the team.

§49-5D-3. Multidisciplinary treatment planning process.

(a) On or before the first day of January, one thousand nine hundred ninety-five, a multidisciplinary treatment planning process shall be established within each county of the state, either separately or in conjunction with a contiguous county by the secretary of the department with advice and assistance from the prosecutor's advisory council as set forth in section four, article four, chapter seven of this code.

Treatment teams shall assess, plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families when a judicial proceeding has been initiated involving the child or children and for children and their families involved in delinquency proceedings.
(b) Each treatment team shall be convened and directed by the child's or family's case manager. The treatment team shall consist of the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child, if assigned by a judge of the circuit court, the child, if the child is over the age of twelve, and if the child's participation is otherwise appropriate, the child, if under the age of twelve when the team determines that the child's participation is appropriate, the guardian ad litem, the prosecuting attorney or his or her designee, and any other agency, person or professional who may contribute to the team's efforts to assist the child and family.

(c) The treatment team shall coordinate their activities and membership with local family resource networks, and coordinate with other local and regional child and family service planning committees to assure the efficient planning and delivery of child and family services on a local and regional level.

(d) State, county and local agencies shall provide the multidisciplinary treatment teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused—Right to counsel; improvement period; hearing; priority of proceeding; transcript.

§49-6-3. Petition to court when child believed neglected or abused—Temporary custody.

§49-6-5. Disposition of neglected or abused children.

§49-6-11. Conviction for offenses against children.

§49-6-12. Improvement period in cases of child neglect or abuse.
§49-6-2. Petition to court when child believed neglected or abused--Right to counsel; improvement period; hearing; priority of proceeding; transcript.

(a) In any proceeding under the provisions of this article, the child, his or her parents, and his or her legally established custodian or other persons standing in loco parentis to him, such persons other than the child being hereinafter referred to as other party or parties, shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. If the other parties have not retained counsel and the other parties cannot pay for the services of counsel, the court shall, by order entered of record, at least ten days prior to the date set for hearing, appoint an attorney or attorneys to represent the other party or parties and so inform the parties. Under no circumstances may the same attorney represent both the child and the other party or parties, nor shall the same attorney represent both parents or custodians. However, one attorney may represent both parents or custodians where both parents or guardians consent to this representation after the attorney fully discloses to the client the possible conflict, and where the attorney assures the court that she or he is able to represent each client without impairing her or his professional judgment; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases. Any attorney appointed pursuant to this section shall by the first day of July, one thousand nine hundred ninety-three, and three hours per year each year thereafter, receive a minimum of three hours of continuing legal education training on representation of children, child abuse and neglect: Provided, That where no attorney who has completed this training is available for such appointment, the court shall appoint a competent attorney with demonstrated knowledge of child welfare law to represent the child. Any attorney appointed pursuant to this section shall perform all duties required as an
(b) In any proceeding brought pursuant to the provisions of this article, the court may grant any respondent an improvement period in accord with the provisions of this article. During such period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children, or the state department or other agency during the improvement period. An order granting such improvement period shall require the department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state department to remedy the alleged circumstances. At the conclusion of the hearing the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected, which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court, except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period
and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of said improvement period and shall be held within sixty days of the termination of such improvement period.

(e) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he cannot pay therefor.

§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.

(a) Upon the filing of a petition, the court may order that the child alleged to be an abused or neglected child be delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child; and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the
allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the state department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; and (2) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the state department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, That the court order shall state: (1) That continuation in the home is contrary to the best interests of the child and state the reasons therefore; (2) whether or not the department made reasonable efforts to prevent the child's removal from his or her
home; (3) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) what efforts should be made by the department to facilitate the child's return home: *Provided, however,* That if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: *Provided,* That after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the supreme court of appeals or prepared by the prosecuting attorney or the applicant, and
shall set forth facts from which it may be determined that
the probable cause described above in this subsection
exists. Upon such sworn testimony or other evidence as
the judge or referee deems sufficient, the judge or referee
may order the emergency taking by the worker to be
ratified. If appropriate under the circumstances, the order
may include authorization for an examination as provided
for in subsection (b), section four of this article. If a refer­
ee issues such an order, the referee shall by telephonic
communication have such order orally confirmed by a
circuit judge of the circuit or an adjoining circuit who
shall on the next judicial day enter an order of confirma­
tion. If the emergency taking is ratified by the judge or
referee, emergency custody of the child or children shall
be vested in the state department until the expiration of the
next two judicial days, at which time any such child taken
into emergency custody shall be returned to the custody
of his or her parent or guardian or custodian unless a
petition has been filed and custody of the child has been
transferred under the provisions of section three of this
article.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two
of this article wherein the court finds a child to be abused
or neglected, the department shall file with the court a
copy of the child's case plan, including the permanency
plan for the child. The term case plan means a written
document that includes, where applicable, the require­
ments of the family case plan as provided for in section
three, article six-d of this chapter and that also includes at
least the following: A description of the type of home or
institution in which the child is to be placed, including a
discussion of the appropriateness of the placement and
how the agency which is responsible for the child plans to
assure that the child receives proper care and that services
are provided to the parents, child and foster parents in
order to improve the conditions in the parent(s) home,
facilitate return of the child to his or her own home or the
permanent placement of the child, and address the needs
of the child while in foster care, including a discussion of
the appropriateness of the services that have been provided
to the child. The term permanency plan refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the state department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court. The court order shall state: (1) That continuation in the home is contrary to the best interests of the child and why; (2) whether or not the state department made a reasonable effort to prevent the placement to
include a statement of what efforts were made or that the emergency situation made such efforts unreasonable or impossible; and (3) the specific circumstances of the situation which makes such efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department shall continue. Considerations pertinent to the determination include whether the child should: (1) Be continued in foster care for a specified period; (2) should be considered for adoption; (3) because of a child's special needs or circumstances, be continued in foster care on a permanent or long-term basis; or (4) be continued in foster care until reunification is achieved. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate the parental, custodial or guardianship rights and/or responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the state department or a licensed child welfare agency. If the court shall so find, then in fixing its dispositional order, the court shall consider the following factors: (1) The child's need for continuity of care and caretakers; (2) the amount of time required for the child to be integrated into a stable and permanent home environment; and (3) other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the permanent parental rights shall not be terminated if a child fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or
not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state: (1) That continuation in the home is not in the best interest of the child and why; (2) why reunification is not in the best interests of the child; (3) whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and (4) whether or not the state department made a reasonable effort to reunify the family including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect, on their own or with help. Such conditions shall be deemed to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;
(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child; or

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills.

(c) The court may as an alternative disposition allow to the parents or custodians an improvement period not to exceed six months. During this period the parental rights shall not be permanently terminated and the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person for the temporary care of the child during the period. At the end of the period the court shall hold a hearing to determine whether the conditions have been adequately improved, and at the conclusion of such hearing, shall make a further dispositional order in accordance with this section.

§49-6-11. Conviction for offenses against children.

In any case where a person is convicted of an offense described in section twelve, article eight, chapter sixty-one of this code or articles eight-b or eight-d of said chapter against a child and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or to any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of this chapter as to the child victim, and may find that the person is an abusing parent as to any child who resides in
the same household as the victim, and the court shall take such further steps as are required by this article.

§49-6-12. Improvement period in cases of child neglect or abuse.

(a) A court may grant a respondent an improvement period of a period not to exceed three months prior to making a finding that a child is abused or neglected pursuant to section two of this article only when:

(1) The respondent files a written motion requesting the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period, or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period; and

(4) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter;

(b) After finding that a child is an abused or neglected child pursuant to section two of this article, a court may grant a respondent an improvement period of a period not to exceed six months when:

(1) The respondent files a written motion requesting the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court fur-
ther makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period, or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improvement period and that the department submit a report as to the respondent's progress in the improvement period within sixty days of the order granting the improvement period;

(4) Since the initiation of the proceeding, the respondent has not previously been granted any improvement period or the respondent demonstrates that since the initial improvement period, the respondent has experienced a substantial change in circumstances. Further, the respondent shall demonstrate that due to that change in circumstances the respondent is likely to fully participate in a further improvement period; and

(5) The order granting the improvement period requires the department to prepare and submit to the court an individualized family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) The court may grant an improvement period not to exceed six months as a disposition pursuant to section five of this article when:

(1) The respondent moves in writing for the improvement period;

(2) The respondent demonstrates, by clear and convincing evidence, that the respondent is likely to fully participate in the improvement period and the court further makes a finding, on the record, of the terms of the improvement period;

(3) In the order granting the improvement period, the court (A) orders that a hearing be held to review the matter within sixty days of the granting of the improvement period, or (B) orders that a hearing be held to review the matter within ninety days of the granting of the improve-
ment period and that the department submit a report as to
the respondent's progress in the improvement period with-
in sixty days of the order granting the improvement peri-
od;

(4) Since the initiation of the proceeding, the respon-
dent has not previously been granted any improvement
period or the respondent demonstrates that since the initial
improvement period, the respondent has experienced a
substantial change in circumstances. Further, the respon-
dent shall demonstrate that due to that change in circum-
stances, the respondent is likely to fully participate in the
improvement period; and

(5) The order granting the improvement period shall
require the department to prepare and submit to the court
an individualized family case plan in accordance with the
provisions of section three, article six-d of this chapter.

(d) When any improvement period is granted to a
respondent pursuant to the provisions of this section, the
respondent shall be responsible for the initiation and com-
pletion of all terms of the improvement period. The court
may order the state department to pay expenses associated
with the services provided during the improvement period
when the respondent has demonstrated that he or she is
unable to bear such expenses.

(e) When any improvement period is granted to a
respondent pursuant to the provisions of this section, the
respondent shall execute a release of all medical informa-
tion regarding that respondent, including, but not limited
to, information provided by mental health and substance
abuse professionals and facilities. Such release shall be
accepted by any such professional or facility regardless of
whether the release conforms to any standard required by
that facility.

(f) When any respondent is granted an improvement
period pursuant to the provisions of this article, the depart-
ment shall monitor the progress of such person in the
improvement period. When the respondent fails to partici-
pate in any service mandated by the improvement period,
the state department shall initiate action to inform the
court of that failure. When the department demonstrates
that the respondent has failed to participate in any provi-
sion of the improvement period, the court shall forthwith
terminate the improvement period.

(g) A court may extend any improvement period
granted pursuant to subsections (b) or (c) of this section
for a period not to exceed three months when the court
finds that the respondent has substantially complied with
the terms of the improvement period; that the continuation
of the improvement period will not substantially impair
the ability of the department to permanently place the
child; and that such extension is otherwise consistent with
the best interest of the child.

(h) Upon the motion by any party, the court shall
terminate any improvement period granted pursuant to
this section when the court finds that respondent has failed
to fully participate in the terms of the improvement peri-
od.

(i) This section may not be construed to prohibit a
court from ordering a respondent to participate in services
designed to reunify a family or to relieve the department
of any duty to make reasonable efforts to reunify a family
required by state or federal law.

(j) Any hearing scheduled pursuant to the provisions
of this section may be continued only for good cause
upon a written motion properly served on all parties.
When a court grants such continuance, the court shall
enter an order granting the continuance which shall specify
a future date when the hearing will be held.

(k) Any hearing to be held at the end of an improve-
ment period shall be held as nearly as practicable on suc-
cessive days and shall be held as close in time as possible
after the end of said improvement period and shall be held
no later than sixty days of the termination of such im-
provement period.

ARTICLE 6D. WEST VIRGINIA CHILD PROTECTIVE SERVICES
ACT.

§49-6D-3. Family case plans for parents of abused or neglect-
ed children.
(a) The department shall develop a family case plan for every family wherein a person has been referred to the department after being allowed an improvement period under the provisions of section twelve, article six of this chapter. The department may also prepare a family case plan for any person who voluntarily seeks child abuse and neglect services from the department, or who is referred to the department by another public agency or private organization. The family case plan is to clearly set forth an organized, realistic method of identifying family problems and the logical steps to be used in resolving or lessening those problems. Every family case plan prepared by the department shall contain the following:

1. A listing of specific, measurable, realistic goals to be achieved;
2. An arrangement of goals into an order of priority;
3. A listing of the problems that will be addressed by each goal;
4. A specific description of how the assigned case-worker or caseworkers and the abusing parent, guardian or custodian will achieve each goal;
5. A description of the departmental and community resources to be used in implementing the proposed actions and services;
6. A list of the services which will be provided;
7. Time targets for the achievement of goals or portions of goals;
8. An assignment of tasks to the abusing or neglecting parent, guardian or custodian, to the caseworker or caseworkers and to other participants in the planning process; and
9. A designation of when and how often tasks will be performed.

(b) In cases where the family has been referred to the department by a court under the provisions of this chapter, and further action before the court is pending, the family case plan described in subsection (a) of this section shall
be furnished to the court within thirty days after the entry
of the order referring the case to the department, and shall
be available to counsel for the parent, guardian or custodi-
an and counsel for the child or children. The department
shall encourage participation in the development of the
family case plan by the parent, guardian or custodian, and,
if the child is above the age of twelve years and the child's
participation is otherwise appropriate, by the child. It shall
be the duty of counsel for the participants to participate in
the development of the family case plan. The family case
plan may be modified from time to time by the depart-
ment to allow for flexibility in goal development, and in
each such case the modifications shall be submitted to the
court in writing. The court shall examine the proposed
family case plan or any modification thereof, and upon a
finding by the court that the plan or modified plan can be
easily communicated, explained and discussed so as to
make the participants accountable and able to understand
the reasons for any success or failure under the plan, the
court shall inform the participants of the probable action
of the court if goals are met or not met.

(c) (1) In addition to the family case plan provided for
under the provisions of subsection (b) of this section, the
department shall prepare, as an appendix to the family
case plan, an expanded "worker's case plan". As utilized by
the department under the provisions of this section, the
worker's case plan shall consist of the following:

(A) All of the information contained in the family
case plan described in subsection (c) of this section;

(B) A prognosis for each of the goals projected in the
family case plan, assessing the capacity of the parent,
guardian or custodian to achieve the goal and whether
available treatment services are likely to have the desired
outcome;

(C) A listing of the criteria to be used to assess the
degree to which each goal is attained;

(D) A description of when and how the department
will decide when and how well each goal has been at-
tained;
(E) If possible, a listing of alternative methods and specific services which the caseworker or caseworkers may consider using if the original plan does not work; and

(F) A listing of criteria to be used in determining when the family case plan should be terminated.

(2) Because the nature of the information contained in the worker's case plan described in subdivision (1) of this subsection may, in some cases, be construed to be negative with respect to the probability of change, or may be viewed as a caseworker's attempt to impose personal values into the situation, or may raise barriers of hostility and resistance between the caseworker and the family members, the worker's case plan shall not be made available to the court or to persons outside of the department, but shall be used by the department for the purpose of confirming the effectiveness of the family case plan or for determining that changes in the family case plan need to be made.

(d) In furtherance of the provisions of this article, the department shall, within the limits of available funds, establish programs and services for the following purposes:

(1) For the development and establishment of training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) For the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams and community teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support and supervision of satellite centers and attention homes, as well as providing advice and consultation to individuals, agencies and organizations which request such services;
(3) For furnishing services of multidisciplinary teams and community teams, trained in the prevention, identification and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available;

(4) For other innovative programs and projects that show promise of successfully identifying, preventing or remedying the causes of child abuse and neglect, including, but not limited to, programs and services designed to improve and maintain parenting skills, programs and projects for parent self-help, and for prevention and treatment of drug-related child abuse and neglect; and

(5) Assisting public agencies or nonprofit private organizations or combinations thereof in making applications for grants from, or in entering into contracts with, the secretary of the federal department of health and human services for demonstration programs and projects designed to identify, prevent and treat child abuse and neglect.

(e) Agencies, organizations and programs funded to carry out the purposes of this section shall be structured so as to comply with any applicable federal law, any regulation of the federal department of health and human services or the secretary thereof, and any final comprehensive plan of the federal advisory board on child abuse and neglect. In funding organizations, the department shall, to the extent feasible, ensure that parental organizations combating child abuse and neglect receive preferential treatment.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

Article
8B. Sexual Offenses.
8D. Child Abuse.

ARTICLE 8B. SEXUAL OFFENSES.


1 In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation or other parental rights to the child
who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take such further action in accord with the provisions of said article.

ARTICLE 8D. CHILD ABUSE.


In any case where a person is convicted of an offense described in this article against a child and the person has custodial, visitation or other parental rights to the child who is the victim of the offense or any child who resides in the same household as the victim, the court shall, at the time of sentencing, find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code as to the child victim, and may find that the person is an abusing parent as to any child who resides in the same household as the victim, and shall take such further action in accord with the provisions of said article.

CHAPTER 84

(H. B. 4474—By Delegates Douglas, Trump, Jenkins and Manuel)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That article five-d, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated sections five, six and seven, all to read as follows:

ARTICLE 5D. MULTIDISCIPLINARY TEAMS.

§49-5D-5. Child fatality review team.
§49-5D-6. Other agencies of government required to cooperate.
§49-5D-7. Law enforcement; prosecution; interference with performance of duties.

§49-5D-5. Child fatality review team.

(a) The state child fatality review team is hereby established under the office of medical examinations which shall be a multidisciplinary team created to review the deaths of children under the age of eighteen years as provided for in this section. It shall include among its membership the following, appointed by the governor, to serve three-year terms:

(1) The state medical examiner, who shall serve as the chairperson of the state child fatality review team;

(2) One prosecuting attorney or his or her designee;

(3) The state superintendent of the West Virginia state police or his or her designee;

(4) One law-enforcement official other than a member of the West Virginia state police;

(5) One child protective services worker currently employed in investigating reports of child abuse or neglect;

(6) One health care provider, specializing in the practice of pediatric medicine or family medicine; and

(7) One social worker who may be employed in the area of public health.

Members of the state child fatality review team shall, unless sooner removed, continue to serve until their re-
spective terms expire and until their successors have been
appointed and have qualified. Each appointment of a
prosecuting attorney, whether for a full term or to fill a
vacancy, shall be made by the governor from among three
nominees therefor selected by the West Virginia prosecut-
ing attorneys institute. Each appointment of a law-en-
forcement officer, whether for a full term or to fill a va-
cancy, shall be made by the governor from among three
nominees therefor selected by the state fraternal order of
police. Each appointment of a child protective services
worker and a social worker, whether for a full term or to
fill a vacancy, shall be made by the governor from among
three nominees therefor selected by the West Virginia
social work licensing board. Each appointment of a phys-
ician, whether for a full term or to fill a vacancy, shall be
made by the governor from among three nominees there-
for selected by the West Virginia state medical association.
When an appointment for a full term, the nomination shall
be submitted to the governor not later than eight months
prior to the date on which the appointment shall become
effective. In the case of an appointment to fill a vacancy,
such nominations shall be submitted to the governor with-
in thirty days after the request for the nomination has
been made by the governor to the chairperson or presi-
dent of the organization. When an association fails to
submit to the governor nominations for the appointment
in accordance with the requirements of this section, the
governor may make the appointment without nomina-
tions.

Each member of the state child fatality review team
shall serve without additional compensation and may not
be reimbursed for any expenses incurred in the discharge
of the duties under the provisions of this article.

(b) The state child fatality review team shall, pursuant
to the provisions of chapter twenty-nine-a, promulgate
rules applicable to the following:

(1) The standard procedures for the establishment,
formation and conduct of the state child fatality review
team;
(2) Guidelines for hospitals, physicians and other health-care providers to utilize in order to report the deaths of children to the state child fatality review team; and

(3) Recommend protocols for the review of child fatalities where other than natural causes are suspected.

(c) The state child fatality review team shall submit an annual report to the governor and to the Legislature concerning its activities and the incidents of child fatalities within the state. The first such report shall be due on the first day of July, one thousand nine hundred ninety-seven. Thereafter, a report shall be due annually on the first day of July. The report shall include statistics setting forth the number of child fatalities. Such statistical analysis may include information regarding the causes of child fatalities in the state. The report shall also include the number of children whose deaths have been determined to have been unexpected or unexplained and whether court proceedings regarding criminal prosecution have commenced.

(d) The local multidisciplinary team created pursuant to the provisions of section two of this article shall review all cases referred to the team pursuant to the provisions of that section: Provided, That a local team may refer any or all cases for review of deaths to the state multidisciplinary team. Further, the local multidisciplinary team shall provide all information to the state child fatality review team necessary for the state child fatality review team to create and submit any report required by this section.

(e) All information and records acquired by the state team or by a local team in the exercise of its purpose and duties pursuant to this article shall be confidential. For purposes of this section, the term confidential shall be defined consistent with the definition set forth in section one, article seven, chapter forty-nine of this code.

§49-5D-6. Other agencies of government required to cooperate.
State, county and local agencies shall provide the multi-disciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court's order directing said agencies to release information in its possession relating to the child. The team shall assure that all information received and developed in connection with the provisions of this article remain confidential. For purposes of this section, the term "confidential" shall be construed in accordance with the provisions of section one, article seven of this chapter.

§49-5D-7. Law enforcement; prosecution; interference with performance of duties.

No multidisciplinary team may take any action which, in the determination of the prosecuting attorney or his or her assistant, impairs the ability of the prosecuting attorney, his or her assistant, or any law-enforcement officer to perform his or her statutory duties.

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of agriculture; department of education; division of corrections; division of culture and history; division of health; division of human services; division
of labor; division of motor vehicles; and education and state employees grievance board 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 overexpenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Agriculture:

(TO BE PAID FROM GENERAL REVENUE FUND)

1 (1) Geraldine Eberbaugh ...................... $ 396.00

(b) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

1 (1) Gail Balcourt ...................... $ 222.75
2 (2) Bonnie Kaye Coleman ...................... $ 756.00
3 (3) Rosalee Dorsey ...................... $ 360.00
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<th>No.</th>
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<td>4.</td>
<td>Lynne Dunmire</td>
<td>$408.00</td>
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<td>Susan E. Garnett</td>
<td>$245.00</td>
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<td>Deborah Halsey</td>
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<td>Kevin B. Hedinger</td>
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<td>Gilmer Marcum</td>
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<td>Debra Diane Mills</td>
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<td>14.</td>
<td>Barbara Perez</td>
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<td>15.</td>
<td>Regina Marie Perfin</td>
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<td>Jennifer L. Reed</td>
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<td>Jamie L. Riffe</td>
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<td>Cheryll R. Roberts</td>
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<td>Margaret J. Roush</td>
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<td>21.</td>
<td>Elizabeth Saunders</td>
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<td>22.</td>
<td>Wilma Jean Sexton</td>
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<td>Donald L. Smith</td>
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<td>Elizabeth M. Thompson</td>
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<td>25.</td>
<td>Margaret Vance</td>
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<td>26.</td>
<td>John M. Vidovich</td>
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*(c) Claims against the Division of Corrections:*

*(TO BE PAID FROM GENERAL REVENUE FUND)*

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<td>1.</td>
<td>Anthony Creek Rescue Squad</td>
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<td>Marshall County Sheriff's Department</td>
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<td>3.</td>
<td>Medical Services, Inc.</td>
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<td>Robert B. Miller, M.D.</td>
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<td>5</td>
<td>(5) Professional Imaging, Inc.</td>
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<td>(6) Rizzo &amp; Bonasso, M.D.'s Inc.</td>
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<td>(7) Roentgen Diagnostics, Inc.</td>
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<td>(8) United Hospital Center, Inc.</td>
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<td>(9) WVSOM Clinic, Inc.</td>
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(d) Claims against the Division of Culture and History:

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(e) Claim against the Division of Health:

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(f) Claim against the Division of Human Services:

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<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1) Wood County Commission</td>
<td>$ 27,425.50</td>
</tr>
</tbody>
</table>

(g) Claim against the Division of Labor:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1) AT &amp; T GBCS</td>
<td>$ 1,241.74</td>
</tr>
</tbody>
</table>

(h) Claim against the Division of Motor Vehicles:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1) Allied Capital Lease Administration</td>
<td>$ 1,689.68</td>
</tr>
</tbody>
</table>

(i) Claim against the Education and State Employees Grievance Board:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1) Pitney Bowes, Inc.</td>
<td>$ 59.25</td>
</tr>
</tbody>
</table>
CHAPTER 86

(S. B. 567—By Senators Whitlow, Helmick, Blatnik, Manchin, Chafin, Dugan, Kimble, Love, Minear, Plymale and Sharpe)

[Passed March 6, 1996; 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 alcohol beverage control administration; attorney general's office; bureau of commerce; department of administration; department of agriculture; department of education; department of tax and revenue; division of corrections; division of culture and history; division of environmental protection; division of health; division of highways; division of human services; division of labor; division of motor vehicles; division of natural resources; division of personnel; division of rehabilitation services; division of tourism; insurance commission; municipal bond commission; office of miners' health, safety and training; office of the governor; public service commission; real estate commission; regional jail and correctional facility authority; state of West Virginia; West Virginia state police; the West Virginia supreme court of appeals; and the board of barbers and cosmetologists; 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 inde-
pendently 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 Alcohol Beverage Control Administration:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Kelli D. Talbott</td>
</tr>
</tbody>
</table>

(b) **Claim against the Attorney General:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) System Design Associates</td>
</tr>
</tbody>
</table>

(c) **Claim against the Bureau of Commerce:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) AT &amp; T</td>
</tr>
</tbody>
</table>

(d) **Claims against the Department of Administration:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) E &amp; M Products, Inc.</td>
</tr>
<tr>
<td>(2) Government Data Publications, Inc.</td>
</tr>
<tr>
<td>(3) Manpower Temporary Services</td>
</tr>
<tr>
<td>(4) James L. Steele</td>
</tr>
</tbody>
</table>

(e) **Claim against the Department of Agriculture:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM SPECIAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Phyllis N. Voorhees</td>
</tr>
</tbody>
</table>

(f) **Claims against the Department of Education:**

<table>
<thead>
<tr>
<th>(TO BE PAID FROM GENERAL REVENUE FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Donald Bucher</td>
</tr>
</tbody>
</table>
37 (2) Division of Rehabilitation Services ... $ 575.00
38 (3) Shirley L. Dodson .......................... $ 320.00
39 (4) Desirae M. Smith .......................... $ 690.00
40 (g) Claim against the Department of Tax and Revenue:
41 (TO BE PAID FROM GENERAL REVENUE FUND)
42 (1) Tommy Diamond .......................... $ 597.02
43 (h) Claims against the Division of Corrections:
44 (TO BE PAID FROM GENERAL REVENUE FUND)
46 (1) Barbour County Commission ........... $ 4,475.00
47 (2) Cabell County Commission .............. $ 1,666.56
48 (3) Camden-Clark Memorial Hospital ...... $ 304.50
49 (4) Davis Memorial Hospital .............. $ 18,482.77
50 (5) Grafton City Hospital ................. $ 127.30
51 (6) Mammen Kovoor, M.D. ................. $ 25.00
52 (7) Mountain State Temporary Services, dba Manpower
53 Temporary Services .......................... $ 580.08
54 (8) Radiology, Inc. ......................... $ 220.00
55 (9) Regional Jail and Correctional Facility Authority ................. $149,380.00
58 (10) Bret Rosenblum, M.D. ................. $ 215.00
59 (11) Romeo B. Tan, M.D. ................. $ 440.00
60 (12) University Health Associates ....... $ 35,930.00
61 (13) West Virginia University Hospitals, Inc. ................. $ 84,958.62
63 (14) Workers' Compensation Fund ........ $233,993.24
64 (i) Claim against the Division of Culture and History:
65 (TO BE PAID FROM GENERAL REVENUE FUND)
66 (1) Xerox Corporation ....................... $ 607.00
67 (j) Claims against Division of Environmental Protection:
68 (TO BE PAID FROM SPECIAL REVENUE FUND)
### Claims

<table>
<thead>
<tr>
<th>Number</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>70</td>
<td>Division of Highways</td>
<td>$12,269.92</td>
</tr>
<tr>
<td>71</td>
<td>Janet T. Surface</td>
<td>$502.25</td>
</tr>
<tr>
<td>72</td>
<td>(k) Claim against the Division of Health:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
<td></td>
</tr>
<tr>
<td>74</td>
<td>(1) National-Interstate Council</td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>of State Boards of Cosmetology, Inc.</td>
<td>$500.00</td>
</tr>
<tr>
<td>77</td>
<td>(l) Claims against the Division of Highways:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(TO BE PAID FROM STATE ROAD FUND)</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>(1) Keith L. Adkins</td>
<td>$765.94</td>
</tr>
<tr>
<td>80</td>
<td>(2) Margaret Bailey</td>
<td>$89.54</td>
</tr>
<tr>
<td>81</td>
<td>(3) Bruce A. Balcar, dba B.K. Mining and</td>
<td></td>
</tr>
<tr>
<td>82</td>
<td>Construction</td>
<td>$126,339.58</td>
</tr>
<tr>
<td>84</td>
<td>(4) Wendell D. and Debra Y. Brown</td>
<td>$300.00</td>
</tr>
<tr>
<td>85</td>
<td>(5) C. W. Stickley, Inc.</td>
<td>$1,428.37</td>
</tr>
<tr>
<td>86</td>
<td>(6) Sabrina S. Collins</td>
<td>$1,124.03</td>
</tr>
<tr>
<td>87</td>
<td>(7) Ginger B. Compton</td>
<td>$500.00</td>
</tr>
<tr>
<td>88</td>
<td>(8) Doris Evans</td>
<td>$3,500.00</td>
</tr>
<tr>
<td>89</td>
<td>(9) Albert Earl Everly, III</td>
<td>$500.00</td>
</tr>
<tr>
<td>90</td>
<td>(10) James L. Fields</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>91</td>
<td>(11) Hillard W. Hicks</td>
<td>$500.00</td>
</tr>
<tr>
<td>92</td>
<td>(12) Bobby P. Huffman</td>
<td>$432.00</td>
</tr>
<tr>
<td>93</td>
<td>(13) Marcia and Jackie Hundley</td>
<td>$250.00</td>
</tr>
<tr>
<td>94</td>
<td>(14) Bobby Jarrell</td>
<td>$500.00</td>
</tr>
<tr>
<td>95</td>
<td>(15) Dorothy Kehrer</td>
<td>$250.00</td>
</tr>
<tr>
<td>96</td>
<td>(16) Shawn and Elizabeth Kniceley</td>
<td>$314.80</td>
</tr>
<tr>
<td>97</td>
<td>(17) Michelle Lee Levero</td>
<td>$224.13</td>
</tr>
<tr>
<td>98</td>
<td>(18) Joel A. Maddy</td>
<td>$109.12</td>
</tr>
<tr>
<td>99</td>
<td>(19) Thomas W. Marcum</td>
<td>$500.00</td>
</tr>
<tr>
<td>100</td>
<td>(20) Gary L. McNeely</td>
<td>$1,432.08</td>
</tr>
<tr>
<td>101</td>
<td>(21) Robert F. McVay</td>
<td>$750.00</td>
</tr>
<tr>
<td>102</td>
<td>(22) Brian Scott Miller</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>103</td>
<td>(23) Thomas L. Mugnano</td>
<td>$1,290.00</td>
</tr>
<tr>
<td>104</td>
<td>(24) Betty Murphy</td>
<td>$1,939.04</td>
</tr>
<tr>
<td>105</td>
<td>(25) Eddie E. Napier</td>
<td>$2,671.65</td>
</tr>
</tbody>
</table>
I 06 (26) Julie Parsley .................. $ 251.70
I 07 (27) Patricia Parsons-Mills ........ $ 1,200.00
I 08 (28) Anita Geraldine Priest ....... $ 363.55
I 09 (29) Gregory and Linda Sellards .. $ 196.19
I 10 (30) Edna Marie Sheppard .......... $ 1,497.12
I 11 (31) Sally Spoor Stevens .......... $ 213.82
I 12 (32) Steve L. Stover ............... $ 3,024.05
I 13 (33) Robert H. and Lori A. Trail .. $ 1,952.42
I 14 (34) Marilyn D. Wickline .......... $ 119.09
I 15 (35) Doris Woody .................. $ 250.00

116 (m) Claims against the Division of Human Services:

117 (TO BE PAID FROM GENERAL REVENUE FUND)

118 (1) Tennant Funeral Home .......... $ 1,200.00
119 (2) WV Assoc. of Rehab. Facilities, Inc. .. $ 3,248.59

120 (n) Claim against Division of Labor:

121 (TO BE PAID FROM GENERAL REVENUE FUND)

122 (1) Bell Atlantic-West Virginia, Inc. .... $ 627.86
123 (o) Claims against the Division of Motor Vehicles:

124 (TO BE PAID FROM STATE ROAD FUND)

125 (1) Polaroid Corporation ........... $ 62,447.64
126 (2) South Berkeley Auto Sales ........ $ 875.00

127 (p) Claims against the Division of Natural Resources:

128 (TO BE PAID FROM SPECIAL REVENUE FUND)

130 (1) Contemporary Galleries .......... $ 1,774.55
131 (2) Division of Highways ............ $ 19,389.28

132 (q) Claim against the Division of Personnel:

133 (TO BE PAID FROM SPECIAL REVENUE FUND)

134 (1) Tele. Communications Innov.
135 dba The Telemanagement Group .. $ 789.32
(r) Claim against the Division of Rehabilitation Services:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Division of Highways ............... $ 3,756.36

(s) Claim against the Division of Tourism:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Division of Highways ............... $ 253.21

(t) Claim against the Insurance Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Lanier Worldwide, Inc. .............. $ 312.84

(u) Claim against the Municipal Bond Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) System Design Associates ........... $ 1,173.00

(v) Claim against the Office of Miners’ Health, Safety and Training:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Workers’ Compensation Fund ........ $121,736.11

(w) Claim against the Office of the Governor:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Central Service ..................... $ 320.20

(x) Claim against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Gary M. Hellems ..................... $ 1,442.37

(y) Claim against the Real Estate Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) WV Assoc. of Rehabilitation Facilities, Inc. ..................... $ 562.02
(2) Claim against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) City Hospital, Inc. ....................... $ 71,732.47

(aa) Claims against the State of West Virginia:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bell Atlantic-West Virginia, Inc. ....... $ 4,989.25
(2) David Hill .................................. $ 5,415.00

(bb) Claims against the West Virginia State Police:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T ......................................... $ 41,457.85
(2) Trans. Int. Pool, Inc.
    dba GE Cap. Modular Space ........ $ 1,300.00

(cc) Claims against the West Virginia Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Mercer County Commission .............. $ 1,950.00
(2) Pennsylvania Council of
    Children's Services ..................... $ 2,000.00

(dd) Claim against the Board of Barbers and Cos-
    metologists:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Terri W. Wood .............................. $ 106.50

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
AN ACT 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) Annette K. Clark ....................... $15,000.00
(2) Jeffrey L. Nichols .................... $ 5,000.00
(3) Wilma J. Peak ......................... $ 7,500.00
(4) Sherri C. Rakes ....................... $ 5,000.00
(5) Anthony Ramey ........................ $ 9,000.00
(6) Rebecca L. Ray, as guardian of James Adams ....................... $ 5,000.00
CLAIMS

21 (7) Rebecca L. Ray, as guardian of
22 Kristine Adams ........................... $ 5,000.00
23 (8) Robert L. Rohrer ..................... $10,000.00
24 (9) Cathy Lynn Spencer ................... $ 5,000.00
25 (10) Stanley Gerald Spencer, II .......... $ 5,000.00
26 (11) Frank L. Spiker, III, & Tamela Leigh
27 Spiker, as guardians of
28 Matthew A. Spiker .................... $15,000.00
29 TOTAL ................................. $86,500.00

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 88

(H. B. 4844—By Delegates Kiss, Browning, Farris, Wallace and Walters)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring that the judgments entered by
the Circuit Court of Kanawha County in the case of Gribben
v. Kirk, Civil Action No. 94-MISC.-160; in the case of Cordle
v. Kirk, Civil Action No. 83-P. MISC.-662; and in the case
of Adams v. Mooney, Civil Action No. MISC.-77-342, are
moral obligations of the state and directing the manner in
which the auditor may issue warrants for the payment
thereof.

Be it enacted by the Legislature of West Virginia:

That the Legislature finds and declares that certain
judgments against the state by the Circuit Court of Kanawha
County in the cases of Gribben v. Kirk, Civil Action No.
94-MISC.-160; the case of Cordle v. Kirk, Civil Action No. 83-P.
MISC.-662; and the case of Adams v. Mooney, Civil Action No.
MISC.-77-342, are moral obligations of the state and directs that
payment be made in accordance with the provisions set forth
herein. The Legislature further finds and declares that it is not
abrogating the state's sovereign immunity from suit by declaring
this judgment a moral obligation of the state. The Legislature further finds that the separation of powers provision found in West Virginia Constitution, Section one, Article V, prohibits payments from being made from the state treasury absent a lawful appropriation by the Legislature. Therefore, in order that other constitutional officers are not required to abrogate their constitutional duties, the Legislature 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 the specific line item appropriations made therefor in the budget act for each fiscal year. The Legislature finds that the following amounts will be considered a payment in full of the moral obligation of this state for the payments of the judgments:

1 (1) Gribben v. Kirk — total ................. $1,508,848
2 (2) Cordle v. Kirk — total .................. $3,148,491
3 (3) Adams v. Mooney — total ................ $312,995

It is the intent of the Legislature that payments on the above-stated amounts will be made in accordance with a line item appropriation in the budget for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in an amount of at least two million dollars. The Legislature finds that an appropriate schedule for payment of the moral obligation declared herein would be an appropriation of two million dollars per fiscal year until the moral obligation has been satisfied.

The Legislature finds that the above amounts do not include payments for interest accrued after the twentieth day of January, one thousand nine hundred ninety-six. The Legislature finds that it is under no obligation to pay amounts for interest which may have heretofore or may hereafter accrue. The Legislature declares that it may toll the running on interest or choose to pay no interest on the judgment in its discretion. The provisions of this act are deemed to be severable and the rules for construction of statutes provided for in subsection (cc), section ten, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, shall be applicable as if that subsection were included herein in extenso.
CHAPTER 89

(H. B. 4391—By Delegates Gallagher and Fleischauer)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section one, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section one, article four, chapter twenty-nine of said code; and to repeal section fifteen, article six, chapter sixty-one of said code, all relating to obsolete provisions of the code of West Virginia; horse trading near fairs or religious meetings; notaries in office on the first day of January, one thousand nine hundred thirty-one; power of notaries regarding negotiable instruments; common drinking cups; and penalties.

Be it enacted by the Legislature of West Virginia:

That section one, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article four, chapter twenty-nine of said code be repealed; and that section fifteen, article six, chapter sixty-one be repealed, all to read as follows:

CHAPTER 16.

ARTICLE 9. OFFENSES GENERALLY.

§1. Repeal of section relating to common drinking cup prohibited.

1 Section one, article nine, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 29.

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§1. Repeal of section relating to notaries in office on January 1, 1931.
Section one, article four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 61.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§1. Repeal of section relating to horse trading near fairs or religious meetings.

Section fifteen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 90

(H. B. 4395—By Delegates Gallagher and Kerns)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections six and seven, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to new motor vehicles to be equipped with reflectors; stop lamps required on new motor vehicles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. EQUIPMENT.

§1. Repeal of sections relating to requiring new vehicles to have stop lamps and reflectors.

Sections six and seven, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.
CHAPTER 91

(H. B. 4602—By Delegates Trump, Kiss, Evans, Manuel, Linch and Thomas)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crimes against the peace and employment of nonresidents as police.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§1. Repeal of section relating to the prohibition of employment of nonresidents as police.

1. Section eleven, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 92

(Com. Sub. for H. B. 4605—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)

[By Request of the Executive]

[Passed March 7, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter twenty-two of said code by adding thereto a new article, designated article twenty-two; and to amend and reenact section four, article fifteen, chapter thirty-one of said code, all relating generally to remediation of contaminated property; adding the remediation of contaminated property as projects eligible for tax increment financing; legislative findings and purpose; defining terms; authorizing the director to
promulgate legislative rules; establishing the voluntary remediation program; establishing eligibility requirements and the application process for the remediation of contaminated property; authorizing the director to establish application fees and other costs; making information available to the public; providing for confidentiality of trade secrets; creating criminal penalties for violating confidentiality of trade secrets; establishing requirements for site assessments; establishing the criteria under which the director may reject an application; providing for notice and partial return of application fee if the application is denied; establishing brownfield remediation program, application process and fee; providing for application for remediation loans for brownfield sites; allowing access to information in possession of the director; creating voluntary remediation administrative fund; providing for disbursements from the fund; establishing brownfield revolving fund; providing for disbursements from the fund; authorizing employment of specialized persons to administer and manage the fund; providing for voluntary remediation agreements; requiring the use of licensed remediation specialist; establishing the requirements of voluntary remediation agreements; creating applicants right to appeal to the environmental quality board upon failure to reach a voluntary remediation agreement; providing that no enforcement action will be undertaken when property is in compliance with a voluntary remediation agreement unless there is imminent threat to the public; requiring that voluntary remediation work plans and reports must be submitted to the director for review; allowing the remediator to terminate the remediation agreement; allowing the director to recover the remediation costs incurred prior to termination; providing for suit in circuit court of Kanawha County or the circuit court where the site is situated for recovery of clean-up costs; authorizing the director to take samples at brownfield and voluntary remediation sites, and share the samples with the remediator; authorizing the director to inspect and make reports; providing the director access to all records relating to brownfield and voluntary remediation sites; requiring license issued by the director in order to work as a remediation specialist; specifying licensure requirements; specifying licensed remediation specialist duties, responsibilities and limitations; providing for licenses renewal,
revocation or suspension; providing for civil and criminal penalties, license revocation and enforcement orders for licensing remediation specialists; providing for issuance of certificate of completion; providing for land-use covenants to be issued by the director; providing that the land-use covenant be recorded in the deed; establishing criminal penalty for violating land-use covenants; providing for reopening a remediation agreement for a brownfield site for future action; requiring the assessors of each county and allowing citizens to notify the director when use of property changes; providing for notification of the public when a remediation site is being considered; providing for environmental liability protection; establishing and limiting the responsibilities of remediation contractors; establishing affirmative defenses; providing that nothing in this article effects the rights, duties, immunities, other defenses or causes of action; and adding site assessment and site remediation cost to the definition of "costs of establishing an industrial development project".

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.
22. Environmental Resources.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

1 As used in this article, the term or phrase:

2 (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 including water or waste water facilities, and the remediation of contaminated property as provided for in article twenty-two, chapter twenty-two of this code, 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.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 22. VOLUNTARY REMEDIATION AND REDEVELOPMENT ACT.

§22-22-1. Legislative findings; legislative statement of purpose.
§22-22-3. Rule-making authority of the director.
§22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assessment; rejection or return of application; appeal of rejection.
§22-22-5. Brownfield application; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director.
§22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.
§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the environmental quality board; no enforcement action when subject of agreement.
§22-22-8. Voluntary remediation work plans and reports.
§22-22-9. Termination of agreement; cost of recovery; legal actions.
§22-22-10. Inspections; right of entry; sampling; reports and analyses.
§22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.
§22-22-14. Land-use covenant; criminal penalties.
§22-22-16. Duty of assessor and citizens to notify director when change of property use occurs.
§22-22-17. Public notification for brownfields.
§22-22-19. Establishing and limiting the responsibilities of remediation contractors.

§22-22-1. Legislative findings; legislative statement of purpose.

(a) The Legislature finds there is property in West Virginia that is not being put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property.

(b) The Legislature further finds that abandonment or under use of contaminated or potentially contaminated industrial sites results in inefficient use of public facilities and services and increases the pressure for development of uncontaminated pristine land. Since existing industrial areas frequently have transportation networks, utilities and an existing infrastructure, it can be less costly to society to redevelop existing industrial areas than to relocate amenities for industrial areas at pristine sites.

(c) The Legislature further finds that the existing legal structure creates uncertainty regarding the legal effect of remediation upon liability. Legal uncertainty serves as a further disincentive to productive redevelopment of brownfields. Therefore, incentives should be put in place to encourage voluntary redevelopment of contaminated or potentially contaminated sites.

(d) The Legislature further finds that an administrative program should be established to encourage persons to voluntarily develop and implement remedial plans without the need for enforcement action by the division of environmental protection. Therefore, it is the purpose of this article to:
(1) Establish an administrative program to facilitate voluntary remediation activities and brownfield revitalization;

(2) Provide financial incentives to entice investment at brownfield sites; and

(3) Establish limitations on liability under environmental laws and rules for those persons who remediate sites in accordance with applicable standards established under this article.


As used in this article, unless otherwise provided or indicated by the context:

(a) "Applicable standards", mean the remediation levels established in or pursuant to section three of this article;

(b) "Brownfield" means any industrial or commercial property which is abandoned or not being actively used by the owner as of the effective date of this article, but shall not include any site subject to a unilateral enforcement order under §104 through §106 of the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or which has been listed or proposed to be listed by the United States environmental protection agency on the priorities list of Title I of said act, or subject to a unilateral enforcement order under §3008 and §7003 of the "Resource Conservation Recovery Act" or any unilateral enforcement order for corrective action under this chapter;

(c) "Certified laboratory" means any laboratory approved by the director under laboratory certification rules adopted pursuant to section fifteen, article one of this chapter;

(d) "Contaminant" or "contamination" means any man made or man induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater resulting from activities regulated under this article, in excess of applicable stan-
(e) "Controls" means to apply engineering measures, such as capping or treatment, or institutional measures, such as deed restrictions, to contaminated sites;

(f) "Development authority" means any authority as defined in article twelve, chapter seven of this code or the state development office as defined in article two, chapter five-b of this code.

(g) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to this article;

(h) "Division" means the division of environmental protection of the state of West Virginia;

(i) "Engineering controls" means remedial actions directed exclusively toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, slurry walls, liner systems, caps, leachate collection systems and groundwater recovery trenches;

(j) "Hazardous substance" means any substance identified as a hazardous substance pursuant to the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended;

(k) "Institutional controls" means legal or contractual restrictions on property use that remain effective after the remediation action is completed and are used to meet applicable standards. The term may include, but is not limited to, deed and water use restrictions;

(l) "Industrial activity" means commercial, manufacturing, public utility, mining or any other activity done to further either the development, manufacturing or distribution of goods and services, intermediate and final products and solid waste created during such activities, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, stor-
age, repair and maintenance of commercial machinery or
equipment and solid waste management;

(m) "Land-use covenant" means a document or deed
restriction issued by the director on remediated sites which
have attained and demonstrate continuing compliance with
site-specific standards for any contaminants at the site.
The covenant shall be recorded by deed in the office of
the county clerk of the county wherein the site is situated.
The document or covenant shall be included by any
grantor or lessor in any deed or other instrument of con-
veyance or any lease or other instrument whereby real
property is let for a period of one year or more, as more
fully set forth in sections thirteen and fourteen of this
article;

(n) "Licensed remediation specialist" means a person
certified by the director pursuant to rules adopted under
section three of this article as qualified to perform profes-
sional services and to supervise the remediation of con-
taminated sites;

(o) "Mitigation measure" means any remediation
action performed by a person prior to or during imple-
mentation of a remediation plan to protect human health
and the environment;

(p) "Natural gas" means natural gas, natural gas liq-
uids, liquefied natural gas, coalbed methane, synthetic gas
usable for fuel or mixtures of natural gas and synthetic
gas;

(q) "Nonresidential property" means any real property
on which commercial, industrial, manufacturing or any
other activity is done to further the development, manu-
facturing or distribution of goods and services, intermedi-
ate and final business activities, research and development,
warehousing, shipping, transport, remanufacturing, stock-
piling of raw materials, storage, repair and maintenance of
commercial machinery and equipment, and solid waste
management. This term shall not include schools, day
care centers, nursing homes, or other residential-style
facilities or recreational areas;
(r) "Owner" means any person owning or holding legal or equitable title or possessory interest in property or, where title or control of property was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to this state or a political subdivision of this state, or any person who owned the property before the conveyance;

(s) "Operator" means the person responsible for the overall operation of a facility site;

(t) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; partnership; trust; estate; person or individuals acting individually or as a group; or any legal entity whatever;

(u) "Petroleum" means oil or petroleum of any kind and in any form, including, without limitation, crude oil or any fraction thereof, oil sludge, oil refuse, used oil, substances or additives in the refining or blending of crude petroleum or petroleum stock;

(v) "Practical quantitation level" means the lowest analytical level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory conditions for a specified matrix. It is based on quantitation, precision and accuracy under normal operation of a laboratory and the practical need in a compliance-monitoring program to have a sufficient number of laboratories available to conduct the analyses;

(w) "Property" means any parcel of real property, and any improvements thereof;

(x) "Related" means the persons who are related to the third degree of consanguinity or marriage;

(y) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing of any contaminant or regulated substance into the environment,
including, without limitation, the abandonment or improper discarding of barrels, containers or any other closed receptacle containing any contaminant;

(z) "Remediation" means to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect the present or future public health, safety, welfare, or the environment, including preliminary actions to study or assess the release;

(aa) "Remediation contractor" means any person who enters into and is carrying out a contract to cleanup, remediate, respond to or remove a release or threatened release of a contaminant and includes any person who the contractor retained or hired to provide services under a remediation contract;

(bb) "Residential" means any real property or portion thereof which is designed for the housing of human beings and does not meet the definition of "nonresidential" property set forth above;

(cc) "Risk" means the probability that a contaminant, when released into the environment, will cause an adverse effect in exposed humans or other living organisms;

(dd) "Site" means any property or portion thereof which contains or may contain contaminants and is eligible for remediation as provided under this article;

(ee) "Unilateral enforcement order" means a written final order issued by a federal or state agency charged with enforcing environmental law, which compels the fulfillment of an obligation imposed by law, rule against a person without their voluntary consent; and

(ff) "Voluntary remediation" means a series of measures that may be self-initiated by a person to identify and address potential sources of contamination of property and to establish that the property complies with applicable remediation standards.

§22-22-3. Rule-making authority of the director.

Within one year after the effective date of this section, the director, in accordance with chapter twenty-nine-a of
this code, shall propose, and subsequently may amend, suspend or rescind, rules that do the following:

(a) Establish an administrative program for both brownfield revitalization and voluntary remediation, including application procedures;

(b) Establish procedures for the licensure of remediation specialists, including, but not limited to establishing licensing fees, testing procedures, disciplinary procedures and methods for revocation of licenses;

(c) Establish procedures for community notification and involvement;

(d) Establish risk-based standards for remediation;

(e) Establish standards for the remediation of property;

(f) Establish a risk protocol for conducting risk assessments and establishing risk-based standards. The risk protocol shall:

(1) Require consideration of existing and reasonably anticipated future human exposures based on current and reasonably anticipated future land and water uses and significant adverse effects to ecological receptor health and viability;

(2) Include, at a minimum, both central tendency and reasonable upper bound estimates of exposure;

(3) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range or size of populations likely to be exposed to risk, and quantitative and qualitative descriptions of uncertainties;

(4) Establish criteria for what constitutes appropriate sources of toxicity information;

(5) Address the use of probabilistic modeling;

(6) Establish criteria for what constitutes appropriate criteria for the selection and application of fate and transport models;
(7) Address the use of population risk estimates in addition to individual risk estimates;

(8) To the extent deemed appropriate and feasible by the director considering available scientific information, define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways;

(9) Establish appropriate sampling approaches and data quality requirements; and

(10) This protocol shall include public notification and involvement provisions so that the public can understand how remediation standards are applied to a site and provide for clear communication of site risk issues, including key risk assessment assumptions, uncertainties, populations considered, the context of site risks to other risks and how the remedy will address site risks;

(g) Establish chemical and site specific information, where appropriate for purpose of risk assessment. Risk assessments should use chemical and site specific data and analysis, such as toxicity, exposure and fate and transport evaluations in preference to default assumptions. Where chemical and site specific data are not available, a range and distribution of realistic and plausible assumptions should be employed;

(h) Establish criteria to evaluate and approve methods for the measurement of contaminants using the practical quantitation level and related laboratory standards and practices to be used by certified laboratories;

(i) Establish standards and procedures for the utilization of certificates of completion, land use covenants and other legal documents necessary to effectuate the purposes of this article; and

(j) Establish any other rules necessary to carry out the requirements and the legislative intent of this act.

§22-22-4. Voluntary remediation program; eligibility application and fee; information available to public; confidentiality of trade secrets; information; criminal penalties; requirements of site assess-
ment; rejection or return of application; appeal of rejection.

(a) Any site is eligible for participation in the voluntary remediation program, except those sites subject to a federal environmental protection agency unilateral enforcement order, under §104 through §106 of the "Comprehensive Environmental Response, Compensation and Liability Act", 94 Stat. 2779, 42 U.S.C. §9601, as amended, or have been listed or proposed to be listed by the United States environmental protection agency on the priorities list of Title I of said act, or subject to a unilateral enforcement order under §3008 and §7003 of the "Re­source Conservation Recovery Act" or any unilateral enforcement order for corrective action under this chapter: Provided, That the release which is subject to remediation was not created through gross negligence or willful misconduct. In order to participate in the voluntary remediation program, a person must submit an application to the director and enter into a voluntary remediation agreement as set forth in section seven of this article.

(b) Any person who desires to participate in the voluntary remediation program must submit to the division an application and an application fee established by the director. The application shall be on a form provided by the director and contain the following information: The applicant's name, address, financial and technical capability to perform the voluntary remediation, a general description of the site, a site assessment of the actual or potential contaminants made by a licensed remediation specialist and all other information required by the director.

(c) The director shall promulgate a legislative rule establishing a reasonable application fee. Fees collected under this section shall be deposited to the credit of the voluntary remediation fund in the state treasury as established in section six of this article.

(d) Information obtained by the division under this article shall be available to the public, unless the director certifies such information to be confidential. The director may make such certification where any person shows, to
the satisfaction of the director, that the information or
parts thereof, if made public, would divulge methods,
processes or activities entitled to protection as trade se-
crets. In submitting data under this article, any person
required to provide such confidential data may designate
the data which that person believes is entitled to protection
under this section and submit such designated data sepa-
rately from other data submitted under this article. This
designation request shall be made in writing. Any person
who divulges or discloses any information entitled to pro-
tection under this section is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not more than five
thousand dollars or imprisoned in a county jail for not
more than one year, or both fined and imprisoned.

(e) The site assessment must include a legal descrip-
tion of the site; a description of the physical characteristics
of the site and the general operational history of the site to
the extent that the history is known by the applicant, and
information of which the applicant is aware concerning
the nature and extent of any known contamination at the
site and immediately contiguous to the site, or wherever
the contamination came to be located.

(f) The director may reject or return an application if:

(1) A federal requirement precludes the eligibility of
the site;

(2) The application is not complete and accurate; or

(3) The site is ineligible under the provisions of this
article.

(g) The director shall act upon all applications within
forty-five days of receipt, unless an extension of time is
mutually agreed to and confirmed in writing. If an appli-
cation is returned by the director because it is not com-
plete or accurate, the director shall provide the applicant a
list of all information that is needed to make the applica-
tion complete or accurate. The applicant may resubmit an
application without submitting an additional application
fee.
(h) If the director rejects the application, then he or she shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. The applicant may, within twenty-five days of rejection, indicate his desire to resubmit the application. Upon final determination by the director, if the application is rejected, the director shall return one half of the application fee. The applicant may appeal the director’s rejection of the application to the environmental quality board established under article three, chapter twenty-two-b of this code.

(i) Upon withdrawal of an application, the applicant is entitled to the refund of one half of the application fee.

§22-22-5. Brownfield application; remediation process; brownfield remediation; eligibility; application; remediation loan; and obtaining information from director.

(a) For brownfield property, any environmental remediation undertaken pursuant to this article, by a development authority or any person who did not cause or contribute to the contamination on the property shall comply with the appropriate standards established by the director pursuant to this article and rules promulgated hereunder. After conferring with the director, the person may apply to the director for a site assessment loan under section six of this article. A site assessment must be conducted to establish existing contamination of the site. An application for brownfield remediation must be submitted along with the application fee. The procedures established for voluntary remediation set forth in section four must be followed. The director shall establish a reasonable application fee.

(b) Brownfield sites being remediated by persons who did not cause or contribute to the contamination of the site are eligible for consideration for remediation loans established under article fifteen, chapter thirty-one of this code.

(c) Persons undertaking brownfield remediation, who did not cause or contribute to the contamination of the brownfield site, may obtain all information relating to
§22-22-6. Voluntary remediation administrative fund established; voluntary remediation fees authorized; brownfields revolving fund established; disbursement of funds moneys; employment of specialized persons authorized.

(a) There is hereby created in the state treasury a special revenue fund known as the "Voluntary Remediation Administrative Fund". 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 the fund and be available for expenditure in succeeding fiscal years. This fund shall consist of fees collected by the director in accordance with the provisions of this article as well as interest earned on investments made from moneys deposited in the fund. Moneys from this fund shall be expended by the director for the administration, licensing, enforcement, inspection, monitoring, planning, research and other activities required by this article.

The director shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of voluntary remediation fees applicable to persons who conduct activities subject to the provisions of this article. The fees may include an appropriate assessment of other program costs not otherwise attributable to any specific site but necessary for the administrative activities required to carry out the provisions of this article.

(b) There is hereby created in the state treasury a special revenue fund known as the "Brownfields Revolving Fund". The fund shall be comprised of moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state brownfields redevelopment revolving fund, all receipts from loans made from the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund, and all other sums designated for deposit to the fund from any source, public or private.
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 the account and be available for expenditure in succeeding fiscal years. Moneys in the fund, to the extent that moneys are available, shall be used solely to make loans to persons to finance site assessments of eligible brownfield sites and such other activities as authorized by any federal grant received or any legislative appropriation: Provided, That moneys in the fund may be utilized to defray those costs incurred by the division in administering the provisions of this subsection. The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to govern the disbursement of moneys from the fund, and establish a state brownfields redevelopment assistance program to direct the distribution of loans from the fund, and establish the interest rates and repayment terms of such loans: Provided, however, That amounts in the fund, other than those appropriated by the federal government, and which are found from time to time to exceed the amount needed for the purposes set forth in this article, may be transferred to other accounts or funds and redesignated for other purposes through appropriations of the Legislature.

In order to carry out the administration and management of the fund, the division is authorized to employ officers, agents, advisors and consultants including attorneys, financial advisors, engineers, other technical advisors and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

§22-22-7. Voluntary remediation agreement; required use of licensed remediation specialist; required provisions of a voluntary remediation agreement; failure to reach agreement; appeal to the environmental quality board; no enforcement action when subject of agreement.
Upon acceptance of an application, the director shall enter into an agreement with the applicant for the remediation of the site which sets forth the following:

(a) A person desiring to participate in the voluntary remediation program must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans;

(b) Any voluntary remediation agreement approved by the director shall provide for the services of a licensed remediation specialist for supervision of all activities described in the agreement;

(c) A voluntary remediation agreement must provide for cost recovery of all reasonable costs incurred by the division in review and oversight of the person's work plan and reports as a result of field activities or attributable to the voluntary remediation agreement, which are in excess of the fees submitted by the applicant along with a schedule of payments; appropriate tasks, deliverables and schedules for performance of the remediation; a listing of all statutes and rules for which compliance is mandated; a description of any work plan or report to be submitted for review by the director, including a final report that provides all information necessary to verify that all work contemplated by the agreement has been completed; the licensed remediation specialist's supervision of remediation contractors; and a listing of the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved. The voluntary remediation agreement may also provide for alternate dispute resolutions between the parties to the agreement, including, but not limited to, arbitration or mediation of any disputes under this agreement;

(d) No voluntary remediation agreement may be modified or amended, unless the amendment or modification is reduced to writing and mutually agreed upon by the parties to the agreement: Provided, That when the director determines that there is an imminent
threat to the public, he or she may unilaterally modify or amend the agreement;

(e) Upon acceptance of an application, the director and the applicant shall develop a remediation agreement.
If an agreement is not reached between the applicant and the director on or before the thirty-first day after the application has been accepted, either party may withdraw from negotiations. Should this occur, the agency retains the application fee. The applicant may appeal the failure to reach agreement to the environmental quality board as established under article three, chapter twenty-two-b of this code. By mutual agreement, when it becomes impractical to reach an agreement within thirty-one days, the time limit may be extended in writing; and

(f) The division may not initiate an enforcement action against a person who is in compliance with this section for the contamination that is the subject of the voluntary remediation agreement or for the activity that resulted in the contamination, unless there is an imminent threat to the public.

§22-22-8. Voluntary remediation work plans and reports.

After signing a voluntary remediation agreement, the person undertaking remediation shall prepare and submit the appropriate work plans and reports to the director. The director shall review and evaluate the work plans and reports for accuracy, quality and completeness. The director may approve a voluntary remediation work plan or report or disapprove and notify the person of additional information needed to obtain approval.

§22-22-9. Termination of agreement; cost of recovery; legal actions.

The person undertaking remediation may, in their sole discretion, terminate the agreement as provided by the terms of the agreement and by giving fifteen days advance written notice of termination. Only those costs incurred or obligated by the director before notice of termination of the agreement are recoverable, if the agreement is terminated. The termination of the agreement does not affect any right the director may have under any other law
to recover costs. The person undertaking the remediation
must pay the division's costs associated with the voluntary
remediation within thirty-one days after receiving notice
that the costs are due and owing. The director may bring
an action in Kanawha County circuit court or in the circuit
court in the county wherein the property is situated to
recover the amount owed to the division and reasonable
legal expenses.

§22-22-10. Inspections; right of entry; sampling; reports and
analyses.

(a) The director, upon presentation of proper
credentials may enter any building, property, premises,
place or facility where brownfield or voluntary
remediation activities are being or have been performed
for the purpose of making an inspection to ascertain the
compliance by any person with the provisions of this
article or the rules promulgated by the director.

(b) The director shall make periodic inspections at
sites subject to this article. After an inspection is made, a
report shall be filed with the director and a copy shall be
provided to the person who is responsible pursuant to the
voluntary agreement for remediation activities. The
reports shall not disclose any confidential information
protected under the provisions of subsection (d), section
four of this article. The inspection reports shall be
available to the public in accordance with the provisions of
article one, chapter twenty-nine-b of this code.

(c) The director may, upon presentation of proper
credentials, enter any building, motor vehicle, property,
premises or site where brownfield or voluntary
remediation activities are being or have been performed
and take samples of wastes, soils, air, surface water and
groundwater. In taking such samples, the director may
utilize such sampling methods as are necessary in
exercising good scientific technique. Following the taking
of any sample, the director shall give the person
responsible in the voluntary agreement for remediation
activities a receipt describing the sample obtained and if
requested, a portion of each sample equal in volume or
weight to the portion retained. The director shall
promptly provide a copy of any analysis made to the responsible person named in the voluntary agreement.

(d) Upon presentation of proper credentials, the director shall be given access to all records relating to a brownfield or voluntary remediation.


(a) No person may practice as a licensed remediation specialist without a license issued by the director. Any violation of this provision shall be subject to the enforcement orders as set forth in section twelve of this article.

(b) To obtain a license, a person must apply to the director in writing on forms approved and supplied by the director. Each application for examination for license shall contain:

(1) The full name of the person applying for the license;

(2) The principal business address of the applicant;

(3) All formal academic education and experience of the applicant to demonstrate professional expertise of the applicant;

(4) If waiver of the examination is being requested, any license or certification that the person desires to be considered as part of the waiver request;

(5) The examination fee; and

(6) Any other necessary information prescribed by the director.

(c) The director shall establish the date, time and location of licensed remediation specialist examinations.

(d) The applicant must demonstrate that he or she possesses a practical knowledge of the remediation activities; procedures necessary to remediate a site; and the management of contaminants at a site, including, but not limited to, site investigation, health and safety protocol, quality assurance, feasibility studies and remedial design.
(e) If the director does not certify the remediation specialist applicant, the director shall inform the applicant in writing of the reasons therefor. The director may not deny a license without cause.

(f) It is the licensed remediation specialist's duty to protect the safety, health and welfare of the public as set forth in this article, in the performance of his or her professional duties. The licensed remediation specialist is responsible for any release of contaminants during remediation activities undertaken pursuant to the approved remediation agreement, work plans or reports. If a licensed remediation specialist faces a situation where he or she is unable to meet this duty, the licensed remediation specialist may either sever the relationship with the client or employer or refuse professional responsibility for work plan, report or design. The specialist shall notify the division, if there is a threat to the environment or the health, safety or welfare of the public.

(g) A licensed remediation specialist shall only perform assignments for which the specialist is qualified by training and experience in those specific technical fields; be objective in work plans, reports and opinions; and avoid any conflict of interest with employer, clients and suppliers. A licensed remediation specialist shall not solicit or accept gratuities, directly or indirectly from contractors, agents or other parties dealing directly with the employer or client in regard to professional services being performed at the work site; accept any type of bribe; falsify or permit misrepresentation of professional qualifications; intentionally provide false information to the director; or knowingly associate with one who is engaging in business or professional practices of a fraudulent or dishonest nature.

(h) A licensed remediation specialist shall not charge any special fees above usual and customary professional rates for being licensed.

(i) The license issued by the director may be renewed every two years for any licensed remediation specialist in good standing. The director, by rule, shall establish license fees.
(j) The director is authorized to revoke a license; suspend a license for not more than five years or impose lesser sanctions as may be appropriate for acts or omissions in violation of this article.

§22-22-12. Enforcement orders for licensed remediation specialists; cease and desist order; criminal penalties.

(a) If the director, upon inspection, investigation or through other means observes, discovers or learns that a licensed remediation specialist has violated the provisions of this article or any rules promulgated hereunder, the director may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, orders suspending or revoking licenses, orders requiring a person to take remedial action or cease and desist orders; or

(2) Request the prosecuting attorney of the county in which the alleged violation occurred bring a criminal action as provided for herein.

(b) Any person issued an order may file a request for reconsideration with the director within seven days of the receipt of the order. The director shall conduct a hearing on the merits of the order within ten days of the filing of the request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the order.

(c) Any licensed remediation specialist who fraudulently misrepresents that work has been completed and such action results in an unjustified and inexcusable disregard for the safety of others, thereby placing another in imminent danger or contributing to ongoing harm to the environment, he or she shall be guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or imprisoned not less than one nor more than two years, or both such fine and imprisonment.

(d) If any person associated with remediation of a brownfield or voluntary remediation site engages in
fraudulent acts or representations to the division, he or she shall be guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or imprisoned not less than one nor more than two years, or both.


(a) The licensed remediation specialist shall issue a final report to the person undertaking the voluntary remediation when the property meets the applicable standards and all work has been completed as contemplated in the voluntary remediation agreement or the site assessment shows that all applicable standards are being met. Upon receipt of the final report, the person may seek a certificate of completion from the director.

(b) The director may delegate the responsibility for issuance of a certificate of completion to a licensed remediation specialist in limited circumstances, as specified by rule pursuant to this article.

(c) The certificate of completion shall contain a provision relieving a person who undertook the remediation and subsequent successors and assigns from all liability to the state as provided under this article which shall remain effective as long as the property complies with the applicable standards in effect at the time the certificate of completion was issued. This certificate is subject to reopener provisions of section fifteen of this article and may, if applicable, result in a land-use covenant as provided in section fourteen of this article.

§22-22-14. Land-use covenant; criminal penalties.

(a) The director shall establish by rule, criteria for deed recordation of land-use covenants and containing all necessary deed restrictions. The director shall cause all land-use covenants to appear in the chain of title by deed to be properly recorded in the office of the county clerk where the remediation site is located. If institutional and engineering controls are used, in whole or in part, to achieve a remediation standard, the director shall direct that a land-use covenant be applied. The covenant shall include whether residential or nonresidential exposure
factors were used to comply with the site-specific standard. The covenant shall contain a provision relieving the person who undertook the remediation and subsequent successors and assigns from all civil liability to the state as provided under this article and shall remain effective as long as the property complies with the applicable standards in effect at the time the covenant was issued.

(b) Whoever knowingly violates a land-use covenant by converting nonresidential property to residential property is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, imprisoned for not more than five years, or both.


Any person who completes remediation in compliance with this article shall not be required to undertake additional remediation actions for contaminants subject to the remediation, unless the director demonstrates that:

(a) Fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further remediation of the site;

(b) New information confirms the existence of an area of a previously unknown contamination which contains contaminants that have been shown to exceed the standards applied to the previous remediation at the site;

(c) The level of risk is increased significantly beyond the established level of protection at the site due to substantial changes in exposure conditions, such as, a change in land use, or new information is obtained about a contaminant associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond established protection levels shall be required by the division to undertake additional remediation measures under the provisions of this article;

(d) The release occurred after the effective date of this article on a site not used for industrial activity prior to the
effective date of this article; the remedy relied, in whole or
in part, upon institutional or engineering controls instead
of treatment or removal of contamination; and treatment,
removal or destruction has become technically and
economically practicable; or

(e) The remediation method failed to meet the
remediation standard or combination of standards.

In the event that any of the foregoing circumstances
occur, the remediation agreement will be reopened and
revised to the extent necessary to return the site to its
previously agreed to state of remediation or other
appropriate standard.

§22-22-16. Duty of assessor and citizens to notify director when
change of property use occurs.

If an assessor in any county becomes aware of a
change of remediated property use from nonresidential
property to residential, the assessor shall check the land
record of the county to ascertain if a land-use covenant
appears to have been violated. Should it appear that a
violation has occurred, the assessor shall notify the
director in writing of the suspected violation. If any citizen
becomes aware of a change of property use from
nonresidential to residential, the citizen may check the
land record of the county to ascertain if a land use
covenant appears to have been violated and may notify the
director in writing. The director shall then investigate and
proceed with any necessary enforcement action.

§22-22-17. Public notification for brownfields.

Persons undertaking the remediation and
revitalization of brownfield sites shall comply with the
following public notice and review requirements:

(a) A notice of intent to remediate a site shall be
submitted to the division which provides, to the extent
known, a brief description of the location of the site, a
listing of the contaminants involved and the proposed
remediation measures. The division shall publish an
acknowledgment noting the receipt of the notice of intent
in a division publication of general circulation. At the
time a notice of intent to remediate a site is submitted to the division, a copy of such notice shall be provided to the municipality and the county in which the site is located and a summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located.

(b) The notice required by this subsection shall include a thirty-day public, county and municipal comment period during which the public, county and municipality can request to be involved in the development of the remediation and reuse plans for the site. If requested by the public, county, municipality or the director, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements set forth by the director.


(a) Any person demonstrating compliance with the applicable standards established in section three of this article, whether by remediation or where the site assessment shows that the contamination at the site meets applicable standards, shall be relieved of further liability for the remediation of the site under this chapter. Contamination identified in the remediation agreement submitted to and approved by the division shall not be subject to citizen suits or contribution actions. The protection from further remediation liability provided by this article applies to the following persons:

(1) The current or future owner or operator of the site, including development authorities and fiduciaries who participated in the remediation of the site;

(2) A person who develops or otherwise occupies the site;

(3) A successor or assign of any person to whom the liability protection applies;
(4) A public utility, as defined in section two, article one, chapter twenty-four of this code, and for the purpose of this article, a utility engaged in the storage and transportation of natural gas, to the extent the public utility performs activities on the site;

(5) A remediation contractor;

(6) A licensed remediation specialist; and

(7) A lender or developer who engages in the routine practices of commercial lending, including, but not limited to, providing financial services, holding of security interests, workout practices, foreclosure or the recovery of funds from the sale of a site.

(b) A person shall not be considered a person responsible for a release or a threatened release of contaminants simply by virtue of conducting or having a site assessment conducted. Nothing in this section relieves a person of any liability for failure to exercise due diligence in performing a site assessment.

§22-22-19. Establishing and limiting the responsibilities of remediation contractors.

(a) A person who is engaged in the business of remediation contractor under this article is not responsible for a release or threatened release of contaminants at the site described in the voluntary remediation agreement for work properly performed pursuant to the agreement.

(b) A person who is engaged in the business of remediation contractor under this article is not liable for any harm, damage or injury caused by a release of a contaminant which occurred prior to the contractor undertaking work at the site.

(c) Limitation of liability, pursuant to subsections (a) and (b) of this section does not apply to a release or threatened release of contaminants at the site described in the voluntary remediation agreement that is directly caused by an act or omission which constitutes gross
negligence or by the willful misconduct of the remediation contractor.

(d) A remediation contractor is not required to obtain a permit for remediation activities, if a permit is required under article five, eleven, fifteen or eighteen of this chapter. However, an owner or operator of the site to be remediated is not relieved of the permit requirements, if any, for remediation activities undertaken at the site. A remediation contractor must comply with all applicable state and federal laws in the transportation, treatment, storage and disposal of contaminants generated as a consequence of the remediation activities.

(e) A remediation contractor is not a "generator" for the purposes of the generator assessments imposed pursuant to article twenty of this chapter.


Any person who is alleged to have violated an environmental law or the common law equivalent, which occurred while acting pursuant to this article, may affirmatively plead the following in response to an alleged violation:

(a) An act of God;

(b) An intervening act of a public agency;

(c) Migration from property owned by a third party;

(d) Actions taken or omitted in the course of rendering care, assistance or advice in accordance with the environmental laws or at the direction of the division;

(e) An act of a third party who was not an agent or employee of the lender, fiduciary, developer, remediation contractor or development authority; or

(f) If the alleged liability for a lender, fiduciary, developer or development authority arises after foreclosure, and the lender, fiduciary, developer or development authority exercised due care with respect to the lender's, fiduciary's, developer's or development
authority's knowledge about the contaminants, and took reasonable precautions based upon such knowledge against foreseeable actions of third parties and the consequences arising therefrom. A lender, fiduciary, developer, remediation contractor or development authority may avoid liability by proving any other defense which may be available to it.


Nothing in this article shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to persons conducting remediation of a site.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


Unless the context clearly indicates otherwise, as used in this article:

(a) "Authority" means the West Virginia economic development authority;

(b) "Board" means the governing body of the authority;

(c) "Board of investments" means the board of investments established by article six, chapter twelve of this code;

(d) "Bonds" means bonds or other debt instruments of the authority issued under this article, whether the interest thereon is taxable or tax-exempt for federal income tax purposes;

(e) "Business plan" means a document detailing the sales, production and distribution plans of an enterprise, together with the expenditures necessary to carry out those plans (including budget and cash flow projections) on an annual basis, and an employment plan setting forth steps to be taken by the enterprise to retain jobs or reduce unemployment in this state;
(f) "Costs of establishing an industrial development project" means the cost of acquiring existing facilities, cost of machinery, cost of equipment and fixtures, the cost of construction, including with out limitation, cost of improvements, repairs, and renovations, costs of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction, cost of architectural, engineering, legal and financial or other consulting services, plans, site assessments, site remediation costs, specifications and surveys, estimates of costs and any other expenses necessary or incident to determining the feasibility or practicability of any project, together with such other costs and expenses as may be necessary or incidental to the financing and the construction or acquisition of the project and the placing of the same in operation;

(g) "County" means any county of this state;

(h) "Enterprise" means an entity which is or proposes to be engaged in this state in any business activity for profit. The entity may be owned, operated, controlled or under the management of a person, partnership, corporation, trust, community-based development organization or council, local commerce group, employee stock ownership plan, pension or profit-sharing plan, a group of participating employees who desire to own an entity which does not presently exist, or any similar entity or organization;

(i) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America;

(j) "Financing plan" means a plan designed to meet the financing needs of an enterprise as reflected in the business plan;

(k) "Fund" means the economic development fund provided for in section twenty-three of this article;

(l) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise;
(m) "Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist enterprises or projects in this state;

(n) "Insurance fund" means the insurance fund created in this article;

(o) "Loan" means an extension of financing by the authority to an industrial development agency or an enterprise, including, but not limited to, a loan, a lease or an installment sale;

(p) "Municipality" means any city or town in this state;

(q) "Notes" means any notes, including commercial paper, of the authority issued under this article whether the interest thereon is taxable or tax-exempt for federal income tax purposes;

(r) "Project" means a commercial or industrial undertaking and all of the assets reasonably and necessarily required therefor, all as determined by the authority, which determination shall be conclusive, and shall include, without limiting the generality of the foregoing, industrial projects and commercial projects as presently defined in section three, article two-c, chapter thirteen;

(s) "Revenues" means all fees, premiums, charges, moneys, profits, payment or principal of or interest on, loans and other investments, gifts, grants, appropriations, contributions and all other income derived or to be derived by the authority under this article; and

(t) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.
AN ACT to amend and reenact sections seven hundred four, seven hundred six and seven hundred seven, article seven, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing seized or forfeited assets to be deposited into interest-bearing depositories insured by an agency of the federal government.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-704. Procedures for seizure of forfeitable property.

§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.

§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

§60A-7-704. Procedures for seizure of forfeitable property.

(a) Seizure of property made subject to forfeiture by the provisions of this article may be made upon process issued by any court of record having jurisdiction over the property.

(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property subject to forfeiture by the provisions of this article may be made without process if:

(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant or an inspection warrant;
(2) The property subject to seizure has been the sub-ject of a prior judgment in favor of the state in a forfeiture proceeding based upon this article;

(3) The appropriate person has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The appropriate person has probable cause to believe that the property was used or intended for use in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:

(1) Place the property under seal;

(2) Remove the property to a place designated by him;

(3) Require the appropriate law-enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.

The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and appurtenances thereto.

§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments; distribution of proceeds.
(a) Whenever moneys, securities or other negotiable instruments are forfeited under the provisions of this article, such proceeds shall be distributed as follows:

(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney which initiated the forfeiture proceeding;

(2) The balance shall be deposited in a special law-enforcement investigation fund. The fund may be placed in any interest-bearing depository insured by an agency of the federal government. The fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property.

(b) No funds shall be expended from the special law-enforcement investigation fund except as follows:

(1) In the case of the funds belonging to the department of public safety, the funds shall only be expended at the direction of the superintendent of the department and in accordance with the provisions of section fifteen, article two, chapter five-a of this code and the provisions of subsection (j), section two, article two, chapter twelve of this code;

(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of any county in which the special fund has been created, the funds therein may only be expended in the manner provided in sections four and five, article five, chapter seven of this code; and

(3) In the case of funds belonging to the police department of any municipality in which the special fund has been created, the funds therein may only be expended in the manner provided in section twenty-two, article thirteen, chapter eight of this code.

§60A-7-707. Disposition of other forfeited property; distribution of proceeds.

(a) When property other than that referred to in section seven hundred six of this article is forfeited under this article, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the
law-enforcement agency that seized said forfeited property, may direct that:

(1) Title to the forfeited property be vested in the law-enforcement agency so petitioning; or

(2) The law-enforcement agency responsible for the seizure retain the property for official use; or

(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county where the public auction will be held.

(b) When a law-enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law-enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.

(c) The proceeds of every public sale conducted pursuant to this section shall be paid and applied as follows: First, to the balance due on any security interest preserved by the court; second, to the costs incurred in the storage, maintenance and security of the property; third, to the costs incurred in selling the property.

(d) Any proceeds of a public sale remaining after distribution pursuant to subsection (c) of this section shall be distributed as follows:

(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney who initiated the forfeiture proceeding.

(2) The balance shall be deposited in a special law-enforcement investigation fund. Such fund shall be administered by the chief of the law-enforcement agency that seized the forfeited property sold and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in the special law-enforcement investigative fund
pursuant to this article shall be expended only to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or for such other law-enforcement purposes as the chief of the law-enforcement agency may deem appropriate; however, these funds may not be utilized for regular operating needs.

(e) If more than one law-enforcement agency was substantially involved in effecting the seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall equitably distribute the forfeited property among the law-enforcement agencies. In the event of a public sale of such property pursuant to subsection (a) of this section, the court shall equitably distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1), subsection (d) of this section among such law-enforcement agencies for deposit into their individual special law-enforcement investigative fund. Equitable distribution shall be based upon the overall contribution of the individual law-enforcement agency to the investigation which led to the seizure.

(f) Upon the sale of any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to subsection (a) of this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to subsection (a) of this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.

(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection (b), section seven hundred five of this article.

(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall
submit an annual report to the body which has budgetary
authority over such agency. Such report shall specify the
type and approximate value of all forfeited property and
the amount of proceeds from the sale of forfeited proper-
yty received in the preceding year. No county or munici-
pality may use anticipated receipts of forfeited property in
their budgetary process.

(i) In lieu of the sale of any forfeited property subject
to a bona fide security interest preserved by an order of
the court, the law-enforcement agency receiving the for-
feited property may pay the balance due on any security
interest preserved by the court from funds budgeted to the
office or department or from the special fund and retain
possession of the forfeited property for official use pursu-
ant to subsection (a) of this section.

(j) In every case where property is forfeited, disposi-
tion of the forfeited property, in accordance with this
article, shall be made within six months of the date upon
which the court of jurisdiction orders forfeiture. Should
the office or agency receiving the property fail either to
place the property in official use or dispose of the proper-
ty in accordance with law, the court of jurisdiction shall
cause disposition of the property to be made with any
proceeds therefrom to be awarded to the state.

(k) No disposition shall occur until all applicable
periods for filing a notice of intent to appeal has expired
and no party in interest shall have filed such notice. The
filing of the notice of intent to appeal shall stay any such
disposition until the appeal has been finally adjudicated or
until the appeal period of one hundred eighty days has
expired without an appeal having actually been taken or
filed, unless a valid extension of the appeal has been
granted by the circuit court under the provisions of sec-
tion seven, article four, chapter fifty-eight of this code.

(l) The special law-enforcement investigative funds of
each law-enforcement agency may be placed in an
interest-bearing depository insured by the federal govern-
ment.
AN ACT to amend and reenact section eleven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article five, chapter forty-nine of said code, by adding thereto a new section, designated section thirteen-d, all relating to juvenile offenders; escape; permitting or aiding the escape of an inmate of a center for housing youthful offenders; creating pilot project for certain status offenders as an alternative to disposition; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter
25. Division of Corrections.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-11. Escape; aiding escape.

1 (a) Any inmate of a center who shall escape from said center or the custody of an officer or employee of such center shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the commissioner
of corrections for not more than five years. A term of
incarceration imposed pursuant to the provisions of this
section shall be imposed as a consecutive sentence and not
served concurrently with any sentence or period of con-
finement previously imposed.

(b) Any person who willfully permits or aids any in-
mate of such center to escape therefrom or conceals him
with the intent of enabling him to elude pursuit is guilty of
a felony and, upon conviction thereof, shall be committed
to the custody of the commissioner of corrections for not
more than five years.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13d. Teen court program.

(a) Any child who has committed an act of delin-
quency which would not be a criminal offense if commit-
ted by an adult, and who is otherwise subject to the provi-
sions of this article shall be given the option of choosing
disposition in a teen court program as an alternative to a
disposition provided by section thirteen of this article.
The decision to enter the teen court program as an alterna-
tive disposition shall be made jointly by the circuit court,
juvenile probation officer, and parent, guardian or custo-
dian of the child. The circuit court shall find, prior to
admission into the program, that the offender is a suitable
candidate for the program. Any child who does not suc-
cessfully cooperate in and complete the teen court pro-
gram and any disposition imposed therein shall be re-
turned to the circuit court for disposition provided by
section thirteen of this article.

(b) The teen court program shall be administered by
the governor's committee on crime and delinquency.

(c) The following provisions shall apply to all teen
court programs:
(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia state bar, who shall serve on a voluntary basis. Bar members shall be offered continuing legal education credit for such service.

(2) Any child who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades ten through twelve of high schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk and bailiff for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the child to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury, from a standard list of available community service programs provided by the county juvenile probation system. The performance of the child shall be monitored by the county juvenile probation system. The child shall also perform two sessions of teen court jury service, and, if deemed appropriate by the judge, the child shall participate in an education program.

(d) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge. A copy of such rules shall be provided to every teen court participant.

(e) Teen court programs are pilot projects to be utilized from the effective date of this section until the first day of July, one thousand nine hundred ninety-eight, in the circuit courts in three of the counties of this state. The supreme court of appeals is to determine the counties in which the pilot projects will be utilized based upon its determination of those counties which have recently experienced the most significant increases in the commission of criminal and status offenses by children.
CHAPTER 95
(H. B. 4160—By Mr. Speaker, Mr. Chambers, and Delegates
Johnson, Fragale and Manuel)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixteen, article twelve, chapter eight of said code; to amend and reenact section sixteen, article three, chapter twenty-nine of said code; to amend and reenact section nine-a, article seventeen, chapter thirty-three of said code; and to further amend said article by adding thereto a new section, designated section nine-b, all relating to the authority of county commissions and municipalities to require clearance of refuse and debris or to repair, vacate, close, remove, improve, demolish or otherwise alter buildings on private lands; removing the obligation of county commissions to require clearance of refuse or debris; providing for the filing of a judgment lien in an amount not to exceed the assessed value of the property; providing for notification to the landowner; authorizing county commissions and municipalities to adopt ordinances requiring landowners to pay costs, providing for the filing of liens and creating a cause of action for the reimbursement of costs; authorizing the state fire marshal to notify county or municipal officials respecting fire hazards; providing for notification and disbursement of certain insurance proceeds; and making certain technical revisions.

Be it enacted by the Legislature of West Virginia:

That section three-ff, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixteen, article twelve, chapter eight of said code be amended and reenacted; that section sixteen, article three, chapter twenty-nine of said code be amended and reenacted; that section nine-a, article seventeen, chapter thirty-three of said code be amended and reenacted; and
that said article be further amended by adding thereto a new section, designated section nine-b, all to read as follows:

Chapter

7. County Commissions and Officers.
29. Miscellaneous Boards and Officers.
33. Insurance.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Clearance of refuse and debris from private lands; demolition of buildings and recovery of costs incurred; notice of demand thereof; procedure to contest demand.

1 (a) County commissions, as set forth in this article, county health officers, as set forth in section two, article two, chapter sixteen of this code, and state fire marshals as set forth in section twelve, article three, chapter twenty-nine of this code, are hereby authorized to require clearance of any refuse or debris consisting of remnants or remains of any unused or unoccupied dwelling, cement foundation, piping, basements, intact chimneys, nonfarm building, structure or manmade appurtenance on all private lands within their respective scopes of authority by the owners thereof that has accumulated as the result of any natural or manmade fire, force or effect which presents a safety or health hazard including the removal of toxic or contaminant spillage and seepage: Provided, That upon request from a landowner and a written determination and approval from the state fire marshal, where appropriate, a landowner may fill the remains of a basement to ground level with inert fill material in lieu of complete removal of such cement foundation, piping and basement.

(b) Upon determination by the state fire marshal that substantial accumulations of refuse, debris or destroyed structures or appurtenances, as described above, exist on the property as a result of a natural or manmade fire, notice shall be given by the fire marshal and forwarded to the owner immediately informing the landowner of the
requirements of this article to effect repair, removal, closure or demolition of the fire damaged property within ninety days of the receipt of such notice.

(c) Upon a determination by a county commission or county health officer that substantial accumulations of refuse or the presence of debris, as described above exist on any such private lands, notice shall be forwarded to the landowner advising him or her:

(1) Of the commission's or health officer's demand to remove all refuse and debris within ninety days of the receipt of notice unless an extension be granted by the county commission or health officer for good cause shown;

(2) Of the landowner's right to contest such demand and of the proper procedure in which to do so;

(3) That if the landowner fails to both properly contest and comply with the commission's or health officer's demand, that removal will be achieved otherwise and that the reasonable costs incurred thereto will become a civil debt owed by the landowner to the county; and

(4) That if the county incurs costs of removal and the landowner fails to pay such costs within ninety days of the removal, then the county may file a judgment lien on the subject property, for an amount not to exceed the assessed value of the property as recorded in the office of the county assessor, in the office of the clerk of the county commission of the county in which the property is located.

(d) The commission or health officer shall send notice as described in subsection (c) of this section by certified mail, return receipt requested, to the most recent address of the landowner on file in the office of the county assessor of the county in which the subject property is located. If, for any reason, the certified mail is returned without evidence of proper receipt thereof, then in such event, a Class III-0 legal advertisement shall be published in a newspaper of general circulation in the county wherein the subject land is situated in order to render proper notice in
accordance with this section. In addition, the commission or health officer shall post the notice on the front door or other conspicuous location on the subject property: Provided, That if the commission or health officer determines, after notice and inquiry as provided herein, that the refuse or debris was created by someone other than the present landowner, without the landowner's expressed or implied permission, the commission or health officer shall remove any such refuse or debris and shall apply to and be eligible to receive from the solid waste reclamation and environmental response fund created under section eleven, article fifteen, chapter twenty-two of this code for reimbursement for all reasonable costs incurred for removal.

(e) The county commission of every county shall have plenary power and authority to adopt an ordinance requiring the owner or owners of any nonfarm dwelling or building, under order of the county commission or county health officer or determination by the state fire marshal as provided for in subsection (a) of this section, to pay for the costs of clearing any refuse or debris or of repairing, vacating, closing, removing, demolishing or otherwise altering any dwelling or nonfarm building. The county commission shall also have the power and authority to seek reimbursement for such costs by filing a lien against the real property in question for an amount not to exceed the assessed value of the property as recorded in the office of the county assessor, or to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the county with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(f) Not less than ten days prior to instituting a civil action as provided for in this section, the county commission shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the county commission's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located. If, for any reason, such certified mail is returned without evidence of proper
receipt thereof, then in such event, the county commission shall cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and post notice on the front door or other conspicuous location on the subject property.

(g) In the event any landowner desires to contest any demand brought forth pursuant to this section, the landowner shall do so in accordance with article three, chapter fifty-eight of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

(a) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair, alteration or improvement, or the vacating and closing or removal or demolition, or any combination thereof, of any dwellings or other buildings unfit for human habitation due to dilapidation, defects increasing the hazard of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities or any other conditions prevailing in any dwelling or building, whether used for human habitation or not, which would cause such dwellings or other buildings to be unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

(b) The governing body in formally adopting such ordinances shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio members of such enforcement agency.
(c) Any ordinance adopted pursuant to the provisions of this section shall provide fair and equitable rules of procedure and any other standards deemed necessary to guide the enforcement agency, or its agents, in the investigation of dwelling or building conditions, and in conducting hearings: Provided, That any entrance upon premises for the purpose of making examinations shall be made in such manner as to cause the least possible inconvenience to the persons in possession.

(d) The governing body of every municipality shall have plenary power and authority to adopt an ordinance requiring the owner or owners of any dwelling or building under determination of the state fire marshal, as provided in section twelve, article three, chapter twenty-nine of this code, or under order of the enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building. Every municipality shall also have the right to file a lien against the real property in question for an amount not to exceed the assessed value of the property as recorded in the office of the county assessor, or to institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

Not less than ten days prior to instituting a civil action as provided for in this section, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action. The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body shall cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and post
notice on the front door or other conspicuous location on
the subject property.

In the event any landowner desires to contest any
demand brought forth pursuant to this section, the land-
owner may seek relief in a court of competent jurisdiction.

All orders issued by the enforcement agency shall be
served in accordance with the law of this state concerning
the service of process in civil actions, and shall, in addition
thereto, be posted in a conspicuous place on the premises
affected by the complaint or order: Provided. That no
ordinance shall be adopted without providing therein for
the right to apply to the circuit court for a temporary
injunction restraining the enforcement agency pending
final disposition of the cause. In the event such application
is made, a hearing thereon shall be had within twenty days,
or as soon thereafter as possible, and the court shall enter
such final order or decree as the law and justice may re-
quire.

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16. Work to be done at expense of owner or occupant
upon failure to comply with repair or demolition
order; action to recover.

In the event any owner of any building or premises
served with a copy of an order as provided in sections
fourteen and fifteen of this article shall fail substantially to
comply with such order within thirty days from the date of
issuance thereof, or within thirty days after any appeal
from such order has been affirmed by the state fire com-
misson or by the court, the state fire marshal may enter
into and upon the premises affected by such order and
cause the building, structure or premises to be repaired,
torn down, materials removed and all dangerous condi-
tions to be remedied, as the case may be, at the expense of
the owner and with any administrative charges as estab-
lished by the commission also being borne by the owner,
and if such person shall fail or neglect to repay the state
fire marshal the expense and administrative charge there-
by incurred by him, within thirty days after written de-
mand shall have been delivered or mailed to the said own-
er as provided in section fifteen of this article, the state fire
marshal is hereby authorized to bring an action in the
name of the state to recover such expenses, with interest,
and any administrative charge as established by the com-
mission, in any court of competent jurisdiction.

Upon a determination by the state fire marshal that the
provisions of sections fourteen and fifteen of this article
have not been met, and that such property constitutes a
hazard to health or public safety, in lieu of initiating an
order as therein provided, the state fire marshal may notify
the county commission or the county health officer in
order that they may perform their duties pursuant to sec-
tion three-ff, article one, chapter seven of this code. The
fire marshal may also, in lieu thereof, notify the munici-
pality where the property is located so that the municipality
may perform its duties pursuant to section fourteen,
article twelve, chapter eight of this code.

CHAPTER 33. INSURANCE.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9a. Notice of insurance proceeds.
§33-17-9b. Disbursement of insurance proceeds.

§33-17-9a. Notice of insurance proceeds.

Upon notice of a claim of an insured total loss to a
structure located in this state, insurance companies must
notify the insured, and the municipality or county in
which the structure is located, of any coverage in the in-
surance policy providing cleanup, removal of any refuse,
debris, remnants or remains of the dwelling and appurte-
nances and securing the structure. The notification shall
be by letter to the insured, mailed within ten days of the
notification of the claim, and shall include, but not be
limited to:

(a) The terms and limits of coverage designated by the
insurance policy for securing, cleanup and removal; and

(b) Any time limitations imposed on the insured for
securing, cleanup and removal.
§33-17-9b. Disbursement of insurance proceeds.

1. No proceeds shall be paid by an insurance company which has issued a policy which provides coverage for debris removal for cleanup, removal of refuse, debris, remnants, or remains of a dwelling or structure upon a claim of total loss unless and until the insurance company receives certification that the refuse, debris, remnants, or remains of the dwelling or structure have been cleaned up, removed or otherwise disposed of. In the event the insurance company receives, within six months of the date of loss, certification that such cleanup, removal or disposal costs have been incurred by a municipality, county or other governmental entity, rather than the policyholder, such debris removal and cleanup proceeds shall be paid to the municipality, county or other government entity which has incurred such costs.

2. No insurance company subject to this section which complies with this section may be held liable for any claim that may arise out of the cleanup, removal or disposal of debris pursuant to this section.

3. An insurance company subject to this section which complies with this section shall be deemed to have fully satisfied all contractual obligations to the policyholder regarding debris removal.

4. In no event shall an insurance company be required to pay moneys in excess of policy limits for debris removal.

CHAPTER 96

(Com. Sub. for S. B. 382—By Senators Tomblin, Mr. President, and Wooton, Jackson, Wagner, Manchin, Anderson, Bailey, Schoonover, Plymale, Dittmar and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections five and six, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four and six-b of said article; and to amend and
reenact section seventeen, article one, chapter eleven-a of said code, all relating to the classification of counties and the compensation of elected county officials and county commissioners as related to the classification system.

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

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

Chapter

7. County Commissions and Officers.

11A. Collection and Enforcement of Property Taxes.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-1. Legislative findings and purpose.
§7-7-3. Classification of counties for purpose of determining compensation of elected county officials.
§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.
§7-7-6b. Additional compensation of assessors according to county classification.

§7-7-1. Legislative findings and purpose.

The Legislature finds and declares that the county officials' association, the county commissioners' association, the prosecuting attorneys' association, the county clerks' association, the assessors' association, the sheriffs association and the circuit clerks association approached the Legislature requesting that the state's fifty-five counties be reclassified and requested that all county officials be given increases in compensation. Inasmuch as these various county associations have better insight into the needs
at the county level, the Legislature finds that there is a need to reclassify the fifty-five counties into groups which more accurately reflect the assessed valuations of property of all classes in the counties and to provide increases in compensation to the various county officials to reflect the class of county by which they are employed.

The Legislature hereby further finds that it has consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county broad, new and additional duties by the enactment of new provisions and amendments to this code. The new and additional duties imposed upon the aforesaid county officials by these enactments are such that they would justify the increases in compensation as provided in section four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

The Legislature hereby further finds that there are, from time to time, additional duties imposed upon all county officials through the acts of the Congress of the United States, and that such acts constitute new and additional duties for county officials and, as such, justify the increases in compensation as provided by section four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

The Legislature hereby further finds that there is a direct correlation between the total assessed property valuations of a county on which the salary levels of the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys are based, and the new and additional duties that each of these officials is required to perform as they serve the best interests of their respective counties. Inasmuch as the reappraisal of the property valuations in each county has now been accomplished, the Legislature finds that a change in classification of counties by virtue of increased property valuations will occur on an infrequent basis. However, it is the further finding of the Legislature that when such change in classification of counties does occur, that new and additional programs, economic developments, requirements of public safety
and the need for new services provided by county officials all increase, that the same constitute new and additional duties for county officials as their respective counties reach greater heights of economic development, as exemplified by the substantial increases in property valuations and, as such, justify the increases in compensation provided in section four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

The Legislature hereby further finds and declares that the amendments made by this act to this article are intended to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the Constitution of West Virginia, and to be in full compliance with the decisions of the supreme court of appeals of West Virginia.

§7-7-3. Classification of counties for purpose of determining compensation of elected county officials.

(a) For the purpose of determining the compensation of elected county officials, the counties of the state of West Virginia are hereby grouped into seven classes based on their assessed valuation of property, all classes. These seven classes and the minimum and maximum valuation of property, all classes, established to determine the classification of each county are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Assessed Valuation of Property All Classes</th>
<th>Maximum Assessed Valuation of Property All Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$600,000,000</td>
<td>No Limit</td>
</tr>
<tr>
<td>Class II</td>
<td>$450,000,000</td>
<td>$599,999,999</td>
</tr>
<tr>
<td>Class III</td>
<td>$200,000,000</td>
<td>$449,999,999</td>
</tr>
<tr>
<td>Class IV</td>
<td>$100,000,000</td>
<td>$199,999,999</td>
</tr>
<tr>
<td>Class V</td>
<td>$50,000,000</td>
<td>$99,999,999</td>
</tr>
<tr>
<td>Class VI</td>
<td>$15,000,000</td>
<td>$49,999,999</td>
</tr>
<tr>
<td>Class VII</td>
<td>$0</td>
<td>$14,999,999</td>
</tr>
</tbody>
</table>
COUNTY COMMISSIONS

The assessed valuation of property, all classes, that shall be used as the base to determine the class of a county shall be the assessed valuation of property, all classes, of the county as certified by the county assessor, state auditor and county clerk prior to the twenty-ninth day of March, one thousand nine hundred seventy-two.

Prior to the twenty-ninth day of March, one thousand nine hundred seventy-four, and each second year thereafter, the county court [county commission] of each county, shall determine if the assessed valuation of property, all classes, of the county, as certified by the county assessor, state auditor and county clerk, is within the minimum and maximum limits of a class above or below the class in which the county then is. If the county court so determines, it shall record the new classification of the county with the state auditor and state tax commissioner and record its action on its county court [county commission] record.

The classification of each county shall be subject to review by the state tax commissioner. He shall determine if the classification of each county is correct based on the final assessed valuation of property, all classes, certified to him by the county assessor, state auditor and county clerk. If he finds that a county is incorrectly classified, he shall notify the county court [county commission] of that county promptly of his finding and in any case shall notify the county court prior to the thirtieth day of June of that current fiscal year. Any county court [county commission] so notified shall correct its classification immediately and make any necessary corrections in the salaries of its elected county officials for the next fiscal year. Nothing in this section shall be construed as authorizing an increase in compensation except at such time as the affected county officer begins a new term of office.

(b) Effective the first day of July, one thousand nine hundred ninety-six, and thereafter, for the purpose of determining the compensation of elected county officials, the counties of the state of West Virginia will be grouped into ten classes based on their assessed valuation of property, all classes. These ten classes and the minimum and
maximum valuation of property, all classes, established to
determine the classification of each county are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Assessed Valuation of Property All Classes</th>
<th>Maximum Assessed Valuation of Property All Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$ 2,000,000,000</td>
<td>No Limit</td>
</tr>
<tr>
<td>Class II</td>
<td>$ 1,500,000,000</td>
<td>$ 1,999,999,999</td>
</tr>
<tr>
<td>Class III</td>
<td>$ 1,000,000,000</td>
<td>$ 1,499,999,999</td>
</tr>
<tr>
<td>Class IV</td>
<td>$ 700,000,000</td>
<td>$ 999,999,999</td>
</tr>
<tr>
<td>Class V</td>
<td>$ 600,000,000</td>
<td>$ 699,999,999</td>
</tr>
<tr>
<td>Class VI</td>
<td>$ 500,000,000</td>
<td>$ 599,999,999</td>
</tr>
<tr>
<td>Class VII</td>
<td>$ 400,000,000</td>
<td>$ 499,999,999</td>
</tr>
<tr>
<td>Class VIII</td>
<td>$ 300,000,000</td>
<td>$ 399,999,999</td>
</tr>
<tr>
<td>Class IX</td>
<td>$ 200,000,000</td>
<td>$ 299,999,999</td>
</tr>
<tr>
<td>Class X</td>
<td>$ -0-</td>
<td>$ 199,999,999</td>
</tr>
</tbody>
</table>

The assessed valuation of property, all classes, that
shall be used as the base to determine the class of a county
shall be the assessed valuation of property, all classes, of
the county as certified by the county assessor, state auditor
and county clerk prior to the twenty-ninth day of March,
one thousand nine hundred ninety-six.

Prior to the twenty-ninth day of March, one thousand
nine hundred ninety-eight, and each second year thereafter,
the county commission of each county shall determine
if the assessed valuation of property, all classes, of the
county, as certified by the county assessor, state auditor
and county clerk is within the minimum and maximum
limits of a class above or below the class in which the
county then is. If the county commission so determines, it
shall record the new classification of the county with the
state auditor and state tax commissioner and record its
action on its county commission record.
The classification of each county shall be subject to review by the state tax commissioner. He shall determine if the classification of each county is correct based on the final assessed valuation of property, all classes, certified to him by the county assessor, state auditor and county clerk. If he finds that a county is incorrectly classified, he shall notify the county commission of that county promptly of his finding and in any case shall notify the county prior to the thirtieth day of June of that current fiscal year. Any county commission so notified shall correct its classification immediately and make any necessary corrections in the salaries of its elected county officials for the next fiscal year.

Notwithstanding the provisions of this article, whenever any other provision of this code refers to classifications of counties for purposes of imposing any right, duty or responsibility, the classification system set forth in subsection (a) of this section shall be utilized for determining the classification of a particular county.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(a) (1) All county commissioners shall be paid compensation out of the county treasury in amounts and according to the schedule hereafter set forth for each class of county as determined by the provisions of section three of this article: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$20,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$15,500</td>
</tr>
<tr>
<td>Class III</td>
<td>$14,000</td>
</tr>
<tr>
<td>Class IV</td>
<td>$10,000</td>
</tr>
<tr>
<td>Class V</td>
<td>$7,000</td>
</tr>
<tr>
<td>Class VI</td>
<td>$4,000</td>
</tr>
</tbody>
</table>
The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-five, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the provisions of chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three.

(2) For the purpose of determining the compensation to be paid to the elected county officials of each county, the following compensations for each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$24,200</td>
<td>$31,300</td>
<td>$31,300</td>
<td>$24,200</td>
<td>$41,500</td>
</tr>
<tr>
<td>Class II</td>
<td>$24,200</td>
<td>$28,000</td>
<td>$28,000</td>
<td>$24,200</td>
<td>$39,500</td>
</tr>
<tr>
<td>Class III</td>
<td>$24,200</td>
<td>$28,000</td>
<td>$28,000</td>
<td>$24,200</td>
<td>$30,000</td>
</tr>
<tr>
<td>Class IV</td>
<td>$22,300</td>
<td>$24,000</td>
<td>$24,000</td>
<td>$22,300</td>
<td>$26,500</td>
</tr>
<tr>
<td>Class V</td>
<td>$20,400</td>
<td>$22,000</td>
<td>$22,000</td>
<td>$20,400</td>
<td>$23,500</td>
</tr>
<tr>
<td>Class VI</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,200</td>
<td>$17,000</td>
</tr>
</tbody>
</table>

Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county and any prosecuting attorney of a Class II county shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county's classification im-
poses no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected. The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred eighty-five, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

The Legislature finds as a fact that the duties imposed upon county clerks by the provisions of chapter sixty-four, acts of the Legislature, regular session, one thousand nine hundred eighty-two, and by chapter fifteen, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-three, constitute new and additional duties for county clerks and as such justify the additional compensation provided in this section without violating the provisions of section 38, article VI of the Constitution of West Virginia.

The Legislature further finds as a fact that the duties imposed upon circuit clerks by the provisions of chapters sixty-one and one hundred eighty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-one, and by chapter sixty, acts of the Legislature, regular session, one thousand nine hundred eighty-three, constitute new and additional duties for circuit clerks and as such justify the additional compensation provided by this section without violating the provisions of section 38, article VI of the Constitution of West Virginia.

(b) Prior to the primary election in the year one thousand nine hundred ninety-two, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-two, or for any subsequent fiscal year if the approval set out herein is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the public of the date and time of the meeting
and that the purpose of the meeting of the county commission is to decide upon their budget certification to the tax department. Upon submission by the county commission to the chief inspector division of the department of tax and revenue of a proposed annual budget which contains anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the immediately preceding fiscal year, plus such additional amount as is necessary for payment of the increases in the salaries set out herein and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the chief inspector, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year, for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county.

<table>
<thead>
<tr>
<th>COUNTY COMMISSIONERS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class I</strong></td>
</tr>
<tr>
<td><strong>Class II</strong></td>
</tr>
<tr>
<td><strong>Class III</strong></td>
</tr>
<tr>
<td><strong>Class IV</strong></td>
</tr>
<tr>
<td><strong>Class V</strong></td>
</tr>
</tbody>
</table>

If the approval set out hereinabove is granted, the compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-three, to each county commissioner. Within each
county, every county commissioner shall receive the same
annual compensation by virtue of the new duties imposed
upon county commissioners pursuant to the provisions of
chapter one hundred seventy-two, acts of the Legislature,
second regular session, one thousand nine hundred ninety,
and chapter five, acts of the Legislature, third extraordi-
nary session, one thousand nine hundred ninety.

OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$29,040</td>
<td>$37,560</td>
<td>$37,560</td>
<td>$29,040</td>
</tr>
<tr>
<td>Class II</td>
<td>$29,040</td>
<td>$33,600</td>
<td>$33,600</td>
<td>$29,040</td>
</tr>
<tr>
<td>Class III</td>
<td>$29,040</td>
<td>$33,600</td>
<td>$33,600</td>
<td>$29,040</td>
</tr>
<tr>
<td>Class IV</td>
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<td>$28,800</td>
<td>$28,800</td>
<td>$26,760</td>
</tr>
<tr>
<td>Class V</td>
<td>$24,480</td>
<td>$24,480</td>
<td>$24,480</td>
<td>$24,480</td>
</tr>
<tr>
<td>Class VI</td>
<td>$24,480</td>
<td>$26,400</td>
<td>$26,400</td>
<td>$24,480</td>
</tr>
</tbody>
</table>

Any county clerk, circuit clerk, joint clerk of the
county commission and circuit court, if any, county assessor,
sheriff and prosecuting attorney of a Class I county,
any assessor of a Class II and Class III county, any sheriff
of a Class II and Class III county and any prosecuting
attorney of a Class II county shall devote full time to his
or her public duties to the exclusion of any other employ-
ment: Provided, That any public official, whose term of
office begins when his or her county's classification im-
poses no restriction on his or her outside activities, shall
not be restricted on his or her outside activities during the
remainder of the term for which he or she is elected. If
the approval set out hereinabove is granted, the compensa-
tion hereinabove provided shall be paid on and after the
first day of January, one thousand nine hundred
ninety-three, to each elected county official.

In the case of a county that has a joint clerk of the
county commission and circuit court, the compensation of
the joint clerk shall be fixed in an amount twenty-five
percent higher than the compensation would be fixed for
the county clerk if it had separate offices of county clerk and circuit clerk.

Prior to the primary election in the year one thousand nine hundred ninety-two, in the case of a Class III, Class IV or Class V county which has a part-time prosecuting attorney, the county commission may find that such facts and circumstances exist that require the prosecuting attorney to devote full time to his or her public duties for the four-year term, beginning the first day of January, one thousand nine hundred ninety-three. If the county commission makes such a finding, it may by proper order adopted and entered, require the prosecuting attorney who takes office on the first day of January, one thousand nine hundred ninety-three, to devote full time to his or her public duties and the county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class II county.

For any county: (1) Which on and after the first day of July, one thousand nine hundred ninety-four, is classified as a Class II county; and (2) which prior to such date was classified as a Class III, Class IV or Class V county and maintained a part-time prosecuting attorney, the county commission may elect to maintain the prosecuting attorney as a part-time prosecuting attorney: Provided, That prior to the first day of January, one thousand nine hundred ninety-six, the county commission shall make a finding, by proper order and entered, whether to maintain a full-time or part-time prosecuting attorney. The part-time prosecuting attorney shall be compensated at the same rate of compensation as that of a prosecuting attorney in the class for the county prior to being classified as a Class II county.

(c) Prior to the primary election in the year one thousand nine hundred ninety-six, and for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-six, or for any subsequent fiscal year if the approval set out herein is not granted for any fiscal year, and at least thirty days prior to the meeting to approve the county budget, the commission shall provide notice to the
public of the date and time of the meeting and that the purpose of the meeting of the county commission is to decide upon their budget certification to the tax department. Upon submission by the county commission to the chief inspector division of the department of tax and revenue of a proposed annual budget which contains anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance, equal to anticipated receipts into the county's general revenue fund, less anticipated moneys from the unencumbered fund balance and any federal or state special grants, for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, plus such additional amount as is necessary for payment of the increases in the salaries set out herein and related employment taxes over that paid for the immediately preceding fiscal year, and upon approval thereof by the chief inspector, which approval shall not be granted for any proposed annual budget containing anticipated receipts which are unreasonably greater or lesser than that of the immediately preceding fiscal year for the purpose of determining the compensation to be paid to the elected county officials of each county office by class are hereby established and shall be used by each county commission in determining whether county revenues are sufficient to pay the compensation mandated herein for their county officials: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of the county may be paid less than the minimum compensation limits of the county commission for the particular class of the county: Provided, however, That should there be an insufficient projected increase in revenues to pay the compensation and related employment taxes mandated herein, then the compensation of that county's elected officials shall remain at the level in effect at the time certification was sought.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$28,000</td>
</tr>
<tr>
<td>Class II</td>
<td>$27,500</td>
</tr>
<tr>
<td>Class III</td>
<td>$27,000</td>
</tr>
</tbody>
</table>
COUNTY COMMISSIONS

246 Class IV $26,500
247 Class V $26,000
248 Class VI $21,500
249 Class VII $21,000
250 Class VIII $19,000
251 Class IX $18,500
252 Class X $15,000

The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to or on or after the first day of January, one thousand nine hundred ninety-seven, shall receive the same annual compensation by virtue of legislative findings of extra duties as set forth in section one of this article.

For the purpose of determining the compensation to be paid to the elected county officials of each county, the following compensations for each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:

OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
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<tr>
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<td>$33,000</td>
<td>$70,000</td>
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<tr>
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<td>$40,000</td>
<td>$32,750</td>
<td>$68,000</td>
</tr>
<tr>
<td>Class VI</td>
<td>$32,500</td>
<td>$37,500</td>
<td>$37,500</td>
<td>$32,500</td>
<td>$45,000</td>
</tr>
</tbody>
</table>
COUNTY COMMISSIONS

Class VII $32,250 $37,000 $37,000 $32,250 $43,000
Class VIII $32,000 $36,500 $36,500 $32,000 $41,000
Class IX $31,750 $36,000 $36,000 $31,750 $38,000
Class X $29,000 $32,000 $32,000 $29,000 $35,000

The compensation hereinabove provided shall be paid on and after the first day of January, one thousand nine hundred ninety-seven, to each elected county official. Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, shall not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.

Any prosecuting attorney of a Class I through Class V county, inclusive, shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any county which under the prior provisions of this section was classified as a Class II county and elected to maintain a part-time prosecutor may continue to maintain a part-time prosecutor, unless the county commission, on request of the part-time prosecutor, approves and makes a finding, by proper order entered, that the prosecuting attorney shall devote full time to his or her public duties. The county commission shall then compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided, however, That any county which under the
prior provisions of this section was classified as a Class II county and which did not elect to maintain a part-time prosecutor shall maintain a full-time prosecuting attorney and shall compensate said prosecuting attorney at the same rate of compensation as that of a prosecuting attorney in a Class V county: Provided further, That, until the first day of January, two thousand one, when a vacancy occurs in the office of prosecuting attorney prior to the end of a term, the county commission of a Class IV or Class V county may elect to allow the position to become part time for the end of that term, and thereafter the position of prosecuting attorney shall become full time.

§7-7-6b. Additional compensation of assessors according to county classification.

For the purpose of determining the additional compensation to be paid to the county assessor of each county for the additional duties provided by section six-a of this article, the following compensations for each county assessor by class, as provided in section three of this article, are hereby established and shall be used by each county commission in determining the compensation of each county assessor; for assessors in Class I - V counties, inclusive, fifteen thousand dollars; for assessors in Class VI and VII counties, ten thousand dollars; for assessors in Class VIII and IX counties, nine thousand dollars; for assessors in Class X counties, six thousand five hundred dollars.

Notwithstanding this section or any other section of the code to the contrary, in no event shall the additional compensation paid to the county assessors for performance of additional duties as provided in section six-a of this article be less than the additional compensation such county assessors received on the first day of January, one thousand nine hundred seventy-six.

CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

After the sheriff has collected eighty-five percent of the combined total of all taxes assessed on real and personal property, he shall, in addition to the salary and compensation now authorized by law, be allowed a commission as follows: Two and one-half percent on the remainder of the taxes actually collected up to ninety percent of the combined total of all taxes assessed on real and personal property, three and one-half percent of the remainder collected above ninety percent and up to ninety-five percent of the combined total of all taxes assessed on real and personal property, and five percent on the remainder of taxes collected above ninety-five percent of the combined total of all taxes assessed on real and personal property. In all cases the taxes collected on which any commission shall be paid will be exclusive of interest and charges thereon, if the collection be made before the delinquent list has been approved by the county commission: Provided, That the total amount of commissions paid to any sheriff shall not exceed the sum of fifteen thousand dollars in any one year. The commission so allowed shall be determined by the county commission and charged against the various funds for which the taxes are collected.

CHAPTER 97

(S. B. 422—By Senators Bowman, Wiedebusch, Schoonover, Buckalew, Miller, Dittmar, Bailey, Wagner and Blatnik)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seventeen, article fourteen-b of said chapter; to amend and reenact section twenty, article fourteen, chapter eight of said code; and to amend and reenact section twenty-five, article fifteen of said chapter, all relating to the recovery of reasonable attorney fees by a deputy sheriff, police officer, firefighter or correctional officer in a civil
service proceeding and a subsequent appeal therefrom where the applicable civil service commission or a court has determined that the deputy sheriff, police officer, firefighter or correctional officer has been unlawfully removed, discharged, suspended or reduced in rank or pay.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.


CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

Article


14B. Civil Service for Correctional Officers.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in force; mandatory retirement age.

1 (a) No deputy sheriff of any county subject to the provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section fifteen of this article; and no such deputy may be removed, discharged, suspended or reduced in rank or pay except as provided in this article and in no event until the deputy has been furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the deputy desires to file such written answer, shall be
furnished to the civil service commission and entered upon its records. If the deputy demands it, the civil service commission shall grant a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the sheriff to justify his or her action, and in the event the sheriff fails to justify the action before the commission, then the deputy shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which the deputy may have been prevented from performing his or her usual employment, and no charges may be officially recorded against the deputy's record. The deputy, if reinstated or exonerated, shall, if represented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the sheriff from county funds. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection unless an appeal is taken from the action of the commission.

(b) In the event the civil service commission sustains the action of the sheriff, the deputy has an immediate right of appeal to the circuit court of the county. In the event that the commission reinstates the deputy, the sheriff has an immediate right of appeal to the circuit court. In the event either the sheriff or the deputy objects to the amount of the attorney fees awarded to the deputy, the objecting party has an immediate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the deputy or sheriff, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases.
The deputy or sheriff also has the right, where appropriate, to seek, in lieu of an appeal, a writ of mandamus. The deputy, if reinstated or exonerated by the circuit court or by the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the sheriff from county funds.

(c) The removing sheriff and the deputy shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any appointing sheriff to reduce the number of his or her deputies, the sheriff shall follow the procedure set forth in this subsection. The reduction in the numbers of the deputy sheriffs of the county shall be effected by suspending the last person or persons, including probationers, who have been appointed as deputies. The removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the number of deputies is increased in numbers to the strength existing prior to the reduction of deputies, the deputies suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments of deputy sheriffs in the county are made.

(e) Notwithstanding any other provision of this article to the contrary, no deputy sheriff in any county subject to the provisions of this article may serve as a deputy sheriff in any county subject to the provisions of this article after attaining the age of sixty-five years.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-17. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in force; mandatory retirement age.

(a) No correctional officer of any county subject to the provisions of this article, may be removed, discharged,
suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section fifteen of this article; and no such correctional officer may be removed, discharged, suspended or reduced in rank or pay except as provided in this article and in no event until the correctional officer has been furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the correctional officer desires to file such written answer, shall be furnished to the civil service commission and entered upon its records. If the correctional officer demands it, the civil service commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the sheriff to justify his or her action, and in the event the sheriff fails to justify the action before the commission, then the correctional officer shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which the officer may have been prevented from performing his or her usual employment, and no charges may be officially recorded against the officer's record. The correctional officer, if reinstated or exonerated, shall, if represented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the sheriff from county funds. A written record of all testimony taken at the hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection, unless an appeal is taken from the action of the commission.

(b) In the event the civil service commission sustains the action of the sheriff, the correctional officer has an immediate right of appeal to the circuit court of the county. In the event that the commission reinstates the correctional officer, the sheriff has an immediate right of appeal to the circuit court. In the event either the sheriff or the correctional officer objects to the amount of the attorneys fees awarded to the correctional officer, the objecting
party has an immediate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the civil service commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the correctional officer or sheriff, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. The correctional officer or sheriff also has the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus. The correctional officer, if reinstated or exonerated by the circuit court or the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the sheriff from county funds.

(c) The removing sheriff and the correctional officer shall at all times, both before the civil service commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any appointing sheriff to reduce the number of his or her correctional officers, the sheriff shall follow the procedure set forth in this subsection. The reduction in the numbers of the correctional officers of the county shall be effected by suspending the last person or persons, including probationers, who have been appointed as correctional officers: Provided, That in the event the number of correctional officers is increased in numbers to the strength existing prior to the reduction of correctional officers, the correctional officers suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments of correctional officers in the county are made.

(e) Notwithstanding any other provision of this article to the contrary, no correctional officer in any county
subject to the provisions of this article may serve as a correctional officer in any county subject to the provisions of this article after attaining the age of sixty-five years.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building; Police Officers; Civil Service for Certain Police Departments.

15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING; POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-20. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members.

(a) No member of any paid police department subject to the civil service provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section nineteen of this article; and no such member may be removed, discharged, suspended or reduced in rank or pay except as provided by the civil service provisions of this article, and in no event until the member has been furnished with a written statement of the reasons for the action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member desires to file such written answer, shall be furnished to the policemen's civil service commission and entered upon its records. If the member demands it, the commission shall grant a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written
answer thereto, whichever shall last occur. At the hearing, the burden shall be upon the removing, discharging, sus-
pending or reducing officer, hereinafter in this section referred to as "removing officer", to show just cause for his or her action, and in the event the removing officer fails to show just cause for the action before the commission, then the member shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which the member may have been prevented from per-
forming his or her usual employment, and no charges may be officially recorded against the member's record. The member, if reinstated or exonerated, shall, if repre-
resented by legal counsel, be awarded reasonable attorney fees to be determined by the commission and paid by the governing body. A written record of all testimony taken at the hearing shall be kept and preserved by the commis-
sion, which record shall be sealed and not be open to pub-
lic inspection unless an appeal is taken from the action of the commission.

(b) In the event the commission sustains the action of the removing officer, the member has an immediate right of appeal to the circuit court of the county wherein the city or the major portion of the territory thereof is located. In the event that the commission reinstates the member, the removing officer has an immediate right of appeal to the circuit court. In the event either the removing officer or the member objects to the amount of the attorney fees awarded to the member, the objecting party has an imme-
diate right of appeal to the circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the ap-
peal upon the original record made before the commis-
sion and no additional proof may be permitted to be in-
troduced. The circuit court's decision is final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. The member or removing officer also has the right, where
appropriate, to seek, in lieu of an appeal, a writ of mandamus. The member, if reinstated or exonerated by the circuit court or by the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the governing body.

(c) The removing officer and the member shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any Class I or Class II city to reduce the number of paid members of its paid police department, the city shall follow the procedure set forth in this subsection. The reduction in members of the paid police department of the city shall be effected by suspending the last person or persons, including probationers, who have been appointed to the paid police department. The removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid police department is increased in numbers to the strength existing prior to the reduction of members, the members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments to said paid police department are made.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-25. Removal, discharge, suspension or reduction in rank or pay; hearing; attorney fees; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the civil service provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause, which may not be religious or political, except as provided in section twenty-four of this article; and no such member may be removed, discharged, suspended or reduced in rank or pay except as provided by the civil service provisions of this article, and in no event
9 until the member has been furnished with a written state-
10 ment of the reasons for the action. In every case of such
11 removal, discharge, suspension or reduction, a copy of the
12 statement of reasons therefor and of the written answer
13 thereto, if the member desires to file such written answer,
14 shall be furnished to the firemen's civil service commission
15 and entered upon its records. If the member demands it,
16 the commission shall grant a public hearing, which hear-
17 ing shall be held within a period of ten days from the
18 filing of the charges in writing or the written answer there-
19 to, whichever shall last occur. At the hearing, the burden
20 shall be upon the removing, discharging, suspending or
21 reducing officer, hereinafter in this section referred to as
22 "removing officer", to show just cause for his or her action,
23 and in the event the removing officer fails to show just
24 cause for the action before the commission, then the mem-
25 ber shall be reinstated with full pay, forthwith and without
26 any additional order, for the entire period during which
27 the member may have been prevented from performing
28 his or her usual employment, and no charges may be
29 officially recorded against the member's record. The
30 member, if reinstated or exonerated, shall, if represented
31 by legal counsel, be awarded reasonable attorney fees to
32 be determined by the commission and paid by the govern-
33 ing body. A written record of all testimony taken at the
34 hearing shall be kept and preserved by this commission,
35 which record shall be sealed and not be open to public
36 inspection unless an appeal is taken from the action of the
37 commission.

38 (b) In the event the commission sustains the action of
39 the removing officer, the member has an immediate right
40 of appeal to the circuit court of the county wherein the
41 municipality or the major portion of the territory thereof
42 is located. In the event that the commission reinstates the
43 member, the removing officer has an immediate right of
44 appeal to the circuit court. In the event either the remov-
45 ing officer or the member objects to the amount of the
46 attorney fees awarded to the member, the objecting party
47 has an immediate right of appeal to the circuit court. Any
48 appeal must be taken within ninety days from the date of
entry by the commission of its final order. Upon an appeal being taken and docketed with the clerk of the circuit court of the county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof may be permitted to be introduced. The circuit court's decision is final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered has the right to petition the supreme court of appeals for a review of the circuit court's decision as in other civil cases. The member or removing officer also has the right, where appropriate, to seek, in lieu of an appeal, a writ of mandamus. The member, if reinstated or exonerated by the circuit court or by the supreme court of appeals, shall, if represented by legal counsel, be awarded reasonable attorney fees as approved by the court and the fees shall be paid by the governing body.

(c) The removing officer and the member shall at all times, both before the commission and upon appeal, be given the right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it is deemed necessary by any such municipality to reduce the number of paid members of its paid fire department, the municipality shall follow the procedure set forth in this subsection. The reduction in members of the paid fire department of the municipality shall be effected by suspending the last person or persons, including probationers, who have been appointed to the paid fire department. The removal shall be accomplished by suspending the number desired in the inverse order of their appointment: Provided, That in the event the said paid fire department is increased in numbers to the strength existing prior to the reduction of members, the members suspended under the terms of this subsection shall be reinstated in the inverse order of their suspension before any new appointments to said paid fire department are made.
AN ACT to repeal article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said code by adding thereto a new chapter, designated chapter thirty-one-c, all relating generally to providing for the organization, operation, and supervision of cooperative, nonprofit thrift and credit associations to be known as credit unions; and to define their powers.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated chapter thirty-one-c, all to read as follows:

CHAPTER 31C. CREDIT UNIONS.

Article
1. Supervision and Regulation.
2. Formation of Credit Union.
3. Powers of Credit Union.
4. Membership.
5. Direction of Credit Union Affairs.
6. Accounts.
7. Loans.
8. Other Member Services.
9. Investments and Reserve Allocations.
10. Change in Corporate Status.
11. Corporate Credit Union.
12. Penalties.

ARTICLE 1. SUPERVISION AND REGULATION.

§31C-1-1. Definitions.
§31C-1-2. Authority of commissioner and board of banking and financial institutions.
§31C-1-3. Powers of commissioner.
§31C-1-4. Suspension; involuntary liquidation.
§31C-1-5. Examinations.
§31C-1-6. Records.
§31C-1-7. Reports.
§31C-1-8. Assessments.

§31C-1-1. Definitions.

In construing this chapter, the following definitions shall apply unless such application would produce a result clearly inconsistent with the context of the statutory provision.

(a) "Board of banking and financial institutions" means the board created pursuant to section one, article three, chapter thirty-one-a of this code and is referred to herein as "board."

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

(c) "Corporate credit union" means a credit union whose field of membership consists primarily of other credit unions.

(d) "Credit union" means a cooperative, nonprofit corporation, incorporated under this chapter, for the purposes of encouraging thrift among its members, creating a source of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

(e) "Deposit account" means a balance held by a credit union and established by a member, another credit union or a governmental unit in accordance with standards specified by the credit union including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not confer membership or voting rights and does not represent an interest in the equity capital of the credit union upon dissolution or conversion to another type of institution. A deposit account is a debt owed by the credit union to the account holder.
(f) "Equity capital" means reserves, loan loss and investment loss allowance accounts, and undivided earnings.

(g) "Fixed asset" means a structure, land, computer hardware and software, furniture, office equipment and heating and cooling equipment that is affixed to premises.

(h) "Governmental unit" means any board, agency, department, authority, instrumentality or other unit or organizations of the federal, state, county, municipal or other level of government.

(i) "Immediate family" means one's wife or husband, and children, brothers, sisters or parents of the member or their spouse. The term "children" also includes stepchildren, foster children and adopted children.

(j) "Insolvent" means the condition that results when the institution is unable to pay its debts to its depositors, members and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency such that its assets are less than its liabilities, exclusive of equity capital. The term "about to be insolvent" means the institution would be unable to meet the demands of its depositors or members, or to make adequate provision for their timely payment if it were immediately closed for the purpose of liquidation.

(k) "Insuring organization" means an organization that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty in order that the share and deposit accounts in the credit unions shall be protected or guaranteed against loss either without limit or up to a specified level for each account.

(l) "Membership share" means a balance held by a corporate credit union and established by a member in accordance with standards specified by the corporate credit union. Ownership of a membership share represents an interest in the capital of the corporate credit union upon dissolution or conversion to another type of institution.
(m) "Organization" means any corporation, association, partnership, society, firm, syndicate, trust or other legal entity.

(n) "Person" means any natural person, organization or governmental unit.

(o) "Reserves" means allocations of retained income and includes regular and special reserves, except for any allowances for loan losses and investment losses.

(p) "Risk assets" means all assets other than cash on hand, deposits and/or shares in federally or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of five years or less, or which otherwise qualify as risk assets as set forth in 12 CFR 700.1(i) and shall include membership shares in corporate credit unions.

(q) "Share account" or "shares" means a balance held by a credit union and established by a member in accordance with standards specified by the credit union including balances designated as shares, share certificates, share draft accounts or other names. However, it does not include membership shares issued by a corporate credit union. Ownership of a share account confers membership and voting rights and represents an interest in the equity capital of the credit union upon dissolution or conversion to another type of institution.

§31C-1-2. Authority of commissioner and board of banking and financial institutions.

The commissioner of the department of banking shall be responsible for the supervision and regulation of credit unions incorporated under this chapter or previously incorporated under this code. The commissioner is specifically charged with administering the supervisory and regulatory responsibilities set forth in this chapter, in conjunction with the board of banking and financial institutions as set forth in section two, article three, chapter thirty-one-a of this code.

§31C-1-3. Powers of commissioner.
(a) The commissioner may prescribe rules to imple-
ment any provision of this chapter and to define any term
not defined in the chapter. Such rules shall serve to foster
and maintain an effective level of credit union services and
the security of member accounts.

(b) The commissioner may restrict the withdrawal of
share or deposit accounts or both from any credit union
having determined circumstances make such restriction
necessary for the proper protection of shareholders or
depositors.

(c) The commissioner may issue cease and desist
orders pursuant to section four, article two, chapter
thirty-one-a of this code if a credit union is engaged or
has engaged, or when the commissioner has reasonable
cause to believe the credit union is about to engage, in an
unsafe or unsound practice, or is violating or has violated
or the commissioner has reasonable cause to believe is
about to violate a material provision of any law, rule or
any condition imposed in writing by the commissioner or
any written agreement made with the commissioner.

(d) The commissioner may suspend from office and
prohibit from further participation in any manner in the
conduct of the affairs of a credit union any director, offi-
cer or committee member who has committed any viola-
tion of a law, rule or of a cease and desist order or who has
engaged or participated in any unsafe or unsound practice
in connection with the credit union or who has committed
or engaged in any act, omission or practice which consti-
tutes a breach of that person's fiduciary duty as such di-
rector, officer or committee member, when the commis-
sioner has determined that such action or actions have
resulted or will result in substantial financial loss or other
damage that seriously prejudices the interests of the mem-
ers.

(e) The commissioner shall have the power to sub-
poena witnesses, compel their attendance, require the pro-
duction of evidence, administer oaths and examine any
person under oath in connection with any subject relating
to a duty imposed upon or a power vested in the commis-
sioner.
(f) The commissioner may enter into cooperative, coordinating or information-sharing agreements with any other state or federal credit union supervisory agency or any organization affiliated with or representing one or more credit union supervisory agencies.

(g) The commissioner shall also in connection with the supervision of credit unions have all powers set forth in article two, chapter thirty-one-a of this code relating to the regulation of credit unions as financial institutions and to any subsidiary or affiliate organization of such credit union.

§31C-1-4. Suspension; involuntary liquidation.

(a) If it appears that any credit union is bankrupt, insolvent, about to be insolvent or that it has willfully violated this chapter, or is operating in an unsafe or unsound manner, the commissioner may, without prior hearing, issue an order temporarily suspending the credit union's operations. The credit union's board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, and a list of the specific violations of this chapter, if any. The commissioner shall also notify the insuring organization and the board of banking and financial institutions of any suspension.

(b) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the commissioner. The credit union's board of directors shall then file with the commissioner a reply to the suspension notice within five business days of its receipt, and must therein request a hearing to be held within sixty days to present a plan of corrective actions proposed if they desire to continue operations. Alternatively, the credit union's board of directors may request that the credit union be declared insolvent and a liquidating agent be appointed.

(c) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the commissioner may revoke the suspension notice, permit the credit union to resume
normal operations, and notify the insuring organization
and the board of banking and financial institutions of
such action.

(d) If the commissioner, after issuing notice of sus-
pension and providing an opportunity for a hearing, re-
jects the credit union's plan to continue operations, or if
the commissioner after accepting or directing a plan for
continued operations finds that the credit union has failed
to comply with the plan's substantive corrective provisions,
then the commissioner may issue a notice of involuntary
liquidation and appoint a liquidating agent. The credit
union shall be given at least sixty days in which to take
corrective action upon acceptance or issuance of any cor-
rective plan by the commissioner. The credit union may
request the appropriate court to stay execution of an in-
voluntary liquidation sought under this subsection. How-
ever, nothing in this section prevents the commissioner
from appointing a conservator pursuant to section three,
article seven, chapter thirty-one-a of this code, including a
temporary appointment of a conservator pending the
correction of the conditions causing the suspension, or
appointing a receiver and seeking to liquidate the credit
union pursuant to section four, article seven, chapter
thirty-one-a of this code when necessary in order to pro-
tect the interest of the credit union's members and deposi-
tors.

(e) If, within the suspension period, the credit union
fails to answer the suspension notice or request a hearing,
the commissioner may then revoke the credit union's char-
ter, appoint a liquidating agent and liquidate the credit
union.

(f) In the event of liquidation, the assets of the credit
union or the proceeds from any disposition of the assets
shall be applied and distributed in the following sequence:

(1) Secured creditors up to the value of their collater-
al;

(2) Costs and expenses of liquidation;

(3) Wages due the employees of the credit union;
(4) Costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the commissioner;

(5) Taxes owed to the United States or any other governmental unit;

(6) Debts owed to the United States;

(7) General creditors, secured creditors to the extent their claims exceed the value of their collateral and owners of deposit accounts to the extent such accounts are uninsured;

(8) Members, to the extent of uninsured share accounts and the organization that insured the accounts of the credit union; and

(9) Members of a corporate credit union, to the extent of membership shares.

As soon as the appointed liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, a certificate of dissolution shall be executed on a form prescribed by the commissioner and filed with the secretary of state, which shall after filing and indexing same, be forwarded to the commissioner, whereupon the credit union shall be dissolved. The liquidating agent shall return all pertinent books and records of the liquidating credit union to the commissioner.

§31C-1-5. Examinations.

(a) The commissioner shall annually examine or cause to be examined each credit union. A credit union and any of its officers and agents shall be required to give the commissioner or the commissioner's representatives full access to all books, papers, securities, records and other sources of information under their control.

(b) A report of such examination shall be forwarded to the credit union's board of directors within thirty days after completion. Said report shall contain comments relative to the management of the affairs of the credit
union and the general condition of its assets. Within thirty
days after the receipt of such report, the directors and
committee members shall meet to consider matters con­
tained in the report. Every official communication from
the commissioner to any such institution, or to any officer
thereof, relating to an examination or an investigation of
the affairs of such institution conducted by the commis­
ioner or containing suggestions or recommendations as
to the manner of conducting the business of the institu­
tion, shall be read to the board of directors at the next
meeting after the receipt thereof, and the president, or
other executive officer, of the institution shall within four­
teen days of such meeting notify the commissioner in
writing of the presentation and reading of the communica­
tion and of any action taken thereon by the institution.

(c) In lieu of making an examination of a credit
union, the commissioner may accept an examination or
audit report of the condition of the credit union made by
the national credit union administration.

§31C-1-6. Records.

(a) A credit union shall maintain all books, records,
accounting systems and procedures in accordance with
such rules as the commissioner from time to time pre­
scribes. In prescribing such rules, the commissioner shall
consider the relative size of a credit union and its reason­
able capability of compliance. Unless otherwise required
or permitted by a specific rule, credit unions shall follow
the record retention requirements set forth in section
thirty-five, article four, chapter thirty-one-a of this code.

(b) A credit union is not liable for destroying re­
 cords after the expiration of the record retention time
prescribed by subsection (a) of this section, except for any
records involved in an official investigation or examina­
tion about which the credit union has received notice.

(c) Reproduction of any credit union records shall
be admissible as evidence of transactions with the credit
union as provided in section seven-b, article one, chapter
fifty-seven; and section thirty-five, article four, chapter
thirty-one-a of this code.
§31C-1-7. Reports.

(a) Credit unions shall report to the commissioner semi-annually during January and July of each calendar year on a date set by the commissioner for the business periods ending the thirtieth day of June and the thirty-first day of December respectively on forms supplied by the commissioner for that purpose. Additional reports may also be required.

(b) A charge of one hundred dollars shall be levied for each day a credit union fails to provide a required report, unless it is excused for cause by the commissioner or courts.

(c) The fiscal year of each credit union incorporated under this chapter shall end on the last day of December.

(d) In addition to other reports that may be required under this chapter, every credit union with a main office or branch located in this state shall file with the commissioner an annual report specifying for its main office and each branch (excluding automated teller machines) in this state:

(i) The location of each such office, including county and, where applicable, municipality;

(ii) The amount of deposits and shares held by each such office as of the end of the preceding calendar year; and

(iii) The amount of loans outstanding by each such office at the end of the preceding calendar year.

The foregoing report shall be based upon the credit union's allocation of its deposit and share base and loan portfolio among its offices. The report shall be filed with the commissioner on or before the fifteenth day of February of each year on forms prescribed by the commissioner.

§31C-1-8. Assessments.

The commissioner of banking shall charge and collect from each credit union and pay into a special revenue account in the state treasury for the department of
banking an annual assessment payable on the first day of July computed upon the total assets of the credit union shown on the report of condition of the credit union as of the last business day in December of the previous year as is set out in section eight, article two, chapter thirty-one-a of this code.

ARTICLE 2. FORMATION OF CREDIT UNION.

§31C-2-1. Organization procedure.
§31C-2-2. Certification of charter; and certificate of authority.
§31C-2-3. Articles and bylaws.
§31C-2-4. Use of name exclusive.
§31C-2-5. Branches and other service facilities.
§31C-2-6. Out-of-state credit unions.
§31C-2-7. Conducting business outside this state.
§31C-2-8. Tax exemption.
§31C-2-9. Credit unions heretofore organized need not obtain new charter; actions validated.

§31C-2-1. Organization procedure.

(a) Any eight or more residents of this state, of legal age, who share the common bond referred to in section one, article four of this chapter, may organize a credit union and become charter members thereof by complying with this section.

(b) The incorporators shall prepare, adopt and execute in duplicate articles of incorporation and agree to the terms thereof. The articles shall state:

1. The credit union's name and the address of the proposed credit union's principal place of business;

2. That the existence of the credit union shall be perpetual;

3. The names and addresses of the incorporators to the articles of incorporation, and the number of shares subscribed to by each, which for each incorporator shall be not less than one share; and

4. The par value of each share to be issued.

(c) The incorporators shall prepare, adopt and execute in duplicate bylaws consistent with this chapter for the
general government of the credit union. The bylaws shall state:

(1) The conditions and qualifications of membership;

(2) The conditions upon which shares may be issued, transferred and withdrawn;

(3) The number of directors, their powers and duties; and the compensation and duties of all officers;

(4) The date of the annual meeting and requirements as to notice and manner of conducting such meeting;

(5) The term of service for directors, which terms shall be staggered so that an approximately equal number expire each year;

(6) The number and term of service for supervisory committee members, together with their powers and duties;

(7) The number and the term of service for credit committee members, unless the bylaws provide for the board of directors to act as the credit committee, and their respective powers and duties;

(8) The purposes and conditions upon which loans may be made;

(9) The manner of a member's appeal for a loan application disapproved by a loan officer, if the bylaws provide for the appointment of loan officers; and

(10) The par value of shares, and where applicable in corporate credit unions, any membership shares.

(d) The incorporators shall select at least five persons who are eligible for membership and who agree to become members and serve on the board of directors, and at least three other persons who are eligible for membership and who agree to become members and serve on the supervisory committee. The persons selected to serve on the board of directors and supervisory committee shall execute an agreement to serve in these capacities until the first annual meeting or until the election of their respective successors, whichever is later.
(e) The incorporators shall provide to the commis­sioner an affidavit of the expenses incurred or anticipated in the organization of the credit union.

(f) In their application to obtain a certificate of char­ter the incorporators shall forward to the commissioner the duplicate articles of incorporation and bylaws and the agreements to serve. The submission of these documents shall be accompanied by an investigation fee of one hun­dred dollars payable to the commissioner.

§31C-2-2. Certification of charter; and certificate of authority.

(a) The commissioner shall review the incorporation agreement and bylaws together with other information submitted as the commissioner may prescribe and com­plete the examination and investigation on an application to charter a credit union within ninety days, unless a writ­ten request for additional information or disclosures are made by the commissioner, in which event, the period of ninety days shall be extended an additional thirty days. Upon public hearing and obtaining written approval by order of the commissioner, the agreement and bylaws, both executed in duplicate, together with a certified copy of the order and applicable corporation chartering fees shall be forwarded to the secretary of state for processing as in the case of any other corporate charter application. A certificate of charter shall be approved by the commis­sioner if the articles and bylaws are in conformity with this chapter and the commissioner is satisfied that:

(1) The characteristics of the common bond set forth in the proposed bylaws are favorable to the econom­ic viability of the proposed credit union;

(2) The proposed capital structure is adequate;

(3) Provision has been made for suitable quarters from which to conduct the business of a credit union; and

(4) The reputation, character and abilities of the initial board of directors and supervisory committee pro­vide assurance that the credit union's affairs will be prop­erly administered.

(b) The secretary of state shall upon receipt of any applicable fees, file and record the incorporation charter,
and return a copy of the bylaws and one of the duplicate originals of the articles of incorporation to the incorporators or their representatives. The original articles and by-laws shall be preserved in the permanent files of the credit union.

(c) Any order to grant or deny a certificate of charter shall be accompanied by findings of fact and conclusions of law upon which the decision was based. If a certificate of charter is denied by the commissioner, he or she shall notify the incorporators and provide a copy of the order, which shall set forth reasons for the denial. The commissioner's decision may be appealed to the board of banking and financial institutions within thirty days, and if no appeal is made of an order to deny the application, the agreement of incorporation, the corporation chartering fees, and any other papers filed therewith shall be promptly returned to the attorney, agent or other responsible person representing the incorporators in the application.

(d) Upon receipt of a certificate of charter, the incorporators of the credit union shall promptly apply to the commissioner for a certificate of authority to engage in business and comply with the provisions of section five, article two, chapter thirty-one-a of this code, in advance to the issuance of the credit union's certificate of authority. The incorporators shall likewise comply with other provisions of this chapter relating to completion of its corporate organization, and the corporation's readiness to commence business as a credit union.

(e) Upon the credit union's application, and the examination, approval and receipt of a certificate of authority from the commissioner, a credit union may commence to engage in business. The procedure and criteria for the certificate of authority licensure shall be those set forth in section five, article two, chapter thirty-one-a of this code for nonbank financial institutions.

(f) The certificate of authority shall be preserved and displayed in the place of business of the credit union.

(g) If a certificate of authority is denied by the commissioner, he or she shall notify the applicant and set forth reasons for the denial. The credit union may appeal
§31C-2-3. Articles and bylaws.

(a) In order to simplify the organization of credit unions, the commissioner may cause to be prepared model articles of incorporation and bylaws, consistent with this chapter, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available to persons desiring to organize a credit union.

(b) The articles of incorporation and the bylaws may be amended as provided in the articles and bylaws, respectively. Amendments to the articles of incorporation or bylaws shall be submitted to the commissioner who shall approve or disapprove the proposed amendments within sixty days.

(c) Amendments shall become effective upon approval in writing by the commissioner. If the commissioner disapproves any proposed amendment, the credit union may appeal the decision to the board within thirty days.

§31C-2-4. Use of name exclusive.

(a) The name of every credit union organized under this chapter shall include the phrase "credit union." No credit union may adopt a name either identical to the name of any other credit union doing business in this state or so similar to the name of any other credit union doing business in this state as to be misleading or to cause confusion.

(b) No person, other than a credit union incorporated under this chapter, the Federal Credit Union Act or a credit union authorized to do business in this state under section six, article two of this chapter, an association of credit unions, or an organization, corporation or association whose membership or ownership is primarily limited to credit unions or credit union organizations, may use a name or title containing the phrase "credit union" or any derivation thereof, represent itself as a credit union, or conduct business as a credit union.
(c) Violation of this section constitutes a misdemeanor punishable by a fine of not more than one hundred dollars for each day of illegal use of such name, by imprisonment for not more than one year, or both.

(d) The commissioner may petition a court of competent jurisdiction to enjoin a violation of this section.

§31C-2-5. Branches and other service facilities.

(a) A credit union may change its principal place of business within this state upon notice to, and approval in writing of, the commissioner.

(b) A credit union may maintain other service facilities and branches, including automated teller machines (ATMs), at locations other than its principal office upon notice to and approval in writing of the commissioner. The maintenance of such facilities must be reasonably necessary to furnish service to its members. The creation of such facilities must be approved by a majority vote of the credit union's board of directors.

(c) A credit union may, upon notice and approval in writing of the commissioner, join with one or more other credit unions or other financial organizations in the operation of automated teller machines (ATMs) or other service facilities. The joint operation of such facilities must be approved by a majority of the credit union's board of directors.

(d) To the extent that a credit union provides its members access to their accounts through a remote service unit, such as an ATM or point-of-sale (POS) device, the credit union shall be governed by the same rules of the commissioner pertaining to banks operating through customer bank communication terminals (CBCTs).

§31C-2-6. Out-of-state credit unions.

(a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union through a branch or service facility in this state with the approval by written order of the commissioner, provided credit unions incorporated under this chapter are allowed to do business in the other
state under conditions similar to these provisions. Unless the context clearly requires otherwise, the term "territory of the United States" shall, as used in this chapter, include the District of Columbia. Before granting the approval, the commissioner must, upon public hearing, find that the applicant out-of-state credit union:

(1) Is a credit union organized and operating under standards recognized as appropriate pursuant to the provisions of this chapter;

(2) Is financially solvent and has an adequate capital structure;

(3) Has account insurance as required for credit unions incorporated under this chapter;

(4) Has a board of directors and supervisory committee with the reputation, character and abilities to provide assurance that the credit union's affairs will be properly administered;

(5) Has in connection with any office of operations in this state made provision for suitable quarters from which to conduct the business of a credit union;

(6) Is examined and supervised by a regulatory agency of the state or territory in which it is organized; and

(7) Needs to conduct business in this state to adequately serve its members in this state.

(b) No out-of-state credit union may conduct business in this state unless it:

(1) Complies with the limits on finance charges applicable to credit unions set forth in section two, article seven of this chapter when making loans in this state;

(2) Complies with the consumer protection statutes and rules applicable to credit unions incorporated under this chapter;

(3) Agrees to furnish the commissioner a copy of the report of examination of its regulatory agency, and if deemed necessary by the commissioner, to submit to an
examination by the commissioner, the cost of which shall be paid for by the credit union; and

(4) Designates and maintains an agent for the service of process in this state.

(c) The commissioner may revoke the approval of a credit union to conduct business in this state if the commissioner finds that:

(1) The credit union no longer meets the requirements of subsection (a) of this section;

(2) The credit union has violated the laws of this state or lawful rules or orders issued by the commissioner;

(3) The credit union has engaged in a pattern of unsafe or unsound credit union practices; or

(4) Continued operation by the credit union is likely to have a substantially adverse impact on the financial, economic or other interests of residents of this state.

§31C-2-7. Conducting business outside this state.

A credit union incorporated under this chapter may conduct business outside of this state in other states or territories where it is permitted to conduct business as a credit union. The activities and records of such credit union business conducted outside this state remain fully under the jurisdiction and supervision of the commissioner. Prior to the establishment of any branch or service facility outside this state, a credit union shall provide notice to, and obtain written approval of, the commissioner. The creation of such facilities must be approved by a majority vote of the credit union's board of directors.

§31C-2-8. Tax exemption.

(a) Any credit union organized under this or any other credit union act and all shares and deposits therein shall be exempt from all taxation now or hereafter imposed by this state or any taxing authority within this state. No law which taxes corporations in any form, or the shares or deposits thereof, or the accumulation thereon, shall apply to any such credit union; except that any real property and any tangible personal property owned by any
such credit union shall be subject to taxation to the same extent as other similar property is taxed: Provided, That this exception shall not permit the imposition of any sales or use taxes on the credit union.

(b) The shares of any such credit union shall not be subject to stock, transfer taxes, either when issued or when transferred from one member to another.

(c) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

§31C-2-9. Credit unions heretofore organized need not obtain new charter; actions validated.

All credit unions which have been heretofore legally organized under chapter thirty-six of the acts of the Legislature of one thousand nine hundred twenty-five, and which are in existence on the effective date of this section; and all credit unions which have been heretofore legally organized under article ten of chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and which are in existence on the effective date of this section, shall upon the effective date of this section be considered to have been organized under the provisions of this article, and shall not be required to obtain a new charter or to reorganize hereunder. All acts and things done by any such credit unions, insofar as such acts and things shall not have constituted any violation of law as it shall heretofore have existed, shall be deemed valid and effective.

ARTICLE 3. POWERS OF CREDIT UNION.

§31C-3-1. General powers.
§31C-3-2. Incidental powers.
§31C-3-3. Advantageous federal powers.

§31C-3-1. General powers.

In addition to the powers mentioned elsewhere in this chapter, a credit union may:
(a) Enter into contracts necessary for the conduct of
its business as authorized under this statute;

(b) Sue and be sued;

(c) Adopt, use and display a corporate seal;

(d) Acquire, lease, hold, assign, sell, discount or oth-
erwise dispose of property or assets, either in whole or in
part, necessary or incidental to its operation;

(e) Borrow from any source: Provided, That a cred-
it union must obtain approval of the commissioner in
writing of its intention to borrow in excess of an aggregate
of twenty percent of its equity capital and shares, and in
no event shall its borrowing be in excess of an aggregate
of fifty percent of its equity capital and shares;

(f) Purchase the assets of another credit union;

(g) Offer related financial services, including, but not
limited to, electronic fund transfers, safe deposit boxes,
leasing and correspondent arrangements with other finan-
cial institutions;

(h) Hold membership in other credit unions orga-
nized under this or other acts, and in associations and
organizations controlled by or fostering the interests of
credit unions, including a central liquidity facility orga-
nized under state or federal law.

(i) Engage in activities and programs as requested by
any governmental unit;

(j) Act as fiscal agent for and receive payments on
share and deposit accounts from a governmental unit;

(k) Make contributions to any nonprofit civic, chari-
table or service organizations;

(l) Receive the savings of its members either as pay-
ment on shares, or as deposits (including the right to con-
duct Christmas clubs, vacation clubs and other thrift orga-
nizations within the membership);

(m) Make loans for provident, productive,
nonspeculative purposes to members, including a coopera-
§3IC-3-2. Incidental powers.

A credit union may exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes.

§3IC-3-3. Advantageous federal powers.

Unless exercise of a power is specifically denied, the commissioner may prescribe rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions if the commissioner deems it appropriate for the purposes of credit unions in this state and a benefit to their members.

ARTICLE 4. MEMBERSHIP.

§3IC-4-1. Membership defined.

(a) The membership of a credit union shall consist of those persons who share a common bond set forth in the bylaws, have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares and have complied with such other requirements as the articles of incorporation and bylaws specify.

(b) Credit union membership shall be limited to, persons within one or more groups having a common bond or bonds of similar occupation, employer, association or interest, and members of the immediate family of such persons.

§3IC-4-2. Organizations.
(a) Organizations comprised primarily of individuals who are eligible for membership in the credit union, and corporations whose total number of stockholders or whose majority stockholders are comprised primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals. Likewise, organizations one of whose principal functions is to provide services to persons who are eligible for membership in the credit union may be admitted to membership. Other organizations having a commonality of interest with the credit union may be admitted to membership with the approval of the commissioner.

(b) Any corporate credit union organized under this chapter may accept as a member any other credit union organized under this or any other act.

§31C-4-3. Membership applications.

The board of directors of the credit union shall act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the credit union's board of directors.

§31C-4-4. Members who cease to be eligible.

Members who cease to be eligible for membership may be permitted to retain their membership in the credit union, under reasonable standards established by the credit union's board of directors.

§31C-4-5. Liability and expulsion of members.

(a) The members of the credit union shall not be personally or individually liable for the payment of its debts solely by virtue of holding membership.

(b) Any member may be expelled by a two-thirds vote of its members present at any regular meeting or a special meeting called to consider the matter, but only
after an opportunity has been given the member to be
heard.

(c) The credit union's board of directors may expel
a member pursuant to a written policy adopted by it. All
members shall be given written notice of the terms of any
such policy upon becoming a member. Any person ex-
pelled by the credit union's board of directors shall have
the right to request a hearing before it to reconsider the
expulsion.

§31C-4-6. Meetings of members.

(a) The annual meeting and any special meetings of
the members of the credit union shall be held in accor-
dance with the bylaws.

(b) At all such meetings a member shall have but
one vote, irrespective of the member's shareholdings. No
member may vote by proxy, but a member may vote by
absentee ballot, mail or other method if the bylaws of the
credit union so provide.

(c) The credit union's board of directors may estab-
lish a minimum age, not greater than eighteen years of
age, as a qualification of eligibility to vote at meetings of
the members or to hold office, or both.

(d) An organization having membership in the cred-
it union, may be represented and have its vote cast by one
of its members or shareholders, provided such person has
been so authorized by the organization's governing body.

§31C-4-7. Calling of special meeting.

(a) The supervisory committee by a majority vote
may call a special meeting of the members to consider any
violation of this chapter, the credit union's articles of in-
corporation or bylaws, or any practice of the credit union
deemed by the supervisory committee to be unsafe or
unauthorized; and may call a special meeting to consider
the suspension or removal of any officer or director of the
credit union as provided for in this chapter.

(b) The bylaws may also prescribe the manner in
which a special meeting of the members may be called by
the members or by the credit union's board of directors or both.

(c) The commissioner may also require the directors of a credit union to call a special meeting of the members pursuant to his or her authority under section nine, article two, chapter thirty-one-a of this code.

ARTICLE 5. DIRECTION OF CREDIT UNION AFFAIRS.

§31C-5-1. Authority and responsibility of directors.
§31C-5-2. Election of directors and selection of supervisory and credit committee members.
§31C-5-3. Record of officials; and filling vacancies.
§31C-5-4. Compensation of officials; and conflicts of interests.
§31C-5-5. Officers.
§31C-5-6. Executive committee.
§31C-5-7. Credit committee and loan officers.
§31C-5-8. Audits.
§31C-5-9. Fidelity bonds, required oaths and hazard insurance.
§31C-5-10. Suspension and removal of officials.

§31C-5-1. Authority and responsibility of directors.

The credit union's board of directors shall have the authority and responsibility for directing the business affairs, funds and records of the credit union. In addition to the duties found elsewhere in this article, it shall be the special duty of the credit union's board of directors to:

(a) Purchase adequate fidelity coverage for the chief executive officer and for other active officers and employees handling or having custody of funds or property;

(b) Authorize the employment and compensation of the chief executive officer who shall hire such other persons necessary to carry on the business of the credit union;

(c) Approve an annual operating budget for the credit union;

(d) Authorize the conveyance of property;

(e) Borrow or lend money to carry on the functions of the credit union;
(f) Appoint any special committees deemed necessary;

(g) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

The credit union's board of directors shall meet each month. The board may meet at other times as is necessary. Board meetings may be conducted by means of telephone as provided in the bylaws in a manner consistent with state law.

§31C-5-2. Election of directors and selection of supervisory and credit committee members.

(a) The credit union's board shall consist of an odd number of directors, at least five in number, to be elected by and from the members. Elections shall be held at the annual meeting or in such other manner as the bylaws provide. All members of the credit union's board shall hold office for such terms as the bylaws provide, except that terms shall be staggered so that an approximately equal number expire each year.

(b) A supervisory committee of not less than three persons shall either be elected by the membership at the annual meeting or appointed by the credit union's board of directors at the organization meeting held within thirty days following each annual election for such terms as the bylaws provide.

(c) At the same organization meeting, the credit union's board of directors shall appoint a credit committee, unless the bylaws provide for the board of directors to act as the credit committee. The committee shall consist of an odd number, not less than three, whose terms shall be as the bylaws provide.

§31C-5-3. Record of officials; and filling vacancies.

(a) Within twenty days after each organization meeting, a record of the names and addresses of the members of the board and such other committees and officials, as
required by the commissioner, shall be filed with the commissioner.

(b) The credit union's board of directors shall fill any vacancies occurring in the board until successors elected at the next annual election have qualified. The credit union's board shall also fill vacancies in the credit committee and, if appointed by them, the supervisory committee. If the supervisory committee is elected by the members, then any vacancies thereon shall be filled by selection by the remaining supervisory committee members.

§31C-5-4. Compensation of officials; and conflicts of interests.

(a) No officer, director or committee member, other than an employee, may be compensated for services, except as provided in section one, article five of this chapter. However, providing reasonable life, health, accident and similar insurance protection shall not be considered compensation. Directors, officers and committee members may be reimbursed for necessary expenses incidental to the performance of official business of the credit union.

(b) No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership or association (other than the credit union) in which that person is directly or indirectly interested.

§31C-5-5. Officers.

(a) At their organization meeting held within thirty days following each annual election, the credit union's board of directors shall elect from their own number a chairman of the board, one or more vice chairmen, a treasurer and a secretary. The office of secretary and treasurer may, if the bylaws so provide, be held by one person. They shall also elect any other officials that are specified in the bylaws.
(b) The terms of the officers shall be one year, or until their successors are chosen and have been duly qualified.

(c) The duties of the officers shall be prescribed in the bylaws.

(d) The credit union's board of directors shall appoint a president to act as the chief executive officer of the credit union and be in active charge of its operations.

(e) Notwithstanding any other provision of this chapter, a credit union may use any titles it chooses for the officials holding the positions described in this chapter, as long as such titles are not misleading.

§31C-5-6. Executive committee.

The credit union's board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized to act for the board in all respects. These actions are subject to subsequent review by the full credit union's board of directors and any other conditions or limitations prescribed by the board of directors.

§31C-5-7. Credit committee and loan officers.

(a) The credit committee shall have the general supervision of all loans to members. It may approve or disapprove loans, subject to written policies established by the board of directors.

(b) The credit committee shall meet as often as the business of the credit union requires to consider applications for loans and/or review the work of the loan officers. No loan shall be made by the credit committee unless it is approved by a disinterested majority of the committee who are present at the meeting at which the application is considered.

(c) If the bylaws so provide, the board of directors may act as the credit committee.

(d) The credit union's board of directors or credit committee may appoint one or more loan officers and delegate the power to approve or disapprove loans, subject
to such limitations or conditions as the credit committee or
credit union's board of directors prescribes.

e) A member whose application was disapproved by
a loan officer may appeal such action to the credit com-
mittee or credit union's board of directors, as appropriate
under the bylaws.

§31C-5-8. Audits.

(a) The supervisory committee shall make or cause
to be made a comprehensive annual audit of the books
and affairs of the credit union. It shall submit a report of
each annual audit to the credit union's board of directors
and a summary of that report to the members at the next
annual meeting of the credit union. Such reports shall be
filed and preserved with the records of the corporation.

(b) The supervisory committee of not less than three
elected or appointed members shall make or cause to be
made such supplementary audits, examinations and verifi-
cations of members' accounts as it deems necessary or as
are required by the commissioner or by the credit union's
board of directors, and submit reports of these supplemen-
tary audits to the credit union's board of directors.

(c) The workpapers of any audit, including any
materials associated with an audit of the credit union's
electronic data procedures, shall be made available to the
commissioner or to the examiners of the department of
banking upon request, and will be accorded confidentiali-
ty in conformity with section four, article two, chapter
thirty-one-a of this code.

§31C-5-9. Fidelity bonds, required oaths and hazard insur-
ance.

(a) As a condition precedent to qualification or entry
upon the discharge of their duties, all active officers, as
well as every person appointed or elected to any position
requiring the receipt, payment or custody of money or
other personal property owned by a credit union or in its
custody or control as collateral or otherwise, shall give a
bond in some responsible corporate surety company,
licensed to do business in this state, in such sufficient
amount as the credit union directors shall require and approve. The bonds shall provide for indemnity to the credit union on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission by such persons acting independently or in collusion or combination with others. The bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the credit union.

(b) No officer or employee who is required to give bond shall be deemed qualified nor shall be permitted to enter upon the discharge of their duties until their bond shall have been approved by a majority of the credit union's board of directors.

(c) The credit union's board of directors shall also direct and require suitable insurance protection to the credit union against burglary, robbery, theft and other insurable hazards to which the credit union may be exposed in the operations of its business on the premises or elsewhere.

(d) The credit union's board of directors shall be responsible for prescribing at least once each year the amount or penal sum of the bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. This action shall be recorded in the minutes of the board of directors. At any time the commissioner may require additional bond or security, when, in his or her opinion, the bonds then executed and approved are insufficient.

(e) Upon their election or appointment each director, officer and member of a committee shall individually make an oath that they will, as far as the duty devolves upon them, diligently and honestly administer the affairs of the credit union, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to the credit union, and that they are each the owner in good faith in their own right on the books of the credit union of at least one share therein. This oath shall be subscribed by the individual making it, and be certified by the officer before whom it was taken, and shall
§31C-5-10. Suspension and removal of officials.

(a) The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the credit committee and shall report such action to the credit union's board of directors. The credit union's board of directors shall meet not less than seven nor more than twenty-one days after such suspension to take appropriate action.

(b) The supervisory committee by a two-thirds vote of the entire committee may recommend suspension of any officer or member of the credit union's board of directors. A meeting of a quorum of the remaining board members shall convene in person and take action on the recommendation, which meeting shall be held not less than seven nor more than twenty-one days after such proposed suspension. The suspension matter shall be acted upon at the board meeting and the person shall either be removed for cause or restored to office. If the supervisory committee is not satisfied with the board's action, it may call a special meeting of the members or elect to bring the matter before the next member's regular meeting, and the issue will be acted upon at the meeting by the members and the person shall either be removed for cause or reaffirmed to office. At any such member's meeting the person at issue shall have the right to appear and be heard.

(c) Any member of the supervisory committee or of the credit committee may be suspended or removed for cause by the board of directors by a two-thirds vote of those present at a meeting for failure to perform duties in accordance with this chapter, the articles of incorporation or the bylaws. The committee member shall have the right to appear and be heard at such meeting.

ARTICLE 6. ACCOUNTS.

§31C-6-1. Share accounts and membership shares.
§31C-6-2. Dividends.
§31C-6-3. Deposit accounts.
§31C-6-4. Minor accounts.
§31C-6-5. Joint accounts.
§31C-6-6. Trust accounts.
§31C-6-7. Payable-on-death accounts.
§31C-6-8. Liens.
§31C-6-9. Share and deposit insurance.
§31C-6-10. Reduction in shares.

§31C-6-1. Share accounts and membership shares.

(a) Share accounts and membership shares (if any) shall be subscribed to and paid for in such a manner as the bylaws prescribe.

(b) A corporate credit union may require its members to subscribe to and make payments on membership shares.

(c) The par value of shares and any membership shares shall be as prescribed in the bylaws. Par value of shares shall not be less than one dollar nor more than ten dollars per share.

(d) Membership shares may not be pledged as security on any loan.

(e) A credit union may limit the number of shares which may be owned by a member, but any such limit shall apply alike to all members.

§31C-6-2. Dividends.

(a) The credit union's board of directors shall establish the dividend period. Rates of dividends and the terms of payment may be established in advance by action of the board of directors. Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

(b) The commissioner may, if circumstances warrant, establish the maximum dividend that a credit union or corporate credit union may pay in each classification of its savings.

§31C-6-3. Deposit accounts.
(a) A credit union may accept deposit accounts from its members, other credit unions and governmental units subject to the terms, rates and conditions established by the board of directors.

(b) Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

(c) Funds in share and deposit accounts may be withdrawn for payment to the account holder or to third parties, in such manner and in accordance with such procedures as are established by the board of directors, subject to any rules the commissioner prescribes.

(d) Share and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws.

(e) A membership share may not be redeemed or withdrawn except subject to the terms set forth by the corporate credit union.

§31C-6-4. Minor accounts.

Payments on share and deposit accounts may be received from a minor who may withdraw funds from such accounts including the dividends and interest thereon. Payments on share and deposit accounts by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full majority age.

§31C-6-5. Joint accounts.

(a) A member may designate any person or persons to own a share or deposit account with the member in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law, but no co-owner, unless a member in their own right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

(b) Payment of part or all of such accounts to any of the co-owners shall, to the extent of such payment, dis-
charge the liability to all unless: (1) The account agreement contains a prohibition or limitation on such payment; or unless (2) the credit union had received notice in writing signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof, prior to its payment. The commissioner may promulgate rules regarding notice to joint account holders of their rights and liabilities under this section.

§31C-6-6. Trust accounts.

(a) Share and deposit accounts may be owned by a member in trust for a beneficiary, or owned by a non-member in trust for a beneficiary who is a member.

(b) Beneficiaries may be minors, but no beneficiary unless a member in that person's own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

(c) Payment of part or all of such a trust account to the party in whose name the account is held shall, to the extent of such payment, discharge the liability of the credit union to that party and to the beneficiary, and the credit union shall be under no obligation to see to the application of such payment.

(d) In the event of the death of the party who owns a trust account, if the credit union has been given no other written notice of the existence or terms of any trust and has not received a court order as to disposition of the account, account funds and any dividends or interest thereon shall be paid to the beneficiary.

(e) The operation of trust accounts as permitted in this section does not constitute engaging in a trust business as set forth in chapter thirty-one-a of this code.

§31C-6-7. Payable-on-death accounts.

Notwithstanding any other provision of law a credit union may establish share and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable-on-death payees. An account established under this section must be identified as a "payable-on-death" account or abbreviated
as a "p.o.d." account. Any transfer to a payable-on-death payee is effective by reason of the account contract and shall not be considered to be a testamentary transfer.

§31C-6-8. Liens.

The credit union shall have a general lien on the share accounts, any membership shares, and accumulated dividends of a member for any sum owed the credit union by said member and for any loan endorsed by that member. The credit union shall also have a right of immediate set-off with respect to every deposit account. The credit union may also refuse to allow withdrawals from any share or deposit account. The credit union may waive its rights to a lien, to immediate set-off, to restrict withdrawals, or to any combination of such rights with respect to any share or deposit account or groups of such accounts.

§31C-6-9. Share and deposit insurance.

(a) Before the incorporators of a credit union forward the corporate documents to the commissioner under subsection (d), section two, article two of this chapter they shall apply for insurance on share and deposit accounts from the national credit union administration under Title II of the Federal Credit Union Act (12 U.S.C. §1781 et seq.).

(b) A credit union which has lost its commitment for such insurance shall within thirty days commence steps to either liquidate, or merge with an insured credit union or apply in writing to the commissioner for additional time to obtain another insurance commitment. The commissioner may grant one or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the commitment.

(c) No persons shall be granted a certificate of authority to engage in business by the commissioner to operate a credit union unless they have obtained a commitment for insurance of its share and deposit accounts.

(d) The commissioner may make available reports of condition and examination findings to the appropriate
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24 insuring organization and may accept any report of examination made on behalf of such organization.

26 (e) A state-chartered corporate credit union must
27 only apply for and maintain share and deposit insurance
28 in the amounts and of the same kind as would be required
29 for a similarly situated federally chartered corporate credit
30 union.

§31C-6-10. Reduction in shares.

1 (a) Whenever the losses of any credit union, resulting from a depreciation in value of its loans or investments or otherwise, exceed the aggregate of its undivided earnings, reserves and membership shares if any, so that the estimated value of its assets is less than the total amount of share accounts, and the board of directors determines that the credit union may be subject to involuntary liquidation, the credit union board may propose a reduction in shares. The credit union may by a three-fourths majority vote of those voting on the proposition order a reduction in the share accounts of each of its shareholders to divide the loss in proportion to the shareholdings held by shareholders in their respective share accounts.

14 (b) If the credit union thereafter realizes from such assets a greater amount than was fixed by the order of reduction, such excess shall be proportionately restored to the shareholders whose assets were reduced, but only to the extent of such reduction.

ARTICLE 7. LOANS.

§31C-7-1. Purpose and conditions of loans.
§31C-7-2. Finance charge.
§31C-7-3. Additional charges.
§31C-7-4. Applications.
§31C-7-5. Loan limit; collateral requirements; and repayment.
§31C-7-6. Line of credit.
§31C-7-7. Participation loans.
§31C-7-8. Other loan programs.
§31C-7-9. Loans to officials.

§31C-7-1. Purpose and conditions of loans.
A credit union may loan to members for such purposes and upon such conditions as the bylaws may provide. The board of directors shall establish written policies with respect to the granting of loans and the extending of lines of credit, including the terms, conditions and acceptable forms of security.

§31C-7-2. Finance charge.

The finance charges imposed by the credit union on loans shall be determined by the credit union's board of directors, subject to the limitations established by this state. Unless otherwise permitted or prescribed by this code, the finance charge rate shall not exceed one and one-half percent per month, computed on unpaid balances.

§31C-7-3. Additional charges.

(a) In addition to interest on loans, a credit union may charge members reasonable expenses in connection with the making, closing, disbursing, extending or renewing of loans.

(b) A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner. A credit union may also assess charges for other benefits, including insurance, as allowed for lenders under law.

(c) Any charges in connection with a consumer loan, including late charges and deferral charges, permitted under this section shall conform and be limited to those allowed under article three, chapter forty-six-a of this code.

§31C-7-4. Applications.

Except as provided for in section six, article seven of this chapter, every application for a loan shall be made in writing upon a form prescribed by the credit union and shall state the purpose of the loan as well as the security or collateral offered, if any. Each loan shall be evidenced by a written document.

§31C-7-5. Loan limit; collateral requirements; and repayment.
(a) The aggregate of loans to any one member shall be limited to ten percent of the credit union's assets. This limit shall not apply to loans which are fully secured by assignments of shares or deposits in the credit union.

(b) Loans to members which in the aggregate exceed the amount shown in the schedule below shall be secured by such collateral having a value which is at least equal to any amount exceeding the limits in the following schedule, except that all loans exceeding five thousand dollars not subject to collateral shall be supported by a sworn financial statement:

(1) Five hundred dollars in credit unions with assets of less than five thousand dollars;

(2) One thousand dollars in credit unions with assets of five thousand dollars and less than twenty-five thousand dollars;

(3) Two thousand dollars in credit unions with assets of twenty-five thousand dollars and less than one hundred thousand dollars;

(4) Five thousand dollars in credit unions with assets of one hundred thousand dollars and less than five hundred thousand dollars;

(5) Seven thousand dollars in credit unions with assets of five hundred thousand dollars and less than one million dollars; and

(6) Ten thousand dollars in credit unions with assets of one million dollars or more: Provided, That the commissioner may, upon request and at his or her discretion, approve in writing a higher unsecured loan limit amount for credit unions having assets of one million dollars or more.

(c) A borrower may pay the whole or part of the borrower's loan on any day the credit union is open for business.

§31C-7-6. Line of credit.
(a) Upon written application by a member, the credit committee or loan officer may approve a line of credit, and loan advances may be granted to the member within the limit of such line of credit. Access to the line of credit may be by use of a lender credit card. Where a line has been approved, no additional credit application is required as long as the aggregate indebtedness does not exceed the approved limit.

(b) Lines of credit shall be subject to periodic review by the credit union, in accordance with the written policies of the credit union's board of directors, and approved or disapproved as to the granting of further loan advances.

§31C-7-7. Participation loans.

A credit union may participate in loans to credit union members jointly with other credit unions, credit union organizations or other organizations pursuant to written policies established by the credit union's board of directors. A credit union which originates such a loan shall retain an interest of at least ten percent of the face amount of the loan.

§31C-7-8. Other loan programs.

(a) A credit union may participate in any guaranteed loan program of the federal or state government under the terms and conditions specified in the law under which such a program is provided.

(b) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

(c) A credit union may finance for any person the sale of its personal property, including property obtained as a result of defaults in obligations owed to it, under the terms, conditions and rates provided by this chapter.

§31C-7-9. Loans to officials.

(a) A credit union may permit officers, directors, and members of its supervisory and credit committees to act as comakers, guarantors or endorsers of loans to other
members, subject to the requirements of subsection (b) of this section.

(b) A credit union may make loans to its officers, directors and members of its supervisory and credit committees: Provided, That:

(1) The loan complies with all requirements of this chapter and is not on terms more favorable than those extended to other borrowers; and

(2) The aggregate of loans to or guaranteed by all such officials combined, excepting those secured by shares or deposits, may not exceed twenty percent of the credit union's assets, and shall be shown in aggregate as a separate item in the reports rendered by the credit union and filed with the commissioner pursuant to section seven, article one of this chapter.

(c) No credit union officer, director, or member of its supervisory or credit committee may participate in making a credit approval of a loan in which they have a self-interest. If any member of the credit committee makes an application to borrow money from the credit union or becomes surety for any other member whose application for a loan is under consideration, the supervisory committee shall appoint a substitute to act on the credit committee in place of that member, during the consideration of the application.

ARTICLE 8. OTHER MEMBER SERVICES.

§31C-8-1. Insurance for members.

§31C-8-2. Indemnification of officers.

§31C-8-3. Group purchasing.

§31C-8-4. Money-type instruments.

§31C-8-5. Retirement accounts and trust authority.

§31C-8-1. Insurance for members.

A credit union may purchase or make available credit life or other credit insurance for its members either on an individual or group basis.

§31C-8-2. Indemnification of officers.
A credit union may indemnify 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 credit union's articles of incorporation or by-laws or to the restrictions placed on indemnification contained in this section or other applicable state law.

§31C-8-3. Group purchasing.

A credit union may enter into marketing arrangements and joint ventures with other credit unions, organizations or financial institutions to facilitate its members' voluntary purchase of goods, insurance and other services from third parties, consistent with the purposes of the credit union. A credit union may be compensated for services so provided.

§31C-8-4. Money-type instruments.

A credit union may collect, receive and disburse moneys in connection with the providing of negotiable checks, money orders, travelers' checks and other money-type instruments, and the providing of these services through automated teller machines (ATMs) and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

§31C-8-5. Retirement accounts and trust authority.

A credit union may provide pension savings programs and deferred income accounts, including individual retirement accounts. In order to carry out its authority under this section, a credit union may:

(a) Contract for the provision of trust services to its members with a trust company or other organization with trust powers authorized to do business in this state. For this purpose, the trust company or other organization with
trust powers may serve credit union members at credit union facilities on a full-time or part-time basis; and

(b) Act as trustees of member funds permitted by federal law to be deposited in a credit union in the form of share deposits either as a deferred compensation or tax-deferral device, provided the credit union obtains the prior approval to conduct such activity from the board of banking and financial institutions upon hearing and written order.

ARTICLE 9. INVESTMENTS AND RESERVE ALLOCATIONS.

§31C-9-1. Investment and deposit of funds.
§31C-9-3. Reserve funds.

§31C-9-1. Investment and deposit of funds.

(a) The credit union's board of directors shall have charge of the investment of funds, except that they may designate an investment committee or investment officer to make investments in its behalf, under written investment policies established by the credit union's board.

(b) The credit union's board of directors shall designate a depository or depositories for the funds of the credit union.


Funds not used in loans to members may be invested:

(a) In securities, obligations or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations or other accounts of banking institutions organized under state or federal law;
(d) In loans to or in shares or deposits of other credit unions or corporate credit unions;

(e) In deposits in, loans to, or shares of any federal reserve bank or of any central liquidity facility established under state or federal law;

(f) In shares, stocks, deposits in, loans to or other obligations of any organization, corporation or association providing services associated with the general purposes of the credit union or engaging in activities incidental to the operations of a credit union. Such investments in the aggregate may not exceed two percent of the credit union's equity capital and shares without written permission of the commissioner;

(g) In any investment legal for banking institutions or trust funds chartered in this state;

(h) In participation loans with other credit unions, credit union organizations or other organizations;

(i) In fixed assets, not to exceed five percent of the credit union's equity capital and shares, unless with the prior written approval of the commissioner.

§31C-9-3. Reserve funds.

(a) At the end of each accounting period the credit union shall determine its gross income and from this amount shall set aside and transfer funds to a regular reserve. The credit union shall transfer to the reserve amounts as required under a schedule set by the national credit union administration (NCUA) or its successor. If no such schedule is set, then the reserve shall be at a rate of ten percent of gross income until such time as the reserve fund reaches five percent of risk assets; then the formula is decreased to seven percent of gross income until such time as the reserve fund reaches six percent of risk assets; and then the formula is decreased to five percent of gross income until the reserve fund attains a maximum of seven percent of risk assets, with subsequent transfers required only to maintain the seven percent maximum. The reserves established under this section shall
belong to the credit union and shall be held to meet contingencies or losses in its business.

(b) Special reserves to protect the interest of members may be required by the commissioner by rule, or when found by the credit union's board of directors or by the commissioner, in any special case, to be necessary for that purpose. These may include allowances for loan losses and investment losses.

ARTICLE 10. CHANGE IN CORPORATE STATUS.

§31C-10-1. Voluntary liquidation.
§31C-10-2. Merger of credit unions.
§31C-10-3. Conversion.

§31C-10-1. Voluntary liquidation.

(a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) If it decides to begin the procedure, the board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(c) Within ten days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the commissioner and the insuring organization in writing, setting forth the reasons for the proposed liquidation. Within ten days after the members act on the question of liquidation, the president shall notify the commissioner and the insuring organization in writing as to the action of the members on the proposal.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of, and making any transfer of share and deposit accounts to loans and interest, making investments of any kind, and granting loans may be restricted or suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however,
continue to be paid on authorization of the board of di-
rectors or liquidating agent during the period of liquida-
tion.

(e) For a credit union to enter voluntary liquidation,
approval by a majority of the members in writing or by a
two-thirds majority of the members present at a regular or
special meeting of the members is required. When autho-
rization for liquidation is to be obtained at a meeting of
the members, notice in writing shall be given to each
member, by first class mail, at least ten days prior to such
meeting.

(f) A liquidating credit union shall continue in exis-
tence for the purpose of discharging its debts, collecting
on loans and distributing its assets, and doing all acts re-
quired in order to wind up its business and may sue and
be sued for the purpose of enforcing such debts and obli-
gations until its affairs are fully concluded.

(g) The board of directors or the liquidating agent
shall distribute the assets of the credit union or the pro-
cesses of any disposition of the assets in the sequence de-
scribed in subsection (f), section four, article one of this
chapter.

(h) As soon as the board of directors or the liquidat-
ing agent determines that all assets from which there is a
reasonable expectancy of realization have been liquidated
and distributed as set forth in this section, a certificate of
dissolution shall be executed on a form prescribed by the
commissioner and filed with the secretary of state, which
shall after filing and indexing same, be forwarded to the
commissioner, whereupon such credit union shall be dis-
solved. The liquidating agent shall return all pertinent
books and records of the liquidating credit union to the
commissioner.

§31C-10-2. Merger of credit unions.

(a) A credit union organized under this chapter may,
with the approval of the commissioner and regardless of
common bond, merge with one or more other credit un-
ions organized under this chapter, the laws of another state
or territory of the United States or the laws of the United States.

(b) When two or more credit unions merge, they shall either designate one of them as the continuing credit union, or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under article two of this chapter. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(c) Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the commissioner for review and hearing to grant preliminary approval. If the plan includes the creation of a new credit union, all documents required by section one, article two of this chapter shall be submitted as part of the plan. In addition to any other documents or information required by the commissioner, each participating credit union shall submit the following:

(1) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) The vote of the directors in favor of the adoption of the plan; and

(3) A copy of the resolution or other action by which the plan was agreed upon.

(d) The commissioner shall after review and hearing, grant preliminary approval by written order, if: (i) The plan has been approved properly by each board of directors; (ii) the documentation required to form a new credit union, if any, complies with section one, article two of this chapter; (iii) the action would not result or tend to create a monopoly, or substantially lessen competition, or otherwise further a restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the members to be served; and (iv) taking into consideration the financial and managerial resources and further prospects of the credit
unions concerned, the action would not be contrary to the
best interests of the community whose shares are affected
by such action, nor detrimental to the safety and sound-
ness of the credit union to be acquired.

(e) After the commissioner grants preliminary ap-
proval, each merging credit union shall, unless waived by
the commissioner, conduct a membership vote on its par-
ticipation in the plan. The vote shall be conducted either
at a special membership meeting called for that purpose or
by mail ballot. If a majority of the members voting ap-
prove the plan, the credit union shall submit a record of
that fact to the commissioner indicating the vote by which
the members approved the plan and either the time and
place of the membership meeting or the mailing date and
closing date of the mail ballot.

(f) The commissioner may waive the membership
vote described in subsection (e) of this section for any
credit union upon determining that the credit union is
insolvent or about to be insolvent.

(g) The commissioner shall grant final approval of
the plan of merger after determining that the requirements
of subsection (e) of this section in the case of each merg-
ing credit union have been met. If the plan of merger
includes the creation of a new credit union, the commis-
sioner must approve the organization of the new credit
union under section two, article two of this chapter as part
of the approval of the plan of consolidation. The com-
missioner shall notify all participating credit unions of the
approval of the plan.

(h) Upon final approval of the plan by the commis-
sioner and the filing of the proper documents with the
office of the secretary of state, all property, property
rights, and members' interests in each merging credit un-
ion shall vest in the continuing or new credit union as
applicable without deed, endorsement, or other instrument
of transfer, and all debts, obligations and liabilities of each
merging credit union shall be deemed to have been as-
sumed by the continuing or new credit union. The rights
and privileges of the members of each participating credit
union shall remain intact; however, if a person is a mem-


ber of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(i) If the surviving or new credit union created by the transaction is chartered by another state or territory of the United States, it shall, in addition to the criteria set forth in subsection (c) of this section, be subject to the requirements of section six, article two of this chapter. No merger resulting in an out-of-state credit union acquiring a West Virginia credit union shall be permitted unless that other state or territory permits a West Virginia credit union to merge or acquire credit unions in their state or territory on terms that are, on the whole, substantially no more restrictive than those established under the terms of this section: Provided, That no such merger shall be approved where the West Virginia credit union to be acquired has been in operation for less than two years.

(j) Notwithstanding any other provision of law, the commissioner may, without prior hearing, authorize a merger or consolidation of a credit union which is insolvent or is about to be insolvent with any other credit union or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, any other credit union which is insolvent or about to be insolvent if the commissioner is satisfied that:

(1) An emergency requiring expeditious action exists with respect to such other credit union;

(2) Other alternatives are not reasonably available; and

(3) The public interest would best be served by approval of such merger, consolidation, purchase or assumption.

(k) Notwithstanding any other provision of law, the commissioner may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of, or assume any of the liabilities of, a credit union which is insolvent or about to be insolvent, except that prior to exercising this
authority the commissioner should consider attempting to
effect a merger or consolidation with, or purchase and
assumption by, another credit union as provided in sub-
section (j) of this section; and

(l) For purposes of the authority contained in subsec-
tion (k) of this section, insured share and deposit accounts
of the credit union may upon consummation of the pur-
chase and assumption be converted to insured deposits or
other comparable accounts in the acquiring institution,
and the commissioner and the insuring organization shall
be absolved of any liability to the credit union's members
with respect to those accounts.

§31C-10-3. Conversion.

(a) A credit union incorporated under the laws of
this state may be converted to a credit union organized
under the laws of any other state or under the laws of the
United States, by complying with the following require-
ments:

(1) The proposition for such conversion shall first
be approved, and a date set for a vote thereon by the
members, (either at a meeting to be held on such date or
by written ballot to be filed on or before such date), by a
majority of the directors of the said West Virginia state
credit union. Written notice of the proposition and of the
date set for the vote shall then be delivered in person to
each member, or mailed to each member at the address for
such member appearing on the records of the credit un-
ion, not more than thirty or less than seven days prior to
such date. Approval of the proposition for conversion
shall be by the affirmative vote of two thirds of the mem-
bers, in person or in writing;

(2) A statement of the results of the vote, verified by
the affidavits of the president or vice president and the
secretary, shall be filed with the commissioner of banking
within ten days after the vote is taken. However, no West
Virginia state chartered credit union may convert its char-
ter to that of another state, unless: (i) The conversion is
approved by the commissioner of banking in writing after
notice and hearing on the matter; (ii) the other state allows
conversions of its credit unions to a West Virginia state charter on a reciprocal basis; and (iii) the majority, or in the event the credit union operates offices in more than two states, the plurality, of the credit union's members are residents of that other state. To the extent that an out-of-state credit union created by conversion seeks to conduct business through a branch or service facility in West Virginia, the provisions of section six, article two of this chapter shall apply:

(3) Promptly after the vote approving the conversion is taken, or after approval of the commissioner of banking, where such approval is required, and in no event later than ninety days thereafter, the credit union shall take such action as may be necessary under the applicable federal or state law to make it a federal credit union or credit union of another state, and within ten days after receipt of the federal credit union charter or out-of-state credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing, the credit union shall cease to be a West Virginia state chartered credit union;

(4) The successor federal credit union or out-of-state chartered credit union shall be vested with all the assets and shall continue to be responsible for all of the obligations of the West Virginia state credit union to the same extent as though the conversion had not taken place.

(b) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the laws and rules of this state, and file proof of such compliance with the commissioner. The commissioner shall generally treat the conversion to a West Virginia state chartered credit union as a formation of a new credit union pursuant to article two of this chapter, and the procedures and requirements therein shall be followed to the extent applicable.

ARTICLE 11. CORPORATE CREDIT UNION.
§31C-11-1. Incorporation.

A corporate credit union may be incorporated under this article. All parts of this chapter not inconsistent with this article shall apply to it.

§31C-11-2. Purposes.

The purposes of the corporate credit union are to:

(a) Accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;

(b) Act as an intermediary for credit union funds between members and other corporate credit unions;

(c) Obtain liquid funds from other credit union organizations, financial intermediaries and other sources;

(d) Foster and promote in cooperation with other state, regional and national corporate credit unions and credit union organizations or associations the economic security, growth and development of member credit unions;

(e) Provide payment systems and correspondent services to its members; and

(f) Perform such other services of benefit to its members which are authorized by the commissioner.

§31C-11-3. Membership.

§31C-11-4. Organization.

§31C-11-5. Powers and privileges.

§31C-11-6. Participation in central system.

§31C-11-7. Security interest.

§31C-11-8. Meetings.


§31C-11-10. Reserves.

§31C-11-11. Annual audit.

§31C-11-12. Securities exemption.
§31C-11-3. Membership.

(a) Membership in the corporate credit union shall consist of and be limited to the credit union subscribers to the articles of incorporation, credit unions incorporated under this chapter, the Federal Credit Union Act or any other credit union act, organizations or associations of credit unions, and such other organizations provided for in the articles of incorporation or bylaws.

(b) A member of the corporate credit union shall designate one person to be its authorized representative to attend meetings of the corporate credit union and to vote on behalf of the member. A credit union member of the corporate credit union may only designate as its authorized representative a member of its own credit union.

§31C-11-4. Organization.

(a) Application to form a corporate credit union shall be made in writing to the commissioner. The application shall contain the names of at least ten percent of the credit unions in the proposed field of membership, but in no case less than fifty credit unions that have agreed to subscribe to shares in the corporate credit union at the time the application is made.

(b) The application shall be accompanied by articles of incorporation and bylaws.

(c) The bylaws shall provide for the selection of a board of directors of at least five persons, all of whom shall be authorized representatives of members. The bylaws shall require those applying for membership to subscribe to membership shares or other shares, or both, in a minimum amount as specified in the bylaws.

§31C-11-5. Powers and privileges.

(a) The corporate credit union shall enjoy the powers and privileges of any other credit union incorporated under this chapter in addition to those powers enumerated
in this article, notwithstanding any limitations or restrictions found elsewhere in this chapter.

(b) The corporate credit union may:

(1) Accept funds, either as shares or deposits, from a member and from any credit union incorporated by this state, by another state or territory of the United States or by the United States, whether or not such credit union is a member of the corporate credit union, or from a similar institution incorporated under the laws of another country;

(2) Make loans to or invest in a member or in any credit union incorporated by this state, by another state or territory of the United States or by the United States, whether or not such credit union is a member of the corporate credit union;

(3) Make loans to or place deposits in a bank, savings bank, trust company or savings and loan association incorporated by this state, by another state or territory of the United States or by the United States;

(4) Provide payment systems and correspondent services for the benefit of its members;

(5) Participate with any credit union incorporated by this state, another state or territory of the United States or the United States in making loans to its members or to members of any other participating credit union, under the terms and conditions to which the participating credit unions agree;

(6) Purchase, sell, and hold investment securities which are marketable obligations in the form of bonds, notes or debentures which are salable under ordinary circumstances with reasonable promptness at a fair value. All investments and related contracts and agreements shall be made in accordance with written investment policies established by the board of directors, and shall conform to those investments permitted under section two, article nine of this chapter;
(7) Borrow from any source, at the discretion of its board of directors;

(8) Authorize its board of directors to delegate the authority to set interest rates on loans and deposits and to determine dividends on shares;

(9) Contract for penalties for payment of loans prior to their scheduled maturity;

(10) Sell all or a part of its assets to another depository financial institution, purchase all or part of the assets of another depository financial institution and assume the liabilities of the selling depository financial institution and those of its members or depositors. To the extent that the action results in a merger, the commissioner shall direct that the appropriate provisions of section two, article ten of this chapter be followed;

(11) Act as intermediary for the funds of members, credit unions and other corporate credit unions;

(12) Act as agent for members, other credit unions and credit union organizations in paying, receiving, transferring the assets and liabilities received and invested as permitted in this article;

(13) Receive and hold in safekeeping the securities and other assets of its members and, in connection therewith, make such disposition of such assets as may be agreed to or directed by the member; and

(14) Exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out its purposes.

(c) The corporate credit union may exercise the powers or privileges granted a federal corporate credit union, subject to the approval of the commissioner.

§31C-11-6. Participation in central system.

The corporate credit union may enter into agreements and subscribe to any required shares for the pur-
§31C-11-7. Security interest.

1 The corporate credit union may require and accept security for loans to a member in the form of a pledge, assignment, hypothecation or mortgage of any assets of the member or a guarantor.

§31C-11-8. Meetings.

1 The board of directors of the corporate credit union shall meet each month. The board may meet at other times as is necessary. Board meetings may be conducted by means of telephone as provided in the bylaws in a manner consistent with state law.


1 Corporate credit unions shall pay the assessment and fees set for credit unions under this code to defray the costs to the commissioner and board for their supervision, examination and administration. The assessments and operating fees established by the commissioner or Legislature may make allowances for the special purposes and operations of the corporate credit union.

§31C-11-10. Reserves.

1 (a) The corporate credit union shall be exempt from the regular reserve requirements of subsection (a), section three, article nine of this chapter but at the end of each accounting period and prior to paying a dividend or interest refund (or, at the option of the credit union, on a monthly basis if dividends or interest refunds are paid more frequently than monthly) sums shall be set aside in a regular reserve in accordance with the following schedule:
(1) When the credit union's regular reserve and undivided earnings are less than two percent of assets at the end of the transfer period, the credit union shall set aside an amount equal to .0015 times the credit union's average daily assets for the transfer period, times the number of days in the transfer period, divided by three hundred sixty-five.

(2) When the regular reserve and undivided earnings are equal to or greater than two percent of assets, but the regular reserve is less than four percent of assets, the credit union shall set aside an amount equal to .0010 times the credit union's average daily assets for the transfer period, times the number of days in the transfer period, divided by three hundred sixty-five.

(b) Charges may be made to the regular reserve for loan losses and for investment losses caused by factors other than trading losses or market fluctuations. Other charges to the regular reserve may only be made with the prior approval of the commissioner.

(c) Additional reserves for corporate credit unions may be required by the commissioner when in his or her discretion, circumstances make such additional reserves necessary and prudent for the protection of shareholders and depositors.

§31C-11-11. Annual audit.

(a) The supervisory committee of the corporate credit union shall cause an annual audit to be made by an independent certified public accountant and shall submit the annual audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the commissioner within thirty days after receipt by the board of directors.

§31C-11-12. Securities exemption.

The corporate credit union shall be exempt from the securities laws of this state.
ARTICLE 12. PENALTIES.

§31C-12-1. Criminal liability.

§31C-12-2. Penalty for false reports.

§31C-12-3. Civil penalties.

§31C-12-1. Criminal liability.

Any credit union officer, director, employee or agent, who willfully does any of the following, shall be deemed guilty of a felony and may, upon conviction thereof, be fined not more than ten thousand dollars or imprisoned not less than one year nor more than five years, or both:

(a) With intent to deceive, falsifies any books of account, report, statement, record or other document of a credit union whether by alteration, false entry, omission or otherwise;

(b) Signs, issues, publishes or transmits to a government agency any book of account, report, statement, record or other document which that person knows to be false;

(c) By means of deceit, obtains a signature to a writing which is the subject of forgery;

(d) With intent to deceive, destroys any credit union book of account, report, statement, record or other document.

§31C-12-2. Penalty for false reports.

Whoever maliciously and knowingly spreads false reports about the management or finances of any credit union shall be fined not less than twenty-five dollars, nor more than two hundred dollars or be imprisoned for not less than thirty days nor more than one year, or both.

§31C-12-3. Civil penalties.

Any person who violates this chapter, the rules issued pursuant thereto, or any orders lawfully entered by the commissioner or board of banking and financial institutions may be subject to civil penalties in an action brought by the commissioner or board in an amount not less than fifty dollars nor more than five thousand dollars for each violation.
AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-a of said chapter, all relating to driving a vehicle while under the influence of alcohol, controlled substances or drugs and while having a child under the age of sixteen years in the vehicle at the time of the offense; penalties.

Be it enacted by the Legislature of West Virginia:

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

Article
5. Serious Traffic Offenses.

5A. Administrative Procedures for Suspension and Revocation of Licenses for Driving Under the Influence of Alcohol, Controlled Substances or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Drives a vehicle in this state while:

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

4 (B) He is under the influence of any controlled substance; or

5 (C) He is under the influence of any other drug; or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure; and

(3) Commits such act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to such death, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while:

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

(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes the death of any person within one year next following such act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:
(1) Drives a vehicle in this state while:

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

(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of such vehicle, which act or failure proximately causes bodily injury to any person other than himself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while:

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

(B) He is under the influence of any controlled substance; or

(C) He is under the influence of any other drug; or

(D) He is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.
(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a
vehicle in this state, is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail for not less
than one day nor more than six months, which jail term
shall include actual confinement of not less than
twenty-four hours, and shall be fined not less than one
hundred dollars nor more than five hundred dollars.

(f) Any person who:

(1) Knowingly permits his or her vehicle to be driven
in this state by any other person who is:

(A) Under the influence of alcohol; or

(B) Under the influence of any controlled substance;
or

(C) Under the influence of any other drug; or

(D) Under the combined influence of alcohol and any
controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of
ten hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for not more than six
months and shall be fined not less than one hundred
dollars nor more than five hundred dollars.

(g) Any person who:

Knowingly permits his or her vehicle to be driven in
this state by any other person who is an habitual user of
narcotic drugs or amphetamine or any derivative thereof,
is guilty of a misdemeanor and, upon conviction thereof,
shall be confined in jail for not more than six months and
shall be fined not less than one hundred dollars nor more
than five hundred dollars.

(h) Any person under the age of twenty-one years who
drives a vehicle in this state while he or she has an alcohol
concentration in his or her blood of two hundredths of
one percent or more, by weight, but less than ten
hundredths of one percent, by weight, shall, for a first
offense under this subsection, be guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. For a second or subsequent offense under this subsection, such person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings from time to time to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

1. Drives a vehicle in this state while:
   1. He is under the influence of alcohol; or
   2. He is under the influence of any controlled substance; or
   3. He is under the influence of any other drug; or
   4. He is under the combined influence of alcohol and any controlled substance or any other drug; or
   5. He has an alcohol concentration in his or her blood of ten hundredths of one percent or more, by weight; and

2. The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their
sixteenth birthday, shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the second offense under this section, be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of the prior enactment of this section for an offense which occurred on or after the first day of September, one thousand nine hundred eighty-one, and prior to the effective date of this section;

(2) Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; and

(3) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same
193 elements as an offense described in subsection (a), (b), (c),
194 (d), (e), (f) or (g) of this section, which offense occurred
195 after the tenth day of June, one thousand nine hundred
196 eighty-three.

197 (m) A person may be charged in a warrant or
198 indictment or information for a second or subsequent
199 offense under this section if the person has been
200 previously arrested for or charged with a violation of this
201 section which is alleged to have occurred within the
202 applicable time periods for prior offenses, notwithstanding
203 the fact that there has not been a final adjudication of the
204 charges for the alleged previous offense. In such case, the
205 warrant or indictment or information must set forth the
206 date, location and particulars of the previous offense or
207 offenses. No person may be convicted of a second or
208 subsequent offense under this section unless the
209 conviction for the previous offense has become final.

210 (n) The fact that any person charged with a violation of
211 subsection (a), (b), (c), (d) or (e) of this section, or any
212 person permitted to drive as described under subsection
213 (f) or (g) of this section, is or has been legally entitled to
214 use alcohol, a controlled substance or a drug shall not
215 constitute a defense against any charge of violating
216 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

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

220 (p) The sentences provided herein upon conviction for
221 a violation of this article are mandatory and shall not be
222 subject to suspension or probation: Provided, That the
223 court may apply the provisions of article eleven-a, chapter
224 sixty-two of this code to a person sentenced or committed
225 to a term of one year or less. An order for home
226 detention by the court pursuant to the provisions of article
227 eleven-b, chapter sixty-two of this code may be used as an
228 alternative sentence to any period of incarceration
229 required by this section.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR
SUSPENSION AND REVOCATION OF
LICENSES FOR DRIVING UNDER THE
§17C-5A-2. Hearing; revocation; review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked or suspended under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard. The written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of revocation or suspension. The hearing shall be before the commissioner or a hearing examiner retained by the commissioner who shall rule on evidentiary issues and submit proposed findings of fact and conclusions of law for the consideration of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or the commissioner's authorized deputy or agent and the person agree that the hearing may be held in some other county.

(b) Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on the commissioner's own motion, or upon application for each person for good cause shown. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on the commissioner's own motion or for the benefit of any law-enforcement officer or any person requesting the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article
Provided, That the notice of hearing to the appropriate law-enforcement officers by registered or certified mail, return receipt requested, shall constitute a subpoena to appear at the hearing without the necessity of payment of fees by the division of motor vehicles. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(c) Law-enforcement officers shall be compensated for the time expended in their travel and appearance before the commissioner by the law-enforcement agency by whom they are employed at their regular rate if they are scheduled to be on duty during said time or at their regular overtime rate if they are scheduled to be off duty during said time.

(d) The principal question at the hearing shall be whether the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of ten hundredths of one percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight.

The commissioner may propose a legislative rule in compliance with the provisions of article three, chapter twenty-nine-a of this code, which rule may provide that if a person accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcohol concentration in the person's blood of ten hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his
blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, intends to challenge the results of any secondary chemical test of blood, breath or urine, or intends to cross-examine the individual or individuals who administered the test or performed the chemical analysis, the person shall, within an appropriate period of time prior to the hearing, notify the commissioner in writing of such intention. The rule may provide that when there is a failure to comply with the notice requirement, the results of the secondary test, if any, shall be admissible as though the person and the commissioner had stipulated the admissibility of such evidence. Any such rule shall provide that the rule shall not be invoked in the case of a person who is not represented by counsel unless the communication from the commissioner to the person establishing a time and place for the hearing also informed the person of the consequences of the person's failure to timely notify the commissioner of the person's intention to challenge the results of the secondary chemical test or cross-examine the individual or individuals who administered the test or performed the chemical analysis.

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall make specific findings as to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person to have been driving while under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two
122 hundredths of one percent or more, by weight, but less
123 than ten hundredths of one percent, by weight; (2)
124 whether the person was lawfully placed under arrest for an
125 offense involving driving under the influence of alcohol,
126 controlled substances or drugs, or was lawfully taken into
127 custody for the purpose of administering a secondary test;
128 and (3) whether the tests, if any, were administered in
129 accordance with the provisions of this article and article
130 five of this chapter.
131
132 (f) If, in addition to a finding that the person did drive
133 a motor vehicle while under the influence of alcohol,
134 controlled substances or drugs, or did drive a motor
135 vehicle while having an alcoholic concentration in the
136 person's blood of ten hundredths of one percent or more,
137 by weight, or did drive a motor vehicle while under the
138 age of twenty-one years with an alcohol concentration in
139 his blood of two hundredths of one percent or more, by
140 weight, but less than ten hundredths of one percent, by
141 weight, the commissioner also finds by a preponderance
142 of the evidence that the person when so driving did an act
143 forbidden by law or failed to perform a duty imposed by
144 law, which act or failure proximately caused the death of a
145 person and was committed in reckless disregard of the
146 safety of others, and if the commissioner further finds that
147 the influence of alcohol, controlled substances or drugs or
148 the alcoholic concentration in the blood was a
149 contributing cause to the death, the commissioner shall
150 revoke the person's license for a period of ten years: 
151 Provided, That if the commissioner has previously
152 suspended or revoked the person's license under the
153 provisions of this section or section one of this article
154 within the ten years immediately preceding the date of
155 arrest, the period of revocation shall be for the life of the
156 person.
157
158 (g) If, in addition to a finding that the person did
159 drive a motor vehicle while under the influence of alcohol,
160 controlled substances or drugs, or did drive a motor
161 vehicle while having an alcoholic concentration in the
162 person's blood of ten hundredths of one percent or more,
163 by weight, the commissioner also finds by a
164 preponderance of the evidence that the person when so
driving did an act forbidden by law or failed to perform a
duty imposed by law, which act or failure proximately
caused the death of a person, the commissioner shall
revoke the person's license for a period of five years:
Provided, That if the commissioner has previously
suspended or revoked the person's license under the
provisions of this section or section one of this article
within the ten years immediately preceding the date of
arrest, the period of revocation shall be for the life of the
person.

(h) If, in addition to a finding that the person did
drive a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or did drive a motor
vehicle while having an alcoholic concentration in the
person's blood of ten hundredths of one percent or more,
by weight, the commissioner also finds by a pre-
ponderance of the evidence that the person when so
driving did an act forbidden by law or failed to perform a
duty imposed by law, which act or failure proximately
causd bodily injury to a person other than himself or
herself, the commissioner shall revoke the person's license
for a period of two years: Provided, That if the com-
missioner has previously suspended or revoked the
person's license under the provisions of this section or
section one of this article within the ten years immediately
preceding the date of arrest, the period of revocation shall
be ten years: Provided, however, That if the commissioner
has previously suspended or revoked the person's license
more than once under the provisions of this section or
section one of this article within the ten years immediately
preceding the date of arrest, the period of revocation shall
be for the life of the person.

(i) If the commissioner finds by a preponderance of
the evidence that the person did drive a motor vehicle
while under the influence of alcohol, controlled substances
or drugs, or did drive a motor vehicle while having an
alcoholic concentration in the person's blood of ten
hundredths of one percent or more, by weight, or finds
that the person, being an habitual user of narcotic drugs or
amphetamine or any derivative thereof, did drive a motor
vehicle, or finds that the person knowingly permitted the
person's vehicle to be driven by another person who was under the influence of alcohol, controlled substances or drugs, or knowingly permitted the person's vehicle to be driven by another person who had an alcoholic concentration in his or her blood of ten hundredths of one percent or more, by weight, the commissioner shall revoke the person's license for a period of six months: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(j) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, and if the commissioner further finds that the alcoholic concentration in the blood was a contributing cause to the death, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(k) If, in addition to a finding that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner also finds by a preponderance of the
evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused bodily injury to a person other than himself or herself, and if the commissioner further finds that the alcoholic concentration in the blood was a contributing cause to the bodily injury, the commissioner shall revoke the person's license for a period of two years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days.

(m) If, in addition to a finding that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in the person's blood of ten hundredths of one percent or more, by weight, the commissioner also finds by a preponderance of the evidence that the person when so driving did have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: Provided, however, That if the commissioner has
previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(n) For purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of criminal convictions or administrative suspensions or revocations shall also be regarded as suspensions or revocations under this section or section one of this article:

1. Any administrative revocation under the provisions of the prior enactment of this section for conduct which occurred within the ten years immediately preceding the date of arrest.

2. Any suspension or revocation on the basis of a conviction under a municipal ordinance of another state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

3. Any revocation under the provisions of section seven, article five of this chapter, for conduct which occurred within the ten years immediately preceding the date of arrest.

(o) In the case of a hearing wherein a person is accused of refusing to submit to a designated secondary test, the commissioner shall make specific findings as to:

1. Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs;
2. Whether the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs;
3. Whether the person refused to submit to the secondary test finally designated in the manner provided in section four, article five of this chapter; and
4. Whether the person had been given a written statement advising the
person that the person's license to operate a motor vehicle in this state would be revoked for at least one year and up to life if the person refused to submit to the test finally designated in the manner provided in section four, article five of this chapter.

(p) If the commissioner finds by a preponderance of the evidence that: (1) The arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary chemical test finally designated; and (4) the person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for a period of at least one year and up to life if the person refused to submit to the test finally designated, the commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods specified in section seven, article five of this chapter.

(q) If the commissioner finds to the contrary with respect to the above issues, the commissioner shall rescind his or her earlier order of revocation or shall reduce the order of revocation to the appropriate period of revocation under this section, or section seven, article five of this chapter.

A copy of the commissioner's order made and entered following the hearing shall be served upon the person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the revocation of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming the commissioner's earlier order of revocation, the person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code, except that the commissioner shall not stay enforcement of the
order; and, pending the appeal, the court may grant a stay
or supersedeas of the order only upon motion and
hearing, and a finding by the court upon the evidence
presented, that there is a substantial probability that the
appellant shall prevail upon the merits, and the appellant
will suffer irreparable harm if the order is not stayed:
Provided, That in no event shall the stay or supersedeas of
the order exceed thirty days.

(r) In any revocation or suspension pursuant to this
section, if the driver whose license is revoked or suspended
had not reached the driver's eighteenth birthday at the
time of the conduct for which the license is revoked or
suspended, the driver's license shall be revoked or
suspended until the driver's eighteenth birthday, or the
applicable statutory period of revocation or suspension
prescribed by this section, whichever is longer.

(s) Funds for this section's hearing and appeal process
may be provided from the drunk driving prevention fund,
as created by section sixteen, article fifteen, chapter eleven
of this code, upon application for such funds to the
commission on drunk driving prevention.

CHAPTER 100

(Com. Sub. for S. B. 156—By Senators Whitlow and Bailey)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-35. Digging cultivated ginseng; penalty.

It shall be unlawful for any person to dig cultivated ginseng or prospect for the same, on the lands of another without the consent of the owner or owners thereof first obtained. The property must be properly posted with "No Trespassing" signs, "Private Property" signs, or other signs that explain to a person to stay off the property. The signs must be of reasonable size to be read by an average person and must be posted at reasonable intervals of at least two hundred feet around the property.

Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars.

CHAPTER 101

(S. B. 384—By Senators Bowman, Plymale, Macnaughtan, Ross and Scott)

[Passed March 9, 1996; 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 fifty-two, relating to making it a felony to remove or injure timber valued at more than one thousand dollars; making it a misdemeanor to remove or injure timber valued at one thousand dollars or less; creating penalties; and creating exemptions.

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 fifty-two, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-52. Wrongful injuries to timber; criminal penalties.

(a) Any person who willfully and maliciously and with intent to do harm unlawfully enters upon the lands of another, cuts down, injures, removes or destroys any timber valued at more than one thousand dollars, without the permission of the owner or his or her representative is guilty of a felony and, upon conviction thereof, shall be fined not more than three times the value of timber injured, removed or destroyed, or imprisoned in a regional jail for thirty days, or both fined and imprisoned.

(b) Any person who willfully and maliciously and with intent to do harm unlawfully enters upon the lands of another, cuts down, injures, removes or destroys any timber valued at one thousand dollars or less, without the permission of the owner or his or her representative is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for not more than thirty days.

(c) The necessary trimming and removal of timber to permit the construction, repair, maintenance, cleanup and operations of pipelines and utility lines and appurtenances of public utilities, public service corporations and to aid registered land surveyors and professional engineers in the performance of their professional services, and municipalities, and pipeline companies, or lawful operators and product purchasers of natural resources other than timber shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of timber.

(d) The necessary trimming and removal of timber for boundary line maintenance, for the construction, maintenance and repair of streets, roads and highways or for the control and regulation of traffic thereon by the state and its political subdivisions or registered land surveyors and professional engineers shall not be deemed a willful and intentional cutting down, injuring, removing or destroying of timber.

(e) No fine or imprisonment imposed pursuant to this section shall be construed to limit any cause of action by a landowner for recovery of damages otherwise allowed by law.
CHAPTER 102
(S. B. 400—By Senators Bowman, Wooton, Anderson, Buckalew, Deem, Dittmar, Miller, Oliverio, Ross, Scott and Wiedebusch)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seven and eight, article three, chapter sixty-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 three-e, all relating to criminal offenses involving explosives; definitions; penalties cumulative; illegal possession of destructive devices, explosive materials or incendiary devices; criminal use of destructive devices, explosive materials or incendiary devices; causing death or injury, penalties; causing death or injury to an explosives detection animal; manufacture, purchase, sale, advertising for sale, transporting or possession or use of hoax bomb; possession or use of hoax bomb in commission of a felony; theft of explosive material from storage magazines or buildings; receipt, possession, storage, sale or transportation of stolen explosive material; wanton endangerment involving destructive devices, explosive materials or incendiary devices; exemptions; contraband, seizure and forfeiture; legislative findings; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be further amended by adding thereto a new article, designated article three-e, all to read as follows:

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-1. Definitions.
§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.
§61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty.
§61-3E-5. Causing death or injury; penalties.
§61-3E-6. Causing death or injury to an explosives detection animal; penalty.
§61-3E-7. Manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; penalty.

§61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.

§61-3E-9. Receipt, possession, storage, sale or transportation of stolen explosive material; penalty.

§61-3E-10. Wanton endangerment involving destructive devices, explosive materials or incendiary devices; penalty.


§61-3E-13. Legislative findings.

§61-3E-1. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb or similar device containing an explosive, incendiary, explosive gas or expanding gas which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts, either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled.

"Destructive device" does not include a firearm as such is defined in section two, article seven of this chapter or model rockets and their components as defined in section twenty-three, article three, chapter twenty-nine of this code.

(b) "Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities or packaging that an ignition by fire, by friction, by concussion, by percussion, by detonator or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, powders for blasting, high or low explosives, blasting materials, blasting agents, blasting emulsions, blasting fuses other than electric circuit breakers, detona-
tors, blasting caps and other detonating agents and black
or smokeless powders not manufactured or used for lawful
sporting purposes or fireworks defined in section
twenty-three, article three, chapter twenty-nine of this code
which are not used in violation of this article. Also includ-
ed are all explosive materials listed annually by the office
of the state fire marshal and published in the state register,
said publication being hereby mandated.

(c) "Hoax bomb" means any device or object that by
its design, construction, content or characteristics appears
to be, or is represented to be or to contain a destructive
device, explosive material or incendiary device as defined
in this section, but is, in fact, an inoperative facsimile or
imitation of such a destructive device, explosive material
or incendiary device.

(d) "Incendiary device" means a container containing
gasoline, kerosene, fuel oil, or derivative thereof, or other
flammable or combustible material, having a wick or other
substance or device which, if set or ignited, is capable of
igniting such gasoline, kerosene, fuel oil, or derivative
thereof, or other flammable or combustible material:
Provided, That no similar device commercially manufac-
tured and used solely for the purpose of illumination shall
be deemed to be an incendiary device.

(e) "Legal authority" means that right as expressly
stated by statute or law.

(f) "Person" shall mean an individual, corporation,
company, association, firm, partnership, society or joint
stock company.

(g) "Storage magazine" is defined to mean any build-
ing or structure, other than an explosives manufacturing
building, approved by the legal authority for the storage
of explosive materials.


It is the intention of the Legislature in enacting this
article that all criminal offenses and penalties defined in
this article shall be cumulative and shall be in addition to
any other offenses and penalties provided for by law. The
Legislature contemplates and authorizes separate and
consecutive sentences for the offenses defined in this article and other offenses provided for or defined by law.

The Legislature declares as a matter of law that for the offenses defined in this article that involve injuries or death to persons those offenses are separate offenses as to each person whose injury or death results from the conduct proscribed by this article.

§61-3E-3. Illegal possession of destructive devices, explosive materials or incendiary devices; penalty.

Any person who possesses or manufactures any explosive material without first obtaining a permit to use explosives from the office of the state fire marshal or who possesses or manufacturers any destructive device or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than five thousand dollars, or both.

§61-3E-4. Criminal use of destructive device, explosive material or incendiary device; penalty.

Any person who unlawfully and intentionally damages the property of another or attempts to damage the property of another by the use of a destructive device, explosive material or incendiary device shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two nor more than ten years, or fined not more than ten thousand dollars, or both.

§61-3E-5. Causing death or injury; penalties.

(a) Any person who violates the provisions of this article which violation causes bodily injury to any person shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two nor more than ten years, or fined not more than five thousand dollars, or both.

(b) Any person who violates the provisions of this article which violation causes serious bodily injury to any person shall be guilty of a felony and, upon conviction
thereof, shall be committed to the custody of the division
of corrections for not less than three nor more than fifteen
years, or fined not more than ten thousand dollars, or
both.

(c) Any person who violates the provisions of this
article which violation causes the death of any person shall
be guilty of a felony and, upon conviction thereof, shall
be committed to the custody of the division of corrections
for a definite term of years of not less than ten years nor
more than forty years. No person sentenced to a period
of imprisonment pursuant to the provisions of this subsec-
tion shall be eligible for parole prior to having served a
minimum of ten years.

§61-3E-6. Causing death or injury to an explosives detection
animal; penalty.

Any person who violates the provisions of this article
which violation causes death, serious or debilitating bodily
injury to an explosives detection animal owned or used by
a law-enforcement agency, shall be guilty of a felony and,
upon conviction thereof, be committed to the custody of
the division of corrections for not less than one year nor
more than five years or fined not more than five thousand
dollars, or both.

§61-3E-7. Manufacture, purchase, sale, advertising for sale,
transporting or possession or use of a hoax
bomb; possession or use in commission of a
felony; penalty.

(a) Any person who knowingly manufactures, pur-
chases, sells, advertises for sale, transports or possesses a
hoax bomb with intent to violate any provision of this
code shall be guilty of a misdemeanor. Any person con-
victed of a violation of this section shall be incarcerated in
a county or regional jail for not less than six months nor
more than one year, or fined five thousand dollars, or
both.

(b) Notwithstanding the provisions of subsection (a) of
this section, any person who possesses or uses a hoax
bomb to commit or attempt to commit any felony shall be
guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years, or fined not more than ten thousand dollars, or both.

§61-3E-8. Theft of explosive material from storage magazines or buildings; penalty.

Any person who breaks and enters or shall enter without breaking any storage magazine, shop, office, store-house, warehouse or any other building or out-house adjoining thereto, any railcar, boat, vessel or motor vehicle within the jurisdiction of any county within this state where explosive material is stored, with the intent to commit larceny shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than ten thousand dollars, or both.

§61-3E-9. Receipt, possession, storage, sale or transportation of stolen explosive material; penalty.

Any person who receives, conceals, transports, ships, stores, barters, sells or disposes of any explosive material knowing or have reason to know that such materials is stolen is guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than one nor more than ten years or fined not more than ten thousand dollars, or both.

§61-3E-10. Wanton endangerment involving destructive devices, explosive materials or incendiary devices; penalty.

Any person who wantonly performs any act with a destructive device, explosive material or incendiary device which creates substantial risk of death or serious bodily injury to another shall be guilty of a felony and, upon conviction thereof, shall be committed to the custody of the division of corrections for not less than two years nor more than ten years or fined not more than ten thousand dollars, or both.

(a) Unless specifically prohibited by any provision of this code or the laws of the United States, nothing in this article shall prohibit the authorized manufacture, sale, transportation, distribution, use or possession of any explosive material by any person holding a permit for such issued by the office of the state fire marshal. Any person performing a lawful activity pursuant to or regulated by the terms of a permit issued by the division of environmental protection, or any office thereof, shall be exempt from the provisions of this article.

(b) Unless specifically prohibited by any other provision of this code or the laws of the United States, nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any explosive, destructive device or incendiary device by a member of the armed forces or law-enforcement officers whenever such persons are acting lawfully and in the line of duty; nor shall it prohibit the manufacture, transportation, distribution, use or possession of any explosive material, destructive device or incendiary device to be used solely for lawful scientific research or lawful educational purposes. Any person engaged in otherwise lawful blasting activities failing to obtain a permit or in possession of an expired permit issued by the office of the state fire marshal shall not be construed to be in violation of the article.


Any destructive device, explosive material, incendiary device or hoax bomb possessed, involved in, used or intended to be used in a violation of this article or any violation of any criminal law or regulation of this state are hereby declared to be contraband and any property interest therein shall be vested in the state of West Virginia. Said contraband may be seized by the office of the state fire marshal or other law-enforcement agency conducting said investigation and upon application to the circuit court of the county in which said contraband is seized be forfeited to the state of West Virginia for destruction or for training purposes by the office of the state fire marshal or other law-enforcement agency.

§61-3E-13. Legislative findings.
The Legislature hereby finds and declares that the seizure and use of items under the provisions of this article is not contemplated to be a forfeiture as the same is used in section five, article XII of the Constitution of West Virginia and to the extent that such seizure and use may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and use under this article is not part of net proceeds as the same is contemplated by section five, article XII of the Constitution of West Virginia.

CHAPTER 103

(Com. Sub. for H. B. 4110—By Delegates Ashley, Trump, Rowe and Staton)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the crime of perjury and creating the felony offenses of perjury and subordination of perjury for willfully testifying falsely before a grand jury which is considering a felony presentment.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

§61-5-1. Perjury and subornation of perjury defined.

(a) Any person who is under an oath or affirmation which has been lawfully administered and who willfully testifies falsely regarding a material matter in a trial of any person, corporation or other legal entity for a felony, or before any grand jury which is considering a felony indictment, shall be guilty of the felony offense of perjury.
(b) Any person who induces or procures another person to testify falsely regarding a material matter in a trial of any person, corporation or other legal entity for a felony, or before any grand jury which is considering a felony indictment, shall be guilty of the felony offense of subornation of perjury.

CHAPTER 104

(Com. Sub. for H. B. 4077—By Delegates Linch, Staton, Manuel, Amores, J. Martin, Riggs and Thomas)

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five and six, article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to licensing requirements for carrying concealed deadly weapons; shifting concealed deadly weapons licensing authority from circuit judges to sheriffs; changing license issuance requirements; preventing those persons either adjudicated mentally incompetent, with criminal charges pending, charged or serving sentences for domestic violence, or subject to a domestic violence petition from receiving concealed weapons licenses; modifying applicants background check verification requirements; requiring all concealed weapons applicants to receive training; modifying the appeal process for denied concealed weapons licenses; establishing authority of sheriffs to revoke concealed weapons licenses; directing that certain license fees paid to the sheriff be deposited in a special fund to be administered by the sheriff; providing a portion of the licensing fee be distributed to the state police; directing the state police to develop concealed weapons license cards and application forms; creating a criminal penalty for false swearing for falsifying a permit application; allowing military handgun training to be utilized in meeting training requirements for concealed handgun or revolver license; modifying training program requirements; creating criminal penalties for concealed weapons licensee for failure to have identification
and concealed weapon license in his or her possession when carrying a concealed weapon; allowing certain current licensees to renew their license without paying application fees; excluding retired state police officers from certain licensing requirements; and adding certain retired circuit judges to persons who can carry a concealed weapon without a license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

§61-7-5. Revocation of license.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Except as provided in subsection (h) of this section, any person desiring to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for such license, and shall pay to the sheriff, at the time of application, a fee of sixty dollars. Each applicant shall file with the sheriff, a complete application, as prepared by the superintendent of the West Virginia state police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, social security number and a description of the applicant's physical features;

(2) That, on the date the application is made, the applicant is a bona fide resident of this state and of the county in which the application is made and has a valid driver's license or other state issued photo identification showing such residence;

(3) That the applicant is eighteen years of age or older;
(4) That the applicant is not addicted to alcohol, a controlled substance or a drug, and is not an unlawful user thereof;

(5) That the applicant has not been convicted of a felony or of an act of violence involving the misuse of a deadly weapon;

(6) That the applicant has no criminal charges pending and is not currently serving a sentence of confinement, parole, probation or other court ordered supervision, because of a charge of domestic violence as provided for in section twenty-eight, article two of this chapter, or is the subject of a restraining order as a result of a domestic violence act as defined in that section, or because of a verified petition of domestic violence as provided for in article two-a, chapter forty-eight of this code or is subject to a protective order as provided for in that article;

(7) That the applicant is physically and mentally competent to carry such weapon;

(8) That the applicant has not been adjudicated to be mentally incompetent;

(9) That the applicant has qualified under the minimum requirements set forth in subsection (d) of this section for handling and firing such weapon: Provided, That this requirement shall be waived in the case of a renewal applicant who has previously qualified.

(10) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(b) The sheriff shall conduct an investigation which shall verify that the information required in subdivisions (1), (2), (3), (5), (6), (8) and (9) of subsection (a) are true and correct.

(c) The sixty dollar application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. Such fund shall be administered by the sheriff and shall take the form of an
interest bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay for the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff may deem appropriate.

(d) All persons applying for a license must complete a training course in handling and firing a handgun. The successful completion of any of the following courses fulfills this training requirement:

(1) Any official national rifle association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public institution or organization or handgun training school utilizing instructors duly certified by such institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the national rifle association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve or national guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class, shall constitute evidence of qualification under this section.

(e) All concealed weapons license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing
and is punishable under the provisions of section two, article five, chapter sixty-one of this code.

(f) If the information in the application is found to be true and correct, the sheriff shall issue a license. The sheriff shall issue or deny the license within thirty days after the application is filed if all required background checks authorized by this section are completed, and no later than forty-five days regardless of whether these background checks have been completed.

(g) Before any approved license shall be issued or become effective, the applicant shall pay to the sheriff a fee in the amount of fifteen dollars which the sheriff shall forward to the superintendent of the West Virginia state police within thirty days of receipt. Any such license shall be valid for five years throughout the state, unless sooner revoked.

(h) All persons holding a current and valid concealed weapons license as of the sixteenth day of December, one thousand nine hundred ninety-five, shall continue to hold a valid concealed weapons license until his or her license expires or is revoked as provided for in this article: Provided, That all reapplication fees shall be waived for applications received by the first day of January, one thousand nine hundred ninety-seven, for any person holding a current and valid concealed weapons license as of sixteenth day of December, one thousand nine hundred ninety-five, which contains use restrictions placed upon the license as a condition of issuance by the issuing circuit court. Any licenses reissued pursuant to this subsection will be issued for the time period of the original license.

(i) Each license shall contain the full name, social security number and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach his or her seal to all license cards.

(j) The superintendent of the West Virginia state police shall prepare uniform applications for licenses and license cards showing that such license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(k) In the event an application is denied, the specific
136 reasons for the denial shall be stated by the sheriff
denying the application. Any person denied a license
may file, in the circuit court of the county in which the
application was made, a petition seeking review of the
denial. Such petition shall be filed within thirty days of
the denial. The court shall then determine whether the
applicant is entitled to the issuance of a license under the
criteria set forth in this section. The applicant may be
represented by counsel, but in no case shall the court be
required to appoint counsel for an applicant. The final
order of the court shall include the court's findings of fact
and conclusions of law. If the final order upholds the
denial, the applicant may file an appeal in accordance with
the rules of appellate procedure of the supreme court of
appeals.

(l) In the event a license is lost or destroyed, the person
to whom the license was issued may obtain a duplicate or
substitute license for a fee of five dollars by filing a
notarized statement with the sheriff indicating that the
license has been lost or destroyed.

(m) The sheriff shall, immediately after the license is
granted as aforesaid, furnish the superintendent of the
West Virginia state police a certified copy of the approved
application. It shall be the duty of the sheriff to furnish to
the superintendent of the West Virginia state police at any
time so requested, a certified list of all such licenses issued
in the county. The superintendent of the West Virginia
state police shall maintain a registry of all persons who
have been issued concealed weapons licenses.

(n) All licensees must carry with them a state issued
photo identification card with the concealed weapons
license whenever the licensee is carrying a concealed
weapon. Any licensee who fails to have in his or her
possession a state issued photo identification card and a
current concealed weapons license while carrying a
concealed weapon shall be guilty of a misdemeanor and,
upon conviction thereof, shall be fined not less than fifty
or more than two hundred dollars for each offense.

(o) The sheriff shall deny any application or revoke
any existing license upon determination that any of the
licensing application requirements established in this section have been violated by the licensee.

(p) No person who is engaged in the receipt, review, or in the issuance or revocation of a concealed weapon license shall incur any civil liability as the result of the lawful performance of his or her duties under this article.

(q) Notwithstanding the provisions of subsection (a) of this section, with respect to application by a former law-enforcement officer honorably retired from agencies governed by article fourteen, chapter seven; article fourteen, chapter eight; article two, chapter fifteen; and article seven, chapter twenty of this code, an honorably retired officer is exempt from payment of fees and costs as otherwise required by this section, and the application of the honorably retired officer shall be granted without proof or inquiry by the sheriff as to those requirements set forth in subdivision (9) of subsection (b) of this section, if the officer meets the remainder of the requirements of this section and has the approval of the appropriate chief law-enforcement officer.

§61-7-5. Revocation of license.

A license to carry a deadly weapon shall be deemed revoked at such time as the person licensed becomes unable to meet the criteria for initial licensure set forth in section four of this article. Any person licensed under the provisions of this article shall immediately surrender his or her license to the issuing sheriff upon becoming ineligible for continued licensure.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

The licensure provisions set forth in this article shall not apply to:

(1) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything
herein prohibit a person from possessing a firearm while
hunting in a lawful manner or while traveling from his or
her home, residence or place of business to a hunting site,
and returning to his or her home, residence or place of
business;

(2) Any person who is a member of a properly
organized target-shooting club authorized by law to
obtain firearms by purchase or requisition from this state,
or from the United States for the purpose of target
practice, from carrying any pistol, as defined in this article,
unloaded, from his home, residence or place of business to
a place of target practice, and from any such place of
target practice back to his home, residence or place of
business, for using any such weapon at such place of
target practice in training and improving his skill in the
use of such weapons;

(3) Any law-enforcement officer or law-enforcement
official as such are defined in section one, article
twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia department of
corrections duly appointed pursuant to the provisions of
section five, article five, chapter twenty-eight of this code
while such employee is on duty;

(5) Any member of the armed forces of the United
States or the militia of this state while such member is on
duty;

(6) Any circuit judge, including any retired circuit
judge designated senior status by the supreme court of
appeals of West Virginia, prosecuting attorney, assistant
prosecuting attorney or a duly appointed investigator
employed by a prosecuting attorney;

(7) Any resident of another state, who has been issued
a license to carry a concealed weapon by that state or a
political subdivision thereof, shall be exempt from the
licensing requirements of section four of this article:
Provided, That such state or political subdivision thereof
shall likewise recognize and honor West Virginia licenses
issued pursuant to section four of this article.
CHAPTER 105

(Com. Sub. for S. B. 100—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections fifteen, sixteen, seventeen and eighteen, all relating to the definition of terms; creating a forensic medical examination fund; administration of the fund by the West Virginia prosecuting attorneys institute; reimbursement of institute for expenses; payment from the forensic medical examination fund of the costs of forensic medical exams given to victims of certain sexual offenses; directing a study regarding reimbursement from private insurance companies; development and maintenance of a database; disclosure; confidentiality; and development of rules, instructional manuals and forms by the institute.

Be it enacted by the Legislature of West Virginia:

That section one, article eight-b, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and said article be further amended by adding thereto four new sections, designated sections fifteen, sixteen, seventeen and eighteen, all to read as follows:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.


§61-8B-16. Payment for costs of forensic medical examination.

§61-8B-17. Study of reimbursement; recordkeeping; disclosure; confidentiality.


§61-8B-1. Definition of terms.

1 In this article, unless a different meaning plainly is required:

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(1) "Forcible compulsion" means:
   (a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or
   (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or
   (c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

(2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(6) "Sexual contact" means any intentional touching, either directly or through clothing, of the anus or any part of the sex organs of another person, or the breasts of a female or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons not married to each other involving penetration, how-
ever slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons not married to each other involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

(12) “Forensic medical examination” means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.


There is hereby created "The Forensic Medical Examination Fund" created as a special fund in the state treasury into which shall be deposited the appropriations made to the fund by the Legislature. Expenditures from the fund shall be made by the West Virginia prosecuting attorneys institute, created by the provisions of section six, article four, chapter seven of this code, for the payment of
the costs of forensic medical examinations as they are defined in section sixteen of this article and for the reimbursement to the institute of its expenses in administering the payment of the costs from the fund.

§61-8B-16. Payment for costs of forensic medical examination.

(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for this person on the following conditions and in the following manner:

(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;

(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund;

(3) The forensic medical examination must have been conducted within seventy-two hours of the alleged violation;

(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within ninety days of the examination;

(5) The licensed medical facility shall submit a statement of charges to the prosecuting attorney in the county in which the alleged offense occurred and the prosecuting attorney shall certify, if proper, that the forensic medical examination was conducted as a part of a criminal investigation; and

(6) The prosecuting attorney shall, within sixty days of receipt of a statement of charges from the licensed medical facility, forward the statement of charges and the certification to the West Virginia prosecuting attorneys institute for payment from the fund and for the reim-
bursement of the institute from the fund for the reason-
able costs of processing and recording the payment.

(b) No licensed medical facility may collect the costs
of a forensic medical examination from the victim of an
alleged violation of this article if the reasonable, custom-
ary and usual costs of the forensic medical examination
qualifies for payment from the forensic medical examina-
tion fund as set forth in subsection (a) of this section.

§61-8B-17. Study of reimbursement; recordkeeping; disclo-
sure; confidentiality.

(a) The West Virginia prosecuting attorneys institute
is hereby directed to undertake a study of the viability of
the state seeking reimbursement from private insurance
companies for the cost of forensic medical examinations.
The study shall be completed prior to the first day of the
regular legislative session, one thousand nine hundred
ninety-seven, and provided to the president of the Senate
and the speaker of the House of Delegates.

(b) The West Virginia prosecuting attorneys institute
shall develop and maintain a database for use by
law-enforcement personnel, prosecuting attorneys and
persons engaged in lawful research of the information
collected pursuant to its administration of the forensic
medical examination fund. The database shall include the
number of examinations performed, the facilities perform-
ing the examination and where feasible, other information
considered to be of assistance to law enforcement and the
prosecution of sexual offenses. The database shall be
maintained in a manner which assures the confidentiality
of the information.


The executive council of the West Virginia prosecut-
ing attorneys institute, created by the provisions of section
six, article four, chapter seven of this code, shall promul-
gate rules in accordance with article three, chapter
twenty-nine-a of this code, for the administration of the
forensic medical examination fund, establishing qualifica-
tions for medical personnel performing a forensic medical examination and any other rules necessary to the implementation of this program. The institute shall also create and distribute to all licensed medical facilities, law-enforcement agencies and prosecuting attorneys' offices the instructional manuals and forms necessary to perform forensic medical examinations and to receive payment from the fund. From the effective date of this section until the date of the promulgation of these rules, the executive council of the West Virginia prosecuting attorneys institute may file rules as emergency rules in accordance with the applicable provisions of this code in order to govern during this period of time the administration of the fund.

CHAPTER 106

(H. B. 2458—By Delegates Kallai, Rowe, Michael, Everson, Given and Hubbard)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article eight-d, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crime; child abuse resulting in injury; child abuse creating risk of injury; child neglect resulting in injury; child neglect creating risk of injury; and changing the criminal penalty.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-3. Child abuse resulting in injury; child abuse or neglect creating risk of injury; criminal penalties.
§61-8D-3. Child abuse resulting in injury; child abuse or neglect creating risk of injury; criminal penalties.

(a) If any parent, guardian or custodian shall abuse a child and by such abuse cause such child bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars and committed to the custody of the division of corrections for not less than one nor more than five years, or in the discretion of the court, be confined in the county or regional jail for not more than one year.

(b) If any parent, guardian or custodian shall abuse a child and by such abuse cause said child serious bodily injury as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars and committed to the custody of the division of corrections not less than two nor more than ten years.

(c) Any person who abuses a child and by the abuse creates a substantial risk of serious bodily injury or of death to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than three thousand dollars and confined to the custody of the division of corrections for not less than one nor more than five years.

§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.

(a) If any parent, guardian or custodian shall neglect a child and by such neglect cause said child bodily injury, as such term is defined in section one, article eight-b of this chapter, then such parent, guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall
be fined not less than one hundred nor more than one
thousand dollars or committed to the custody of the
division of corrections for not less than one nor more than
three years, or in the discretion of the court, be confined
in the county jail for not more than one year, or both such
fine and confinement or imprisonment.

(b) If any parent, guardian or custodian shall neglect a
child and by such neglect cause said child serious bodily
injury, as such term is defined in section one, article
eight-b of this chapter, then such parent, guardian or
custodian shall be guilty of a felony and, upon conviction
thereof, shall be fined not less than three hundred nor
more than three thousand dollars or committed to the
custody of the division of corrections for not less than one
nor more than ten years, or both such fine and imprison-
ment.

(c) The provisions of this section shall not apply if the
neglect by the parent, guardian or custodian is due
primarily to a lack of financial means on the part of such
parent, guardian or custodian.

(d) The provisions of this section shall not apply to
any parent, guardian or custodian who fails or refuses, or
allows another person to fail or refuse, to supply a child
under the care, custody or control of such parent,
guardian or custodian with necessary medical care, when
such medical care conflicts with the tenets and practices of
a recognized religious denomination or order of which
such parent, guardian or custodian is an adherent or
member.

(e) Any person who grossly neglects a child and by
the gross neglect creates a substantial risk of serious
bodily injury or of death to the child is guilty of a felony
and, upon conviction thereof, shall be fined not more than
three thousand dollars and confined to the custody of the
division of corrections for not less than one nor more than
five years.
AN ACT to amend and reenact sections two, three, four, five, six, seven and eight, article eight-f, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine; and to amend and reenact section eight, article eleven-a of said chapter, all relating to requiring sex offender registration and notification; expanding crimes for which persons are required to register; expanding information included in registration; designating state police as agency to register such persons; requiring state police to maintain central register; distributing information provided at registration; permitting state police to furnish information to other law-enforcement and governmental agencies; providing for limited immunity for distribution of information; removing requirement that offense be second offense; listing duties of officials to obtain written acknowledgment of duty to register; release of information when person moves out-of-state; failure to register; penalties for failure to register; registration of out-of-state offenders; and expansion of victim notification.

Be it enacted by the Legislature of West Virginia:

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

8F. Sex Offender Registration Act.


ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-2. Registration.
§61-8F-3. Change of address.
§61-8F-4. Duration.
§61-8F-5. Distribution of information.
§61-8F-6. Duties of institution officials.
§61-8F-7. Information shall be released when person moves out of state.
§61-8F-8. Failure to register; penalty.

§61-8F-2. Registration.

(a) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or eight-d of this chapter, or of section fourteen, article two, or of section thirteen, article eight of this chapter, or of a similar provision in another jurisdiction shall be required to be registered as set forth in this article. Any person who has been convicted of an attempt to commit any of the offenses set forth in this section shall also be required to register as set forth in this article.

(b) On the date that any person convicted of the crimes listed herein is released, is granted probation, is granted a suspended sentence, is released on parole or probation, or is ordered to be placed on home detention, the commissioner of corrections, regional jail supervisor or city or sheriff operating a jail which releases such person and any parole or probation officer who releases such person or supervises such person following the release shall obtain all information required by this subsection prior to the release of the person and shall send written notice of the release of the person to the state police. The notice shall include:

(1) The full name of the person;
(2) The address where the person shall reside;
(3) The person's social security number;
(4) A recent photograph of the person; and

(5) A brief description of the crime for which the person was convicted.

(c) At the time the person is convicted of the crimes set forth in subsection (a) of this section, the person shall sign in open court, a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands such provisions. Such statement, when signed and witnessed shall constitute prima facie evidence that the person had knowledge of the requirements of this article.

(d) When a person required to register under this article is released following incarceration, the commissioner of corrections, the regional jail supervisor or the city or sheriff or any other person supervising the operation of the place of confinement shall inform the state police of such release and provide such further information as is required by this article.

(e) The state police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article.

§61-8F-3. Change of address.

When any person required to register under this article changes his or her residence or address, he or she shall inform the West Virginia state police of his or her new address, in writing, within ten days.

§61-8F-4. Duration.

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

§61-8F-5. Distribution of information.

(a) Within five working days after receiving any notifi-
cation as described in this article, the state police shall
distribute a copy of the notification statement to:

(1) The supervisor of each county and municipal law-
enforcement office in the city and county where the per-
son will reside;

(2) The county superintendent of schools where the
person will reside;

(3) The child protective services office charged with
investigating allegations of child abuse or neglect in the
county where the person will reside; and

(4) All community organizations or religious organi-
zations which regularly provide services to youths in the
county where the person will reside.

(b) The information and documentation required in
connection with the registration may be provided to any
other person upon application to the circuit court in the
county where an applicant seeking the information resides,
when that court finds that the information is sufficiently
relevant to public safety to outweigh the importance of
maintaining confidentiality of this article. When the court
orders the release of that information, the court shall fur-
ther order to what extent the applicant may provide for the
release of the information to third parties.

(c) The state police may furnish information and doc-
umentation required in connection with the registration 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 records will be used solely
for law-enforcement related purposes.

(d) An elected public official, public employee or
public agency is immune from civil liability for damages
arising out of any action relating to the provisions of this
section except when the official, employee or agency
acted with gross negligence or in bad faith.

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

In addition to the duties imposed by sections two and
four of this article, any person required to register under
this article, before parole or release, shall be informed of
their duty to register by the official in charge of the place
of confinement. Further, the official shall obtain a state-
ment signed by the person acknowledging that the person
has been informed of their duty to register.

§61-8F-7. Information shall be released when person moves
out of state.

When a person who is required to register pursuant to
the provisions of this article notifies any law-enforcement
official or corrections official, that he or she is moving to
another state, the official shall notify law-enforcement
officials where the person indicates he or she shall reside
of the information provided by the person under the pro-
visions of this article.

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

Any person required to register under this article who
knowingly fails to register or knowingly fails to provide a
change of address as required by this section, is guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than two hundred fifty dollars nor more than ten
thousand dollars, or imprisoned in the county jail not
more than one year, or both fined and imprisoned: Pro-
That each time such person changes residence and fails to register, such failure shall constitute a separate offense.


When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, such officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice.


(a) At the time a complaint is sworn out and again at the time when any person is convicted for a charge of murder, aggravated robbery, sexual assault in the first degree, kidnapping, arson, sexual offenses against minors or any violent crime against a spouse, former spouse, child or stepchild, the prosecuting attorney shall provide written notice to the victim or victim's family member that he or she may be notified prior to and upon the release of the defendant from confinement in any correctional facility, work release, home confinement, probation, parole, or upon the escape of the defendant from any correctional facility. The notice shall include instructions on how to request the notification.

(b) The commissioner of corrections, regional jail supervisors, city or sheriff operating a jail which releases any person shall, from which they have received a written request for notification, provide written notice to the last known address or addresses provided by the victim, or in the case of a minor child, to the custodial parent of the child, upon release of the defendant. Additionally, notice provided in the case of escape shall be by telephone.
CHAPTER 108

(Com. Sub. for H. B. 4771—By Delegate Mezzatesta)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article fourteen-a, all relating to establishing the West Virginia interpreter for the deaf act; defining terms; requiring appointment of interpreters for deaf persons in certain proceedings; providing for notification of need; requiring interpreters to make oaths of true interpretation; providing for fee schedule to be promulgated by legislative rule; and changing the name of the West Virginia commission for the hearing-impaired to the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

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


14A. West Virginia Interpreter For The Deaf Act.

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-3. Continuation of commission; membership.

There is hereby continued within the executive department the "West Virginia Commission for the Hearing-Impaired" which shall be known as the "West Virginia Commission for the Deaf and Hard-of-Hearing", consisting of fifteen persons, eight of whom shall serve ex officio, to be appointed by the governor within sixty days
after the effective date of this article by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission's expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters. The members are:

(a) The commissioner, or his or her designee, of the bureau of human resources; the commissioner, or his or her designee, of the division of labor; the director, or his or her designee, of the bureau of public health; the state superintendent of schools, or his or her designee, of the state board of education; the director, or his or her designee, of the division of rehabilitation; the director, or his or her designee, of the division of handicapped children's services in the division of human services; the chairman, or his or her designee, of the advisory council for the education of exceptional children; and the superintendent, or his or her designee, of the West Virginia school for the deaf, all of whom shall serve ex officio;

(b) Seven persons appointed by the governor, at least three of whom are deaf or hard-of-hearing, one of whom is the parent of a deaf child, one of whom is a certified teacher of the hearing-impaired, one audiologist and one otolaryngologist. Of the three deaf people, at least two shall be selected from a list of four people recommended by the board of the West Virginia association of the deaf.

ARTICLE 14A. WEST VIRGINIA INTERPRETER FOR THE DEAF ACT.

§5-14A-1. Short title.
§5-14A-2. Definitions.
§5-14A-3. Appointment of interpreter in court action or grand jury proceeding.
§5-14A-4. Arrests — Appointment of an interpreter.
§5-14A-5. Administrative proceedings — Appointment of interpreter.
§5-14A-7. Processing request for interpreter — Duties and responsibilities.
§5-14A-9. Interpreter fee; authority for legislative rules.
§5-14A-1. Short title.
This article shall be known and may be cited as the "West Virginia Interpreter for the Deaf Act."

§5-14A-2. Definitions.
As used in this article:
(a) "Deaf person" means one whose sense of hearing is nonfunctional for the ordinary purposes of life;
(b) "Qualified interpreter" means an interpreter certified by the national association of the deaf (NAD) or registry of interpreters for the deaf (RID), or, in the event an interpreter so certified is not available, an interpreter whose qualifications are otherwise determined;
(c) "Oral interpreter" means a person who interprets language through facial and lip movements; and
(d) "Appointing authority" means any court, department, board, commission, agency, licensing authority, political subdivision or municipality of the state required to provide an interpreter.

§5-14A-3. Appointment of interpreter in court action or grand jury proceeding.
(a) In any case before any court or the grand jury, wherein any deaf person is a complainant, defendant or witness, a qualified interpreter to interpret the proceedings to the deaf person and interpret his or her testimony or statements and to assist in preparation with counsel shall be appointed as provided under the provisions of section seven, article five, chapter fifty-seven of this code. The court shall work closely with West Virginia commission for the deaf and hard-of-hearing in finding the right interpreter for any duty in court.
(b) Efforts to obtain the services of a qualified interpreter certified with a legal skills certificate, or a comprehensive oral interpreting certificate will be made prior to accepting services of an interpreter with lesser certification. No qualified interpreter shall be appointed unless the appointing authority and the deaf person make
a preliminary determination that the interpreter is able to communicate readily with the deaf person and is able to interpret accurately the statement of the deaf person and interpret the proceedings in which a deaf person may be involved.

§5-14A-4. Arrests — Appointment of an interpreter.

(a) In the event a person who is deaf is arrested and taken into custody for any alleged violation of a criminal law of this state, the arresting officer or his or her superiors shall procure a qualified interpreter in order to interrogate properly such deaf person and to interpret such person's statements. No statement taken from the deaf person before an interpreter is present may be admissible in court.

(b) An oral interpreter shall be provided upon the request of a deaf person entitled to an interpreter under this article, but who does not communicate in sign language. The right of a deaf person to an interpreter may not be waived except by a deaf person who does not use sign language and who initiates the request for waiver in writing. The waiver is subject to approval of legal counsel for the deaf person, if any, and is subject to approval of the appointing authority.

§5-14A-5. Administrative proceedings — Appointment of interpreter.

(a) In any proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf person is a defendant, the department, board, commission, agency, licensing authority, political subdivision or municipality shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his or her testimony or statements if said deaf person requests an interpreter.

(b) In a proceeding before any department, board, commission, agency or licensing authority of the state, in any political subdivision or municipality, wherein any deaf person is an applicant, complainant or principal witness,
the department, board, commission, agency, licensing
authority, political subdivision or municipality may
appoint a qualified interpreter to interpret the proceedings
to the deaf person and to interpret his or her testimony or
statements if said deaf person requests an interpreter.

§5-14A-6. Notice of necessity of interpreter — Proof of
deafness.

Every deaf person whose appearance in any
proceeding entitles him or her to an interpreter shall
notify the appointing authority of his or her desire for an
interpreter at least forty-eight hours prior to any
appearance and may request at the time the services of an
interpreter: Provided, That if a deaf person reasonably
expects the need for an interpreter for a period greater
than a single day, he or she shall notify the appointing
authority and the notification shall be sufficient for the
duration of his or her participation in the proceedings.

An appointing authority may require a person
requesting the appointment of an interpreter to furnish
reasonable proof of his or her deafness when the
appointing authority has reason to believe that the person
is not deaf.

§5-14A-7. Processing request for interpreter — Duties and
responsibilities.

It shall be the responsibility of the appointing
authority to channel requests for qualified interpreters
through the West Virginia commission for the deaf and
hard-of-hearing except as provided under the provisions
of section seven, article five, chapter fifty-seven of this
code. This listing shall be made available to authorities in
possible need of interpreter service as provided in this
article.


Before a qualified interpreter may participate in any
proceedings under the provisions of this article, the
interpreter shall make an oath or affirmation that he or she
will make a true interpretation in an understandable
manner to the deaf person for whom he or she is
appointed and that he or she will interpret the statements
of the deaf person desiring that statements be made, in the
English language to the best of his or her skill and judgment. The appointing authority shall provide recess peri-
ods as necessary for the interpreter when the interpreter so
indicates. Any and all information that the interpreter
gathers from the deaf person pertaining to any proceeding
then pending shall at all times remain confidential and
privileged, or on a equal basis with the attorney-client
privilege, unless the deaf person desired that the informa-
tion be communicated to other persons.

§5-14A-9. Interpreter fee; authority for legislative rules.

Notwithstanding the provisions of section seven, article
five, chapter fifty-seven with respect to fees, an inter-
preter appointed under the provisions of this article shall
be entitled to a reasonable fee to be established by the
West Virginia commission for the deaf and hard-of-hear-
ing under a fee schedule promulgated by legislative rule
pursuant to the provisions of chapter twenty-nine-a of this
code. When the interpreter is appointed, the fee shall be
paid out of funds available to the appointing authority.

CHAPTER 109

(Com. Sub. for S. B. 154—By Senators Wiedebusch, Love, Kimble, Schoonover, Miller, Oliverio and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
and willful violation of the terms of a protective order whether it is issued by a magistrate, a family law master or a circuit judge; violations of protective order; criminal complaints; and arrest for violation of protective orders, repeat offenses, penalties.

Be it enacted by the Legislature of West Virginia:

That sections three-a, ten-b, ten-c and ten-d, article two-a, chapter forty-eight 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 three-b, all to read as follows:

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-3a. Divorce actions.

§48-2A-3b. Proceedings in magistrate court when temporary divorce, annulment or separation order is in effect.

§48-2A-10b. Violations of protective orders; criminal complaints.

§48-2A-10c. Arrest for violations of protective orders.

§48-2A-10d. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

§48-2A-3a. Divorce actions.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to section thirteen, article two of this chapter.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order has been entered in the action for divorce, annulment and separate maintenance, pursuant to section thirteen, article two of this chapter.

(c) Except as provided in section three-b of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to section thirteen, article two of this chapter, shall be entitled to file for or obtain
relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in subsection (b), section six of this article, any order issued pursuant to this section where a subsequent action is filed seeking a divorce, annulment or separate maintenance, shall remain in full force and effect by operation of this statute until a temporary or final order is issued pursuant to section thirteen, article two of this chapter or a final order granting or dismissing the action for divorce, annulment or separate maintenance.

§48-2A-3b. Proceedings in magistrate court when temporary divorce, annulment or separation order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family law master or judge in an action for divorce, annulment or separate maintenance, notwithstanding the provisions of subsection (c), section three-a of this article.

(b) A person who is a party in an action for divorce, annulment or separate maintenance in which a temporary order has been entered pursuant to section thirteen, article two of this chapter may petition magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order directing the respondent to refrain from abusing the petitioner and/or minor children, to order the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order and to order the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner in any public place. Such order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent's abuse of a child, as abuse is defined in section two
of this article. Any such modification shall be clearly
described in the order as to which party has custody and
why custody or visitation arrangements were changed.

(d) A copy of any temporary emergency protective
order issued by a magistrate pursuant to this section, to-
gether with a copy of the petition, shall be transmitted
forthwith by mail or by facsimile machine to the family
law master before whom the action is pending and to
law-enforcement agencies. Upon receipt of the petition
and order, the master shall examine its provisions. Within
ten days of the magistrate’s issuance of the temporary
emergency protective order, the master shall issue an order
either to extend such emergency protection for a time
certain or to vacate the magistrate’s order. The master shall
forthwith give notice to all parties and to the issuing mag-
istrate court. The magistrate court clerk shall forward a
copy of the master’s order to law-enforcement agencies.

If no temporary order pursuant to section thirteen,
article two of this chapter has been entered, the master
shall forthwith return the order with such explanation to
the issuing magistrate. The magistrate who issued the or-
der shall vacate the order, noting thereon the reason for
termination. The magistrate court clerk shall transmit a
copy of the vacated order to the parties and
law-enforcement agencies.

§48-2A-10b. Violations of protective orders; criminal com-
plaints.

(a) When a respondent abuses the petitioner and/or
minor children or is physically present at any location in
knowing and willful violation of the terms of a temporary
or final protective order issued by a magistrate, a circuit
court judge or a family law master under the provisions of
this article or subdivision (12), subsection (a), section
thirteen, article two of this chapter granting the relief pur-
suant to the provisions of this article, any person author-
ized to file a petition pursuant to the provisions of section
four of this article or the legal guardian or guardian ad
litem may file a petition for civil contempt as set forth in
section ten-a of this article.

(b) When any such violation of a valid order has oc-
curred, the petitioner may file a criminal complaint. If the
court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.

§48-2A-10c. Arrest for violations of protective orders.

(a) When a law-enforcement officer observes any respondent abuse the petitioner and/or minor children or the respondent's physical presence at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or subdivision (12), subsection (a), section thirteen, article two of this chapter granting the relief pursuant to the provisions of this article, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section ten-d of this article, a law-enforcement officer may arrest the perpetrator for said offense where:

(1) The law-enforcement officer has observed credible corroborative evidence, as defined in subsection (b), section fourteen of this article, that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section ten-d of this article; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.
§48-2A-10d. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

(a) A respondent who abuses the petitioner and/or minor children or who is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or subdivision (12), subsection (a), section thirteen, article two of this chapter granting the relief pursuant to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) When a respondent previously convicted of the offense described in subsection (a) of this section abuses the petitioner and/or minor children or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article, the respondent is guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

CHAPTER 110

(S. B. 359—By Senators Wooton, Anderson, Buckalew, Deem, Dittmar, Miller, Schoonover, Scott, Ross, White and Yoder)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]
chapter forty-eight-a of said code; to repeal section seventeen, article two of said chapter; to repeal section seven, article four of said chapter; to amend and reenact sections fifteen, fifteen-a and thirty-two, article two, chapter forty-eight of said code; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections one, four, twenty and twenty-three, article four of said chapter; to further amend said chapter by adding thereto two new articles, designated articles one-a and one-b; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, all relating to domestic relations and support obligations generally; reorganizing portions of the domestic relations law to provide a new methodology for calculating child support based on income shares; providing for relief upon ordering divorce, annulment or separate maintenance; providing for medical support; establishing a valuation date for contingent and other future earned fees that are marital property; defining certain terms that have application to support enforcement; establishing guidelines for child support awards; prescribing the method of calculating a child support order; setting forth a table of monthly basic child support obligations; providing for child health care as a part of support; providing for work-related child care costs as a part of support; computing child support order in a sole custody case; computing child support in shared physical custody case; computing child support in split physical custody case; adjustment for social security benefits sent directly to a child; application of guidelines; providing for modification of support orders; allocation of tax exemption; defining indebtedness; specifying when support guidelines may be disregarded; presenting information on income based on monthly amounts; creating an additional part-time family law master; providing for circuit court review of a law master's recommended order; prescribing fees to be charged by the clerk of the circuit court; disposition of fees; and defining criminal offense of failure to meet obligation to provide support, and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:
That section six, article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section three-a, article one, chapter forty-eight-a of said code be repealed; that section seventeen, article two of said chapter be repealed; that section seven, article four of said chapter be repealed; that sections fifteen, fifteen-a and thirty-two, article two, chapter forty-eight of said code be amended and reenacted; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that sections one, four, twenty and twenty-three, article four of said chapter be amended and reenacted; that sections one, four, twenty and twenty-three, article four of said chapter be further amended by adding thereto two new articles, designated articles one-a and one-b; that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; and that section twenty-nine, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.
48A. Enforcement of Family Obligations.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
61. Crimes and Their Punishment.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

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

§48-2-32. Marital property disposition.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (a) Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

2 Payments of alimony are to be ordinarily made from a party's income, but when the income is not sufficient to adequately provide for those payments, the court may,
upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate. An award of alimony shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court.

(b) Upon ordering the annulment of a marriage or a divorce or granting of decree of separate maintenance, the court may further order all or any part of the following relief:

(1) The court may provide for the custody of minor children of the parties, subject to such rights of visitation, both in and out of the residence of the custodial parent or other person or persons having custody, as may be appropriate under the circumstances. In every action where visitation is awarded, the court shall specify a schedule for visitation by the noncustodial parent: Provided, That with respect to any existing order which provided for visitation but which does not provide a specific schedule for visitation by the noncustodial parent, upon motion of any party, notice of hearing and hearing, the court shall issue an order which provides a specific schedule of visitation by the noncustodial parent;

(2) When the action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to section eight, article two, chapter forty-eight-a of this code. Payments of child support are to be ordinarily made from a party's income, but in cases when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate;

(3) When the action involves a minor child or children, the court shall provide for medical support for any minor children in accordance with section fifteen-a of this article;

(4) As an incident to requiring the payment of alimony or child support, the court may order either party to
continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party: Provided, That if the other party is no longer eligible to be covered by such insurance because of the granting of an annulment or divorce, the court may require a party to substitute such insurance with a new policy to cover the other party or may consider the prospective cost of such insurance in awarding alimony to be paid in periodic installments. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be alimony or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, however, That if the court does not set forth in the order that a portion of such payments is to be deemed installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony: Provided further, That the designation of insurance coverage as alimony under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for alimony other than insurance for covering the costs of health care and hospitalization;

(5) The court may grant the exclusive use and occupancy of the marital home to one of the parties, together with all or a portion of the household goods, furniture and furnishings reasonably necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending at a specific time set forth in the order, subject to modification upon the petition of either party. Except in extraordinary cases supported by specific findings set forth in the order granting relief, a grant of the exclusive use and occupancy of the marital home shall be limited to those situations when such use and occupancy is reasonably necessary to accommodate the rearing of minor children of the parties. The court may require payments to third parties in the form of home loan installments, land contract payments, rent, property taxes and insurance coverage if the amount of such coverage is reduced to a fixed monetary amount set forth in the court's order. When such third party payments are or-
The court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt: Provided, That if the court does not set forth in the order that a portion of such payments is to be deemed child support or installment payments for the distribution of marital property, then all such payments made pursuant to this subdivision shall be deemed to be alimony. When such third party payments are ordered, the court shall specify whether such payments or portions of payments are alimony, child support, a partial distribution of marital property or an allocation of marital debt. If the payments are not designated in an order and the parties have waived any right to receive alimony, the court may designate the payments upon motion by any party. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of such contract;

(6) As an incident to requiring the payment of alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties. The court may require payments to third parties in the form of automobile loan installments or insurance coverage if available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit of the other party shall be deemed to be alimony or installment payments for the distribution of marital property, as the court may direct. Nothing contained in this subdivision shall abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of such contract;

(7) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property as defined in section one of this article, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein;
(8) Unless a contrary disposition is ordered pursuant
to other provisions of this section, then upon the motion
of either party, the court may compel the other party to
deliver to the moving party any of his or her separate
estate which may be in the possession or control of the
respondent party and may make such further order as is
necessary to prevent either party from interfering with the
separate estate of the other;

(9) When allegations of abuse have been proven, the
court shall enjoin the offending party from molesting or
interfering with the other, or otherwise imposing any re-
straint on the personal liberty of the other or interfering
with the custodial or visitation rights of the other. Such
order may permanently enjoin the offending party from
entering the school, business or place of employment of
the other for the purpose of molesting or harassing the
other; or from contacting the other, in person or by tele-
phone, for the purpose of harassment or threats; or from
harassing or verbally abusing the other in a public place;

(10) The court may order either party to take neces-
sary steps to transfer utility accounts and other accounts
for recurring expenses from the name of one party into
the name of the other party or from the joint names of the
parties into the name of one party. Nothing contained in
this subdivision shall affect the liability of the parties for
indebtedness on any such account incurred before the
transfer of such account.

(c) When an annulment or divorce is denied, the court
shall retain jurisdiction of the case and may order all or
any portion of the relief provided for in subsections (a)
and (b) of this section which has been demanded or
prayed for in the pleadings.

(d) When a divorce or annulment is granted in this
state upon constructive service of process and personal
jurisdiction is thereafter obtained of the defendant in such
case, the court may order all or any portion of the relief
provided for in subsections (a) and (b) of this section
which has been demanded or prayed for in the pleadings.
(e) After the entry of an order pursuant to the provisions of this section, the court may revise the order concerning the maintenance of the parties and enter a new order concerning the same, as the circumstances of the parties may require.

The court may also from time to time afterward, upon motion of either of the parties and upon proper service, revise such order to grant relief pursuant to subdivision (9), subsection (b) of this section, and enter a new order concerning the same, as the circumstances of the parties and the benefit of children may require. The court may also from time to time afterward, upon the motion of either of the parties or other proper person having actual or legal custody of the minor child or children of the parties, revise or alter the order concerning the custody and support of the children, and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents or other proper person or persons and the benefit of the children may require: Provided, That all orders modifying child support shall be in conformance with the requirements of support guidelines promulgated pursuant to article one-b, chapter forty-eight-a of this code: Provided, however, That an order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the child support guidelines promulgated pursuant to the provisions of said section.

In granting relief under this subsection, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if such property is still held by the parties, and if necessary to give effect to a modification of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.
(f) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the death of the payor party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the death of the payor party or is to cease, or when the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the death of the payor party or cease.

(g) When a separation agreement is the basis for an award of alimony, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for alimony to continue beyond the remarriage of the payee party or to cease in such event. When alimony is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of alimony is to continue beyond the remarriage of the payee party or is to cease, or when the parties have not entered into a separation agreement and alimony is to be awarded, the court shall specifically state as a part of its order whether such payments of alimony are to be continued beyond the remarriage of the payee party or cease.

(h) In addition to the disclosure requirements set forth in section thirty-three of this article, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

(i) In determining whether alimony is to be awarded, or in determining the amount of alimony, if any, to be awarded under the provisions of this section, the court shall consider and compare the fault or misconduct of either or both of the parties and the effect of such fault or misconduct as a contributing factor to the deterioration of
the marital relationship. However, alimony shall not be
awarded when both parties prove grounds for divorce and
are denied a divorce, nor shall an award of alimony under
the provisions of this section be ordered which directs the
payment of alimony to a party determined to be at fault,
when, as a grounds granting the divorce, such party is
determined by the court:

(1) To have committed adultery; or

(2) To have been convicted for the commission of a
crime which is a felony, subsequent to the marriage if such
conviction has become final; or

(3) To have actually abandoned or deserted his or her
spouse for six months.

(j) Whenever under the terms of this section or section
thirteen of this article a court enters an order requiring the
payment of alimony or child support, if the court antici-
pates the payment of such alimony or child support or
any portion thereof to be paid out of "disposable retired
or retainer pay" as that term is defined in 10 U.S.C.
§1408, relating to members or former members of the
uniformed services of the United States, the court shall
specifically provide for the payment of an amount, ex-
pressed in dollars or as a percentage of disposable retired
or retainer pay, from the disposable retired or retainer pay
of the payor party to the payee party.

(k) Any order which provides for the custody or sup-
port of a minor child shall include:

(1) The name of the custodian;

(2) The amount of the support payments;

(3) The date the first payment is due;

(4) The frequency of the support payments;

(5) The event or events which trigger termination of
the support obligation;

(6) A provision regarding wage withholding;

(7) The address where payments shall be sent;
(8) A provision for medical support; and

(9) When child support guidelines are not followed, a specific written finding pursuant to section eight, article two, chapter forty-eight-a of this code.

(l) (1) Unless the best interests of the child require otherwise, every final order and every modification order which provides for the custody of a minor child of the parties shall also provide for the following:

(A) The custodial parent shall be required to authorize school authorities in the school in which the child is enrolled to release to the noncustodial parent copies of any and all information concerning the child which would otherwise be properly released to the custodial parent;

(B) The custodial parent shall be required, promptly after receipt, to transmit to the noncustodial parent a copy of the child's grades or report card and copies of any other reports reflecting the status or progress of the child;

(C) The custodial parent shall be required, when practicable, to arrange appointments for parent-teacher conferences at a time when the noncustodial parent can be present;

(D) The custodial parent shall be required to authorize medical providers to release to the noncustodial parent copies of any and all information concerning medical care provided to the child which would otherwise be properly released to the custodial parent;

(E) The custodial parent shall be required to promptly inform the noncustodial parent of any illness of the child which requires medical attention; or, if the child is in the actual physical custody of the noncustodial parent during a period of visitation, the noncustodial parent shall be required to promptly inform the custodial parent of any illness of the child which requires medical attention;

(F) The custodial parent shall be required to consult with the noncustodial parent prior to any elective surgery being performed on the child; and in the event emergency medical procedures are undertaken for the child which
require the parental consent of either parent, if time per-
permits, the other parent shall be consulted, or if time does
not permit such consultation, the other parent shall be
promptly informed of such emergency medical proce-
dures: Provided, That the same duty to inform the custo-
dial parent applies to the noncustodial parent in the event
that the emergency medical procedures are required while
the child is in the physical custody of the noncustodial
parent during a period of visitation: Provided, however,
That nothing contained herein shall be deemed to alter or
amend the law of this state as it otherwise pertains to phy-
sicians or health care facilities obtaining parental consent
prior to providing medical care or performing medical
procedures.

(2) In the event a custodial parent shall fail or refuse
to authorize the release of school or medical records as
provided for by subdivision (1) of this subsection, then
upon the ex parte application of the noncustodial parent,
the family law master shall prepare an order for entry by
the circuit court which appoints the family law master as a
special commissioner authorized to execute a consent for
the release of such records and direct it to the appropriate
school authorities or medical providers.

§48-2-15a. 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 welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. §1167, Section 607(1) of the Employee Retirement Income Security Act of 1974 or other entity which provides insurance coverage or offers a service benefit plan.

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

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

(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multi-employer trust or employees' union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to
be liable for reasonable and necessary medical care for a
child. The court shall specify the proportion of the medi-
cal 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 infor-
mation 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 sup-
port.

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

(d) Within thirty days after the entry of an order re-
quiring 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 ter-
minated except as provided in subsection (j) of this sec-

tion.

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

(1) To permit the parent to enroll under family cover-
age any child who is otherwise eligible for coverage with-
out regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make applica-
tion 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 medic-
ad 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 cover-
age for all of its employees;

(4) To withhold from the employee's compensation
the employee's share, if any, of premiums for health cov-
verage and to pay this amount to the insurer: Provided,
That the amount so withheld may not exceed the maxi-
mum 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 pro-
vider of medical care for the child.
(2) No insurer, employer or multi-employer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

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

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

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

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

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

(1) Hold the obligated parent in contempt for failing or refusing to provide the insurance coverage or for failing or refusing to provide the information required in subsection (d) of this section;
(2) Enter an order for a sum certain against the obligated parent for the cost of medical care for the child and any insurance premiums paid or provided for the child during any period in which the obligated parent failed to provide the required coverage;

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

(4) In addition to other remedies available under law, the child 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.

§48-2-32. Marital property disposition.

(a) Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.

(b) In cases where the parties to an action commenced under the provisions of this article have executed a separation agreement, then the court shall divide the marital
property in accordance with the terms of the agreement, unless the court finds:

(1) That the agreement was obtained by fraud, duress or other unconscionable conduct by one of the parties; or

(2) That the parties, in the separation agreement, have not expressed themselves in terms which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

(3) That the agreement, viewed in the context of the actual contributions of the respective parties to the net value of the marital property of the parties, is so inequitable as to defeat the purposes of this section, and such agreement was inequitable at the time the same was executed.

(c) In the absence of a valid agreement, the court shall presume that all marital property is to be divided equally between the parties, but may alter this distribution, without regard to any attribution of fault to either party which may be alleged or proved in the course of the action, after a consideration of the following:

(1) The extent to which each party has contributed to the acquisition, preservation and maintenance, or increase in value of marital property by monetary contributions, including, but not limited to:

(A) Employment income and other earnings; and

(B) Funds which are separate property.

(2) The extent to which each party has contributed to the acquisition, preservation and maintenance or increase in value of marital property by nonmonetary contributions, including, but not limited to:

(A) Homemaker services;

(B) Child care services;

(C) Labor performed without compensation, or for less than adequate compensation, in a family business or
other business entity in which one or both of the parties has an interest;

(D) Labor performed in the actual maintenance or improvement of tangible marital property; and

(E) Labor performed in the management or investment of assets which are marital property.

(3) The extent to which each party expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party, including, but not limited to:

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and

(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

(4) The extent to which each party, during the marriage, may have conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties: Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

(d) After considering the factors set forth in subsection (c) of this section, the court shall:

(1) Determine the net value of all marital property of the parties as of the date of the commencement of the action or as of such later date determined by the court to be more appropriate for attaining an equitable result: Provided, That for contractual rights to contingent and other future earned fees that are considered to be marital property, the valuation date is the date the parties separated. Contractual agreements for contingent or other future earned fees entered into during the marriage and before
the parties separated is marital property. The court shall not delay a division of marital property by retaining continuing jurisdiction over the matter until the amount of the contingent or other future earned fee has been ultimately decided, but shall make a valuation of the contractual agreement contemporaneously with the valuation of other marital property;

(2) Designate the property which constitutes marital property, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions (1), (2), (3) and (4), subsection (c) of this section, if a consideration of factors only under said subdivisions (1) and (2) would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions (3) and (4) produce a finding that a party: (A) Expended his or her efforts during the marriage in a manner which limited or decreased such party's income-earning ability or increased the income-earning ability of the other party; or (B) conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties, then the court may, in the absence of a fair and just alimony award under the provisions of section fifteen of this article which adequately takes into account the facts which underlie the factors described in subdivisions (3) and (4), subsection (c) of this section, equitably adjust the definition of the parties' interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

(3) Designate the property which constitutes separate property of the respective parties or the separate property of their children;

(4) Determine the extent to which marital property is susceptible to division in accordance with the findings of
the court as to the respective interests of the parties therein;

(5) In the case of any property which is not susceptible to division, ascertain the projected results of a sale of such property;

(6) Ascertain the projected effect of a division or transfer of ownership of income-producing property, in terms of the possible pecuniary loss to the parties or other persons which may result from an impairment of the property's capacity to generate earnings; and

(7) Transfer title to such component parts of the marital property as may be necessary to achieve an equitable distribution of the marital property. To make such equitable distribution, the court may:

(A) Direct either party to transfer their interest in specific property to the other party;

(B) Permit either party to purchase from the other party their interest in specific property;

(C) Direct either party to pay a sum of money to the other party in lieu of transferring specific property or an interest therein, if necessary to adjust the equities and rights of the parties, which sum may be paid in installments or otherwise, as the court may direct;

(D) Direct a party to transfer his or her property to the other party in substitution for property of the other party of equal value which the transferor is permitted to retain and assume ownership of; or

(E) Order a sale of specific property and an appropriate division of the net proceeds of such sale: Provided, that such sale may be by private sale, or through an agent or by judicial sale, whichever would facilitate a sale within a reasonable time at a fair price.

(e) In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the trans-
fer of legal title to motor vehicles, household goods and
the former marital domicile without regard to such prefer-
ence where the court determines it to be necessary or con-
venient. In any case involving the equitable distribution
of: (1) Property acquired by bequest, devise, descent,
distribution or gift; or (2) ownership interests in a business
entity, the court shall, unless the parties otherwise agree,
give preference to the retention of the ownership interests
in such property. In the case of such business interests,
the court shall give preference to the party having the
closer involvement, larger ownership interest or greater
dependency upon the business entity for income or other
resources required to meet responsibilities imposed under
this article, and shall also consider the effects of transfer or
retention in terms of which alternative will best serve to
preserve the value of the business entity or protect the
business entity from undue hardship or from interference
caused by one of the parties or by the divorce, annulment
or decree of separate maintenance: *Provided, however,*
That the court may, unless the parties otherwise agree,
sever the business relationship of the parties and order the
transfer of legal title to ownership interests in the business
entity from one party to the other, without regard to the
limitations on the transfer of title to such property other-
wise provided in this subsection, if such transfer is re-
quired to achieve the other purposes of this article: *Pro-
vided further,* That in all such cases the court shall order
or the agreement of the parties shall provide for equitable
payment or transfer of legal title to other property, of fair
value in money or moneys' worth, in lieu of any owner-
ship interests in a business entity which are ordered to be
transferred under this subsection: *And provided further,*
That the court may order the transfer of such business
interests to a third party (such as the business entity itself
or another principal in the business entity) where the inter-
est of the parties under this article can be protected and at
least one party consents thereto.

(f) In any order which divides or transfers the title to
any property, determines the ownership or value of any
property, designates the specific property to which any
party is entitled or grants any monetary award, the court
shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.

(g) If an order entered in accordance with the provisions of this article requires the transfer of title to property and a party fails or refuses to execute a deed or other instrument necessary to convey title to such property, the deed or other instrument shall be executed by a special commissioner appointed by the court for the purpose of effecting such transfer of title pursuant to section seven, article twelve, chapter fifty-five of this code.

(h) As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of section thirty-five of this article, and at anytime and in any manner not otherwise prohibited by an order under this article, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: **Provided,** That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date of this section and no purchaser for value need see to the application of the
proceeds of such purchase except to the extent he or she would have been required so to do prior to the effective date of this section: Provided, however, That as to third parties nothing in this section shall be construed to limit or otherwise defeat the interests or rights to property which any husband or wife would have had in property prior to the enactment of this section or prior to the adoption of the doctrine of equitable distribution by the supreme court of appeals on the twenty-fifth day of May, one thousand nine hundred eighty-three: Provided further, That no order entered under this article shall be construed to defeat the title of a third party transferee thereof except to the extent that the power to effect such a transfer of title or interest in such property is secured by a valid and duly perfected lien and, as to any personal property, secured by a duly perfected security interest.

(i) Notwithstanding the provisions of chapter eleven of this code, no transfer of interest in or title to property under this section shall be taxable as a transfer of property without consideration nor, except as to alimony, create liability for sales, use, inheritance and transfer or income taxes due the state or any political subdivision nor require the payment of the excise tax imposed under article twenty-two, chapter eleven of this code.

(j) Whenever under the terms of this article a court enters an order requiring a division of property, if the court anticipates the division of property will be effected by requiring sums to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the payee party.

(k) The amendments to this section effected by the reenactment of this section during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate mainte-
277 nance that was commenced on or before the effective date
278 of this section.

CHAPTER 48A. ENFORCEMENT OF
FAMILY OBLIGATIONS.

Article
   1A. Definitions.
   1B. Guidelines for Child Support Awards.
   4. Proceedings Before a Master.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

1 If an obligation to pay interest arises under this chap-
2 ter, the rate of interest is that specified in section
3 thirty-one, article six, chapter fifty-six of this code. Inter-
4 est shall accrue only upon the outstanding principal of
5 such obligation. On and after the ninth day of June, one
6 thousand nine hundred ninety-five, this section shall be
7 construed to permit the accumulation of simple interest,
8 and may not be construed to permit the compounding of
9 interest. Interest which accrued on unpaid installments
10 accruing before the ninth day of June, one thousand nine
11 hundred ninety-five, may not be modified by any court,
12 irrespective of whether such installment accrued simple or
13 compound interest: Provided, That unpaid installments
14 upon which interest was compounded before the effective
15 date of this section shall accrue only simple interest there-
16 on on and after the ninth day of June, one thousand nine
17 hundred ninety-five.

ARTICLE 1A. DEFINITIONS.

§48A-1A-1. Application of definitions.
§48A-1A-3. Attributed income.
§48A-1A-4. Automatic data processing and retrieval system.
§48A-1A-5. Basic child support obligation.
§48A-1A-6. Chief judge.
§48A-1A-10. Contingent fee agreement.
§48A-1A-1. Application of definitions.
1 For purposes of this chapter and chapter forty-eight of this code, unless the context clearly requires otherwise, the words and phrases defined in the following sections of this article, and any variations of those words and phrases required by the context, shall have the meanings ascribed to them in this article.

1 (a) "Adjusted gross income" means gross income less the payment of previously ordered child support, spousal support or separate maintenance.

4 (b) A further deduction from gross income for additional dependents may be allowed by the court or master if the support obligor has legal dependents other than those for whom support is being determined. An adjust-
ment may be used in the establishment of a child support order or in a review of a child support order. However, in cases where a modification is sought, the adjustment should not be used to the extent that it results in a support amount lower than the previously existing order for the children who are the subject of the modification. The court or master may elect to use the following adjustment because it allot equitable shares of support to all of the support obligor’s legal dependents. Using the income of the support obligor only, determine the basic child support obligation (from the Table of Basic Child Support Obligations in section three, article one-b of this chapter) for the number of additional legal dependents living with the support obligor. Multiply this figure by 0.75 and subtract this amount from the support obligor’s gross income.

§48A-1A-3. Attributed income.

(a) "Attributed income" means income not actually earned by an obligor, but which may be attributed to the obligor because he or she is unemployed, is not working full time, or is working below full earning capacity. Income may be attributed to an obligor if the court or master evaluates the obligor’s earning capacity in the local economy (giving consideration to relevant evidence that pertains to the obligor’s work history, qualifications, education and physical or mental condition) and determines that the obligor is unemployed, is not working full time, or is working below full earning capacity.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court or master to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor’s work history, qualifications, education or physical or mental condition can-
not be determined, or if there is an inadequate record of
the obligor's previous income, the court or master may, as
a minimum, base attributed income on full-time employ-
ment (at forty hours per week) at the federal minimum
wage in effect at the time the support obligation is estab-
lished.

(c) Income shall not be attributed to an obligor who is
unemployed or underemployed or is otherwise working
below full earning capacity if any of the following condi-
tions exist:

(1) The parent is providing care required by the chil-
dren to whom the parties owe a joint legal responsibility
for support, and such children are of preschool age or are
handicapped or otherwise in a situation requiring particu-
lar care by the parent;

(2) The parent is pursuing a plan of economic
self-improvement which will result, within a reasonable
time, in an economic benefit to the children to whom the
support obligation is owed, including, but not limited to,
self-employment or education: Provided, That if the
parent is involved in an educational program, the court or
master shall ascertain that the person is making substantial
progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning
an income in an amount less that previously earned; or

(4) The court or master makes a written finding that
other circumstances exist which would make the attribu-
tion of income inequitable: Provided, That in such case,
the court or master may decrease the amount of attributed
income to an extent required to remove such inequity.

§48A-1A-4. Automatic data processing and retrieval system.

(a) "Automatic data processing and retrieval system"
means a computerized data processing system designed to
do the following:

(1) To control, account for and monitor all of the
factors in the support enforcement collection and paterni-
ty determination process, including, but not limited to:
(A) 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;

(B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(D) Delinquency and enforcement activities;

(2) 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;

(3) 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;

(4) 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;

(5) To provide for security against unauthorized access to, or use of, the data in such system;

(6) 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

(7) To provide management information on all cases
from initial referral or application through collection and
enforcement.

§48A-1A-5. Basic child support obligation.

"Basic child support obligation" means the base
amount of child support due by both parents as deter-
mined by the table of basic child support obligations set
forth in section three, article one-b of this chapter, based
upon the combined adjusted gross income of the parents
and the number of children to whom support is due.

§48A-1A-6. Chief judge.

"Chief judge" means the circuit judge in a judicial
circuit that has only one circuit judge, or the chief judge
of the circuit court in a judicial circuit that has two or
more circuit judges.


"Child support enforcement division" means the agen-
cy created under the provisions of article two of this chap-
ter, 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. A refer-
ence in this chapter and elsewhere in this code to the
"child advocate office" shall be interpreted to refer to the
child support enforcement division.


"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

"Combined adjusted gross income" means the combined monthly adjusted gross incomes of both parents.

§48A-1A-10. Contingent fee agreement.

(a) "Contingent fee agreement" means a contract under which an attorney may be compensated for work in progress, dependent on the occurrence of some future event which is not certain and absolute. As such, a contingent fee agreement is not an asset, but is potential income or income capacity. This potential income may have current value, and a portion of that current value, if any, may be considered to be a marital asset. In the event a party seeks to quantify the current value of a particular contingent fee agreement for the purpose of establishing the value of the agreement as marital property, the court must find that the party has proved such value by a preponderance of the evidence. Factors to be considered by the court include, but are not limited to, the following:

1. The nature of the particular case or claim which underlies the agreement;
2. The jurisdiction or venue of any projected trial or proceeding;
3. Any historical data relevant to verdicts or settlements within the jurisdiction where the case or claim is pending or may be brought;
4. The terms and particulars of the agreement;
5. The status of the case or claim at valuation date;
6. The amount of time spent working on the case or claim prior to the valuation date, and an analysis of the nature of how that time was spent, including, but not limited to, such activities such as investigation, research, discovery, trial or appellate practice;
(7) The extent of the person's active role in the work in process, whether as an actual participant or as an indirect participant such as a partner, local counsel or other ancillary role;

(8) The age of the case or claim;

(9) The expenses accrued or projected to bring the case or claim to resolution, including any office overhead attributable to case or claim; and

(10) The probable tax consequences attendant to a successful resolution of the case or claim.

(b) The provisions of this section as enacted during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate maintenance that was commenced on or before the effective date of this section.

§48A-1A-11. Court.

"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.

§48A-1A-12. Court of competent jurisdiction.

"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.


"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 par-
§48A-1A-14. Director.

"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.


"Domestic relations matter" means any circuit court proceeding involving child custody, child visitation, child support or alimony.


"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.

§48A-1A-17. Extraordinary medical expenses.

"Extraordinary medical expenses" means reasonable uninsured medical expenses in excess of two hundred fifty dollars per year per child which are recurring and can reasonably be predicted by the court or master at the time of establishment or modification of a child support order. Nonrecurring or subsequently occurring uninsured medical expenses in excess of two hundred fifty dollars per year per child shall be separately divided between the parties in proportion to their adjusted gross incomes. Such expenses shall include, but not be limited to, insurance copayments and deductibles, reasonable costs for necessary orthodontia, dental treatment, asthma treatments, physical therapy, and any uninsured chronic health problem.

"Family law master" or "master" means a person appointed to such position under the provisions of section one, article four of this chapter.


(a) "Gross income" means all earned and unearned income. When determining whether an income source should be included in the child support calculation, the court or master should consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) "Gross income" includes, but is not limited to, the following:

1. Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income due or to be due in the future to an obligor from his employer and successor employers;

2. Any payment due or to be due in the future to an obligor from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers' compensation benefits, and state lottery winnings and prizes;

3. Interest paid on any debt 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;

4. Expense reimbursements or in-kind payments such as business expense accounts, business credit accounts, and tangible property such as automobiles and meals, to the extent that they provide the obligor with property or services he or she would otherwise have to provide;

5. Attributed income of the parent, calculated in accordance with the provisions of section three, article one-a of this chapter;
(6) Compensation paid for personal services as overtime pay: Provided, That overtime compensation may be excluded from gross income if the obligor with the overtime income demonstrates to the court or master that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to divorce or birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the obligor first received such compensation, whichever period is shorter; and

(9) Alimony and separate maintenance receipts.

(c) Depending on the circumstances of the particular case, the court or master may also include severance pay, capital gains, and net gambling, gifts or prizes as gross income.

(d) "Gross Income" does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as aid to families with dependent children, supplemental security income and food stamps; and

(4) A child's income unless the court or master determines that the child's income substantially reduces the family's living expenses.
§48A-1A-20. Guardian of the property of a child.

"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.

§48A-1A-21. 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.

"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:

1. 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:

   (A) Such child has a parent and child relationship with an obligor who is not such custodial parent, primary caretaker or guardian; and

   (B) 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

2. 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

3. 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.

"Obligee" means:

1. 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;

2. 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

3. An individual seeking a judgment determining parentage of the individual's child.


"Obligor" means an individual or the estate of a decedent:

1. Who owes or is alleged to owe a duty of support;

2. Who is alleged, but has not been adjudicated, to be a parent of a child; or

3. Who is liable under a support order.

§48A-1A-24. Primary caretaker of a child.

"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.

§48A-1A-25. Secretary.

"Secretary" means the secretary of the department of health and human resources.


"Shared physical custody" means an arrangement under which each parent keeps a child or children overnight for more than thirty percent of the year and under
which both parents contribute to the expenses of the child or children in addition to the payment of child support.


"Source of income" means an employer or successor employer or any other person who owes or will owe income to an obligor.


"Split physical custody" means a situation where there is more than one child and where each parent has physical custody of at least one child.

§48A-1A-29. Support.

"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 and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; and/or

(C) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.


"Support order" means any order of a court of competent jurisdiction for the payment of support, whether or not for a sum certain.

1 "Unreimbursed medical expenses" means the child’s portion of health insurance premiums and extraordinary medical expenses.


1 "Work-related child care costs" shall mean the cost of child care the parent incurs due to employment or the search for employment.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-1. General provisions.

§48A-1B-2. Calculation of child support order.


§48A-1B-5. Work-related child care costs; deduction of tax credit.

§48A-1B-6. Computation of child support order in sole custody cases.

§48A-1B-7. Shared physical custody adjustment.

§48A-1B-8. Split physical custody adjustment.

§48A-1B-9. Adjustment for obligator’s social security benefits sent directly to the child.

§48A-1B-10. Application.


§48A-1B-12. Tax exemption for child due support.


§48A-1B-15. Present income as monthly amounts.

§48A-1B-1. General provisions.

1 (a) This section establishes 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 these guidelines is the correct amount of child support to be awarded.

12 (b) The Legislature recognizes that children have a right to share in their natural parents' level of living. Ex-
penditures in families are not made in accordance with subsistence level standards, but are made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, the guidelines are structured so as to provide that after a consideration of respective parental incomes, that child support will be related, to the extent practicable, to the level of living that children would enjoy if they were living in a household with both parents present.

(c) The guidelines promulgated under the provisions of this section 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 consider the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation.

(d) The provisions of this article which would create a new method of calculating child support obligations based on an income shares model shall not become operative until the first day of July, one thousand nine hundred ninety-seven. The child support guidelines in effect on the first day of January, one thousand nine hundred ninety-six, as promulgated by legislative rule, shall continue in effect, notwithstanding the repeal of section seventeen, article two of this chapter during the regular session of the Legislature, one thousand nine hundred ninety-six. To the extent that any definition set forth in article one-a of this chapter is inconsistent with the manner of calculating a support obligation under the legislative rule establishing child support guidelines that is in effect on the first day of January, one thousand nine hundred ninety-six, such definition shall have no application until the first day of July, one thousand nine hundred ninety-seven.

§48A-1B-2. Calculation of child support order.
(a) Both parents’ adjusted gross income, as defined in section two, article one-a of this chapter, is used to determine the amount of child support. Unreimbursed child health care expenses and work-related child care expenses are added to the basic child support obligation to determine the total child support obligation. The child support order is determined by dividing the total child support obligation between the parents in proportion to their income.

(b) The calculation of the support order amount requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a sole physical custody arrangement. Worksheet B is used for a shared physical custody arrangement.


(a) The basic child support obligation is determined from the following table of monthly basic child support obligations:

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</table>
If combined adjusted gross income is below six hundred fifty dollars per month, which is the lowest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall be set at fifty dollars per month or a discretionary amount determined by the court or master based on the resources and living expenses of the obligor and the number of children due support. The amount shall not deny the obligor the means for self-support at a minimum subsistence level, yet a specific amount of child support should always be ordered, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child or children.

If combined adjusted gross income is above fifteen thousand dollars per month, which is the highest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall not be less than it would be based on a combined adjusted gross income of fifteen thousand dollars. The court or master may also compute the basic child support obligation for combined adjusted gross incomes above fifteen thousand dollars by the following:
(1) One child — $1,457 + 0.088 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(2) Two children — $2,108 + 0.129 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(3) Three children — $2,483 + 0.153 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(4) Four children — $2,744 + 0.169 \times \text{combined adjusted gross income above fifteen thousand dollars per month};

(5) Five children — $2,974 + 0.183 \times \text{combined adjusted gross income above fifteen thousand dollars per month}; and

(6) Six children — $3,182 + 0.196 \times \text{combined adjusted gross income above fifteen thousand dollars per month}.

(d) When the amount of a support obligation exceeds two thousand dollars per month per child, the court or master may order a portion of the excess over two thousand dollars per month to be invested or placed in trust for the benefit of the child or children. The court or master may place terms and conditions on the access to the monies as are in the best interests of the child or children: Provided, That the court or master shall order that all funds so invested or held in trust shall be paid over and delivered to the child or children at their majority or emancipation.


1 (a) A child support order shall also provide for the child's current and future medical needs by providing relief in accordance with the provisions of section fifteen-a, article two, chapter forty-eight of this code.

(b) The payment of a premium to provide health insurance coverage on behalf of the children subject to the order shall be added to the basic child support obligation.
and shall be divided between the parents in proportion to their adjusted gross income. The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the number of children due support. If this amount is not available or cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy.

(c) After the total child support obligation is calculated and divided between the parents in proportion to their adjusted gross income, the amount of the health insurance premium added to the basic child support obligation shall be deducted from the support obligor's share of the total child support obligation if the support obligor is actually paying the premium.

(d) Extraordinary medical expenses shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

§48A-1B-5. Work-related child care costs; deduction of tax credit.

(a) The amount of the federal tax credit for child care expenses that can be realized by the custodial parent should be deducted from work-related child care costs, except that no such deduction shall be made for custodial parents with monthly gross incomes below the following amounts:

(1) One child — $1,150;
(2) Two children — $1,550;
(3) Three children — $1,750;
(4) Four children — $1,950;
(5) Five children — $2,150; and
(6) Six children — $2,350.
13 (b) Work related child care costs net of any adjustment for the child care tax credit shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

§48A-1B-6. Computation of child support order in sole custody cases.

1 (a) For sole custody cases, the total child support obligation consists of the basic child support obligation plus the child’s share of any unreimbursed health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court or master less any extraordinary credits agreed to by the parents or ordered by the court or master.

9 (b) In a sole custody case, the total basic child support obligation is divided between the parents in proportion to their income. From this amount is subtracted the obligor’s direct expenditures of any items which were added to the basic child support obligation to arrive at the total child support obligation.

15 (c) Child support for sole custody cases shall be calculated using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

CASE NO.____

COURT:_______________ COUNTY:______________

WEST VIRGINIA

In re the Marriage of:______________________________ Petitioner and __________________________ Respondent

<table>
<thead>
<tr>
<th>Children</th>
<th>Date of Birth</th>
<th>Children</th>
<th>Date of Birth</th>
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</table>

1. MONTHLY GROSS INCOME $ $ 

a. Minus preexisting child support payment - - 

b. Minus maintenance paid - - 

c. Minus responsibility for other children - - 

Mother Father Combined
<p>| | | |</p>
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<tbody>
<tr>
<td>2. MONTHLY ADJUSTED GROSS INCOME</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. PERCENTAGE SHARE OF INCOME (Each parent’s income from line 2 divided by Combined Income)</td>
<td>%</td>
<td>%</td>
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<tr>
<td>4. BASIC OBLIGATION (Amount from Schedule) (Apply line 2 Combined to Child Support Schedule.)</td>
<td>$</td>
<td></td>
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<tr>
<td>5. ADJUSTMENTS (Expenses paid directly by each parent) a. Work-Related Child Care Costs (Actual costs minus Federal Tax Credit.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>b. Extraordinary Health Care Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>c. Extraordinary Expenses (Agreed to by parents or by order of the court or master.)</td>
<td>$</td>
<td>$</td>
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<tr>
<td>d. Minus Extraordinary Adjustments.</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract line 5d. Add two totals for Combined amount.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)</td>
<td>$</td>
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<tr>
<td>7. EACH PARENT’S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent’s line 5e.)</td>
<td>$</td>
<td>$</td>
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<tr>
<td>9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)</td>
<td>$</td>
<td>$</td>
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Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.

PREPARED BY: Date:
(d) In a case where the actual or attributed income of a party, if factored into the computation of child support would result in the obligation of the other party being increased rather than decreased because of a self-support reserve built into the calculations, then such actual or attributed income shall not be considered.

§48A-1B-7. Shared physical custody adjustment.

(a) Child support for cases with shared physical custody shall be calculated using the Worksheet B. The following method should be used only for shared physical custody as defined in section twenty-six, article one-a of this chapter: That is, cases where each parent has the child for more than one hundred nine days per year (thirty percent). In addition, a shared physical custody adjustment shall only be made if the sum of the obligee gross adjusted monthly income and the child support order award is above two and one-half times the U.S. poverty guideline for the parent with the highest level of physical custody (if custody is not equally shared) and the number of children for whom support is being determined.

(b) The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the two amounts.

(c) Final adjustments are made by adding the obligor's share of the child's share of any unreimbursed health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court or master less any credits to the obligor for the obligor's direct expenditures on the child's unreimbursed health care expenses, and extraordinary credits agreed to by the parents or ordered by the court or master.
34. (d) Child support for shared physical custody cases shall be calculated using the following worksheet:

**WORKSHEET B: SHARED PHYSICAL CUSTODY**  
CASE NO.____

COURT:_____________ COUNTY: _______________,  
WEST VIRGINIA

In re the Marriage of: _________________ Petitioner  
and _________________ Respondent

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<tr>
<th>Children</th>
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<tr>
<th>Major</th>
<th>MINIMAL</th>
<th>PERCENTAGE</th>
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<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>%</td>
</tr>
</tbody>
</table>

1. **MONTHLY GROSS INCOME** $     $     $     
   a. Minus preexisting child support payment and maintenance paid - - - 
   b. Minus responsibility for other children - - - 

2. **MONTHLY ADJUSTED GROSS INCOME** $     $     $     

3. **PERCENTAGE SHARE OF INCOME**  
   (Each parent's income from line 2 divided by Combined Income.) % % 100%

4. **BASIC OBLIGATION** (Amount from Schedule)  
   (Apply line 2 Combined to Child Support Schedule.) $     

5. **SHARED CUSTODY BASIC OBLIGATION** (line 4 x 1.50) $     

6. **EACH PARENT'S SHARE** (Line 5 x each parent's line 3) $     $     

7. **OVERNIGHT WITH EACH PARENT** (must total 365) 365

8. **PERCENTAGE WITH EACH PARENT** (Line 7 divided by 365) % % 100%

9. **AMOUNT RETAINED** (Line 6 x line 8 for each parent) $     $     

10. **EACH PARENT'S OBLIGATION** (subtract line 9 from line 6) $     $     

11. **AMOUNT TRANSFERRED** (subtract smaller amount on line 10 from larger amount on line 10). Parent with larger amount on line 10 pays other parent the difference. $     $     

12. **ADJUSTMENTS** (Expenses paid directly by each parent)  
   a. Work-Related Child Care Costs (Actual costs minus Federal Tax Credit.) $     $     


§48A-1B-8. Split physical custody adjustment.

In cases with split physical custody, the court or master shall use Worksheet A (Sole-Parenting) as set forth in subsection (c), section six of this article to calculate a separate child support order for each parent based on the number of children in that parent’s custody. Instead of transferring the calculated orders between parents, the two orders are offset. The difference of the two orders is the child support order to be paid by the parent with the higher sole-parenting order.

§48A-1B-9. Adjustment for obligor’s social security benefits sent directly to the child.
If a proportion of the support obligor's social security benefit is paid directly to the custodian of his or her dependents who are the subject of the child support order, the following adjustment shall be made. The total amount of the social security benefit which includes the amounts paid to the support obligor and the obligee shall be counted as gross income to the support obligor. In turn, the child support order will be calculated as described in section six of this article. To arrive at the final child support amount, however, the amount of the social security benefits sent directly to the child's household will be subtracted from the child support order. If the child support order amount results in a negative amount it shall be set at zero.

§48A-1B-10. Application.

The guidelines in child support awards apply as a rebuttable presumption to all child support orders established or modified in West Virginia. The guidelines must be applied to all actions in which child support is being determined including temporary orders, interstate (URESA and UIFSA), domestic violence, foster care, divorce, nondissolution, public assistance, nonpublic assistance and support decrees arising despite nonmarriage of the parties. The guidelines must be used by the court or master as the basis for reviewing adequacy of child support levels in noncontested cases as well as contested hearings.


The provisions of a child support order may be modified if there is a substantial and continuing change of circumstances. If application of the guideline would result in a new order that is more than fifteen percent different, then the circumstances are considered to be a substantial and continuing change.

§48A-1B-12. Tax exemption for child due support.

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the custodial parent except in
cases of shared custody. In shared custody cases, these
rights shall be allocated between the parties in proportion
to their adjusted gross incomes for child support calcula-
tions. In a situation where allocation would be of no tax
benefit to a party, the court or master need make no allo-
cation to that party.


The term "indebtedness" means any legal or contractu-
al obligation incurred as follows:

(1) For the necessary support of a child with regard to
food, clothing, shelter and medical care; or

(2) For the purpose of acquisitions or additions to or
additions intended to add to the value of marital property
of the parties as defined in section one, article two, chapter
forty-eight of this code.

The court or master may disregard any debt which is
incurred with the obvious intent of decreasing child sup-
port payments.


(a) If the court or master finds that the guidelines are
inappropriate in a specific case, the court or master may
either disregard the guidelines or adjust the
guidelines-based award to accommodate the needs of the
child or children or the circumstances of the parent or
parents. In either case, the reason for the deviation and
the amount of the calculated guidelines award must be
stated on the record (preferably in writing on the
worksheet or in the order). Such findings clarify the basis
of the order if appealed or modified in the future.

(b) These guidelines do not take into account the
economic impact of the following factors and can be pos-
sible reasons for deviation:

(1) Special needs of the child or support obligor;

(2) Educational expenses for the child or the parent
(i.e. those incurred for private, parochial, or trade schools,
other secondary schools, or post-secondary education
where there is tuition or costs beyond state and local tax contributions); (3) Families with more than six children; (4) Long distance visitation costs; or (5) The child resides with third party.

§48A-1B-15. Present income as monthly amounts.

To the extent practicable, all information relating to income shall be presented to the court or master based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two and divided by twelve to arrive at a correct monthly amount. If the court or master deems appropriate, such information may be presented in such other forms as the court or master directs.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

§48A-4-4. Assignment of family law masters by geographical regions.

§48A-4-20. Circuit court review of master’s recommended order.

§48A-4-23. Family law masters fund.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

(a) The family law masters holding office on the effective date of this section by virtue of appointments made under the prior enactments of this article shall continue their service for a term of office ending on the thirtieth day of June, one thousand nine hundred ninety-eight. Before the first day of July, one thousand nine hundred ninety-eight, the governor shall appoint family law masters in such numbers and to serve from geographical regions of the state as provided for under the provisions of section four of this article, with terms commencing on the first day of July, one thousand nine hundred ninety-eight, and on a like date in every fourth year thereafter, and ending on the thirtieth day of June, two thousand two, and on a like date in every fourth year thereafter. Upon the expiration of his or her term, a family law master may continue
to perform the duties of the office until the governor
makes the appointment, or for sixty days after the date of
the expiration of the master's term, whichever is earlier. If
a vacancy occurs in the office of family law master, the
governor shall, within thirty days after such vacancy oc-
curs, fill the vacancy by appointment for the unexpired
term: Provided, That if the remaining portion of the un-
expired term to be filled is less than one year, the gover-
nor may, in his or her discretion, simultaneously appoint
an individual to the unexpired term and to the next suc-
ceeding full four-year term.

(b) An individual may be reappointed to succeeding
terms as a family law master to serve in the same or a dif-
ferent region of the state.

(c) Removal of a master during the term for which he
or she is appointed shall be as follows:

(1) Upon a recommendation by the judicial hearing
board created pursuant to the rules of procedure for the
handling of complaints against justices, judges, magistrates
and family law masters, if the supreme court of appeals
shall find that a family law master has violated the judicial
code of ethics or that the master, because of advancing
years and attendant physical or mental incapacity, should
not continue to serve, the supreme court of appeals may,
in lieu of or in addition to any disposition authorized by
such rules, remove the family law master from office; and

(2) The supreme court of appeals may remove a mas-
ter when conduct of the family law master evidences in-
competence, unsatisfactory performance, misconduct,
neglect of duty or physical or mental disability.

§48A-4-4. Assignment of family law masters by geographical
regions.

(a) On and after the first day of July, one thousand
nine hundred ninety-four, there shall be a total of
twenty-six family law masters, not more than fourteen of
whom shall be full-time masters, to serve throughout the
state. During the year immediately preceding the appoint-
ment of law masters as provided for in section one of this
article, the supreme court of appeals shall apportion the state into geographical regions which may be single-master regions or multi-master regions, or a combination of both. County boundaries shall be strictly observed and no county may be divided among two or more regions. Otherwise, in making such apportionment, the supreme court of appeals shall construct regions which provide, as nearly as is practicable, for the caseload of each master to be equal to that of other masters. Mathematical exactness as to caseload is not required and deviations from an absolute standard may be based upon concerns, other than caseload, including, but not limited to, deviations dictated by the following considerations:

(1) Judicial circuits;
(2) Geographical features which affect the time and expense of travel;
(3) Traditional patterns of practice by members of the bar; and
(4) Population variances between regions.

(b) In the region that includes Kanawha County, of the masters appointed, not less than two shall be part-time masters.

(c) Notwithstanding the provisions of subsection (a) of this section, for the time period extending from the first day of August, one thousand nine hundred ninety-six, until the thirtieth day of June, one thousand nine hundred ninety-eight, there shall temporarily be a total of twenty-seven family law masters, not more than fourteen of whom shall be full-time masters, to serve throughout the state, and the additional part-time position of family law master created by this subsection shall be assigned to the region that includes Marshall County.

(d) Nothing contained herein shall prohibit the chief justice of the supreme court of appeals from temporarily assigning a family law master from one geographical region to another geographical region, as caseload, disqualification, recusal, vacation or illness may dictate.
(e) The administrative office of the supreme court shall promulgate any procedural rule necessary to delineate the duties of the part-time and full-time law masters consistent with this article.

§48A-4-20. Circuit court review of master’s recommended order.

(a) The circuit court shall proceed to a review of the recommended order of the master when:

(1) No petition has been filed within the time allowed, or the parties have expressly waived the right to file a petition;

(2) A petition and an answer in opposition have been filed, or the time for filing an answer in opposition has expired, or the parties have expressly waived the right to file an answer in opposition, as the case may be.

(b) To the extent necessary for decision and when presented, the circuit court shall decide all relevant questions of law, interpret constitutional and statutory provisions and determine the appropriateness of the terms of the recommended order of the master.

(c) The circuit court shall examine the recommended order of the master, along with the findings and conclusions of the master, and may enter the recommended order, may recommit the case, with instructions, for further hearing before the master or may, in its discretion, enter an order upon different terms, as the ends of justice may require. Conclusions of law of the family law master shall be subject to review by the circuit court. The circuit court shall not follow the recommendation, findings and conclusions of a master found to be:

(1) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(2) Contrary to constitutional right, power, privilege or immunity;

(3) In excess of statutory jurisdiction, authority or limitations or short of statutory right;
(4) Without observance of procedure required by law;
(5) Unsupported by substantial evidence; or
(6) Unwarranted by the facts.

(d) In making its determinations under this section, the circuit court shall review the whole record or those parts of it cited by a party. If the circuit court finds that a master's recommended order is deficient as to matters which might be affected by evidence not considered or inadequately developed in the master's recommended order, the court may recommit the recommended order to the master, with instructions indicating the court's opinion, or the circuit court may proceed to take such evidence without recommitting the matter.

(e) The order of the circuit court entered pursuant to the provisions of subsection (d) of this section shall be entered not later than ten days after the time for filing pleadings or briefs has expired or after the filing of a notice or notices waiving the right to file such pleading or brief.

(f) If a case is recommitted by the circuit court, the master shall retry the matter within twenty days.

(g) At the time a case is recommitted, the circuit court shall enter appropriate temporary orders awarding custody, visitation, child support, spousal support or such other temporary relief as the circumstances of the parties may require.

§48A-4-23. Family law masters fund.

The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs received for the services of the office under this chapter to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "family law masters fund", which is hereby created. All moneys collected and received under this chapter and paid into the state treasury and credited to the "family law masters fund" shall be used by the administrative office of the supreme court of appeals solely for paying the costs associated with the duties imposed upon the family law
masters under the provisions of this chapter which require activities by the masters which are not subject to being matched with federal funds or subject to reimbursement by the federal government. Such moneys shall not be treated by the auditor and treasurer as part of the general revenue of the state.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

*§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered as such clerk the following fees, and such fees shall be paid in advance by the parties for whom such services are to be rendered:

For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, seventy-five dollars: Provided, That the fee for instituting an action for divorce shall be one hundred five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;

(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, ten dollars;

(4) For issuing an execution, ten dollars;

(5) For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees

*Clerk's Note: This section was also amended by S. B. 19 (Chapter 157), which passed prior to this act.
and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate's court, three dollars;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars:

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents;

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, fifty-five dollars;

(2) In the case of any felony, sixty-five dollars.

(d) No such clerk shall be required to handle or accept for disbursement any fees, cost or amounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, for each civil action instituted under the rules of
civil procedure, any statutory summary proceeding, any
extraordinary remedy, the docketing of civil appeals, or
any other action, cause, suit or proceeding in the circuit
court, the clerk of the court shall, at the end of each
month, pay into the funds or accounts described in this
subsection an amount equal to the amount set forth in this
subsection of every filing fee received for instituting such
action as follows:

(1) Into the regional jail and correctional facility de­
velopment fund in the state treasury established pursuant
to the provisions of section ten, article twenty, chapter
thirty-one of this code, the amount of sixty dollars;

(2) Into the court security fund in the state treasury
established pursuant to the provisions of section fourteen,
article three, chapter fifty-one of this code, the amount of
five dollars.

(b) For each divorce action instituted in the circuit
court, the clerk of the court shall, at the end of each
month, pay into the funds or accounts in this subsection
an amount equal to the amount set forth in this subsection
of every filing fee received for instituting such divorce
action as follows:

(1) Into the regional jail and correctional facility
development fund in the state treasury established pursu­
ant to the provisions of section ten, article twenty, chapter
thirty-one of this code, the amount of ten dollars;

(2) Into the special revenue account of the state trea­
sury, established pursuant to section twenty-four, article
one, chapter forty-eight of this code, an amount of thirty
dollars;

(3) Into the family law masters fund in the state trea­
sury, established pursuant to section twenty-three, article
four, chapter forty-eight-a of this code, an amount of fifty
dollars; and

(4) Into the court security fund in the state treasury,
established pursuant to the provisions of section fourteen,
article three, chapter fifty-one of this code, the amount of
five dollars.

(c) The clerk of each circuit court shall, at the end of
each month, pay into the regional jail and prison develop-
ment fund in the state treasury an amount equal to forty
dollars of every fee for service received in any criminal
case against any defendant convicted in such court and
shall pay an amount equal to five dollars of every such fee
into the court security fund in the state treasury estab-
lished pursuant to the provisions of section fourteen, arti-
cle three, chapter fifty-one of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to
a minor; penalties.

(1) A person who: (a) Persistently fails to provide
support which he or she can reasonably provide and which
he or she knows he or she has a duty to provide to a mi-
nor; or (b) is subject to court order to pay any amount for
the support of a minor child and is delinquent in meeting
the full obligation established by the order and has been
delinquent for a period of at least six months' duration, is
guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than one hundred dollars nor more
than one thousand dollars, or imprisoned in the county jail
for not more than one year, or both fined and imprisoned.

(2) A person who persistently fails to provide support
which he or she can reasonably provide and which he or
she knows he or she has a duty to provide to a minor by
virtue of a court or administrative order and the failure
results in: (a) An arrearage of not less than eight thousand
dollars; or (b) twelve consecutive months without payment
of support, is guilty of a felony and, upon conviction
thereof, shall be fined not less than one hundred dollars
nor more than one thousand dollars, or imprisoned for not
less than one year nor more than three years, or both fined
and imprisoned.
CHAPTER 111

(S. B. 590—Originating in the Committee on Finance)

[Passed March 9, 1996; in effect July 1, 1996. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend section eleven, article two, chapter eighteen of said code; to amend and reenact section one, article three of said chapter; to amend and reenact sections eighteen, twenty-two and thirty-nine, article five of said chapter; to amend article seven-a of said chapter by adding thereto two new sections, designated sections twenty-six-n and twenty-six-o; to amend and reenact section ten, article nine-a of said chapter; to further amend said article by adding thereto a new section, designated section twenty-five; to amend and reenact section two, article seventeen of said chapter; to amend and reenact section thirteen, article two, chapter eighteen-a of said code; to amend and reenact sections two, three, eight, eight-a, eight-b, eight-g, fifteen and sixteen, article four of said chapter; to further amend said article by adding thereto a new section, designated section eight-h; and to amend and reenact section eight, article five of said chapter, all relating to public education; compensation and allowances for appointive state officers; sabbatical leaves for teachers and certain aides; compensation of state superintendent of schools; kindergarten programs; specialized health procedures; establishment of summer school programs; supplemental benefits for certain teachers; foundation allowance to improve instructional programs; state allowance for state teacher of the year salary; admission of students to schools for the deaf and blind; recommended guidelines for full-day and half-day cooks; state minimum salary schedule for teachers; the principals' index; employment term and class titles of service personnel; service personnel minimum monthly salaries; seniority rights for school service personnel; determination of seniority for service personnel; limitation on number of school service personnel positions to be held by an employee; employment of service
personnel substitutes; extracurricular assignments; authority of certain aides to exercise control over pupils.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 (a) Notwithstanding any other provision of this code to the contrary enacted prior to the first day of January, one thousand nine hundred ninety-four, each of the following appointive state officers named in this subsection shall be appointed by the governor, by and with the advice
and consent of the Senate. Each of such appointive state
officers shall serve at the will and pleasure of the governor
for the term for which the governor was elected and until
the respective state officers' successors have been appoint-
ed and qualified. Each of such appointive state officers
shall hereafter be subject to the existing qualifications for
holding each such respective office and each shall have
and is hereby granted all of the powers and authority and
shall perform all of the functions and services heretofore
vested in and performed by virtue of existing law respect-
ing each such office.

Beginning on the first day of July, one thousand nine
hundred ninety-four, the annual salary of each such
named appointive state officer shall be as follows:

Administrator, division of highways, sixty-five thou-
sand dollars; administrator, division of health, fifty-seven
thousand two hundred dollars; administrator, division of
human services, forty-seven thousand eight hundred dol-
ars; administrator, state tax division, forty-nine thousand
nine hundred dollars; administrator, division of energy,
sixty-five thousand dollars; administrator, division of cor-
rections, fifty-five thousand dollars; administrator, division
of natural resources, sixty-five thousand dollars; adminis-
trator, division of public safety, sixty thousand dollars;
administrator, lottery division, sixty thousand dollars;
director, public employees insurance agency, fifty-five
thousand dollars; administrator, division of banking,
fifty-five thousand dollars; administrator, division of in-
surance, fifty-five thousand dollars; administrator, division
of culture and history, fifty thousand dollars; administra-
tor, alcohol beverage control commission, sixty thousand
dollars; administrator, division of motor vehicles, fifty-five
thousand dollars; director, division of personnel, fifty
thousand dollars; adjutant general, fifty thousand dollars;
chairman, health care cost review authority, fifty-five thou-
sand dollars; members, health care cost review authority,
fifty-one thousand two hundred dollars; director, human
rights commission, forty thousand dollars; administrator,
division of labor, fifty-five thousand dollars; administrator,
division of veterans affairs, forty thousand dollars; admin-
istrator, division of emergency services, forty thousand
dollars; members, board of parole, forty thousand dollars; members, employment security review board, seventeen thousand dollars; members, workers' compensation appeal board, seventeen thousand eight hundred dollars.

Prior to the first day of July, one thousand nine hundred ninety-four, each of the aforesaid officers shall continue to receive the annual salaries they were receiving as of the last day of December, one thousand nine hundred ninety-three.

(b) Notwithstanding any other provisions of this code to the contrary enacted prior to the first day of January, one thousand nine hundred ninety-four, each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and, prior to the first day of July, one thousand nine hundred ninety-four, each of the state officers named in this subsection shall continue to receive the annual salaries they were receiving as of the last day of December, one thousand nine hundred ninety-three, and shall thereafter be paid an annual salary as follows: Administrator, division of risk and insurance management, fifty thousand dollars; director, division of rehabilitation services, fifty-five thousand dollars; executive director, educational broadcasting authority, fifty-five thousand dollars; secretary, library commission, forty-seven thousand five hundred dollars; director, geologic and economic survey, forty-seven thousand five hundred dollars; executive director, water development authority, fifty-four thousand two hundred dollars; executive director, public defender services, fifty-five thousand dollars; director, commission on aging, forty thousand dollars; commissioner, oil and gas conservation commission, forty thousand dollars; director, farm management commission, thirty-two thousand five hundred dollars; director, railroad maintenance authority, fifty thousand dollars; executive secretary, women's commission, thirty thousand one hundred dollars; director, regional jail authority, fifty-five thousand dollars; director, hospital finance authority, twenty-five thousand eight hundred dollars.
(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless such appointive state officer shall have first filed with the state auditor and the legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The attorney general shall prepare and distribute such form to the affected spending units: Provided, That no decrease in salary shall be effective for any current appointive state officer appointed prior to the first day of January, one thousand nine hundred eighty-nine: Provided, however, That such decreases shall take effect at such time as any appointive office is vacated: Provided further, That the increase provided for the state superintendent of schools enacted during the regular session, one thousand nine hundred ninety-four, should not become effective until the first day of January, one thousand nine hundred ninety-seven.

CHAPTER 18. EDUCATION.

Article
2. State Board of Education.
5. County Board of Education.
7A. State Teachers Retirement System.
9A. Public School Support.
17. West Virginia Schools for the Deaf and the Blind.

ARTICLE 2. STATE BOARD OF EDUCATION.


(a) The state board shall by the first day of December, one thousand nine hundred eighty-eight, establish by policy a sabbatical leave program. Such program participation shall be considered optional for each county board. Individuals employed as professional educators, as defined in section one, article one, chapter eighteen-a of this code, and aides shall be eligible for the sabbatical leave program: Provided, That such aides have a cumulative grade point of three and two tenths on a possible four point scale pursuant to successful completion of at least sixty-four semester hours of course work at an approved institution
of higher education. Such policy shall establish the edu-
cational objectives, peer selection criteria and other guide-
lines the board deems necessary. The sabbatical leave
policy shall provide that not less than ninety-five percent
of sabbatical leaves granted shall be for classroom teachers
and such policy shall not provide for the granting of sab-
batical leave to any employee who has fewer than ten
years of West Virginia public school service, nor shall
compensation during such leave be more than one half of
the employee's regular salary. While on sabbatical leave
the employee shall be deemed to be a full-time employee
for purposes of years of experience and participation in
the teachers retirement system and the public employee
insurance program. Any employee receiving a sabbatical
leave shall be required to return to employment by the
board which granted the leave for a period of at least one
year or repay the compensation and benefits received
during that time and have deducted the retirement credit
and years of service credit accrued during sabbatical leave:
Provided, however, That sabbatical leaves for teachers and
certain aides shall be optional by the respective boards.

(b) Notwithstanding any other provision of this code
to the contrary, if the state teacher of the year either works
with programs approved by the state department or attends
school at a college or university to further his or her edu-
cation, the teacher shall receive a sabbatical from his or
her position for up to one year in which the teacher has
been selected as state teacher of the year: Provided, That
if the state teacher of the year chooses to take a sabbatical,
then the state department shall provide the county from
where the teacher is taking the sabbatical with an allow-
ance equal to the state average contractual salary for
teachers.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling
expenses; office and residence.

There shall be appointed by the state board a state
superintendent of schools. He shall be a person of good
moral character, of recognized ability as a school adminis-
trator, holding at least a master's degree in educational
administration, and shall have had not less than five years
of experience in public school work. He shall receive an
annual salary set by the state board, to be paid monthly:
Provided, That the annual salary may not exceed one
hundred thousand dollars. The state superintendent shall
also receive necessary traveling expenses incident to the
performance of his duties, the same to be paid out of the
general school fund upon warrants of the state auditor.
The superintendent shall have his office at the state capital.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18. Kindergarten programs.
§18-5-22. Medical and dental inspection; school nurses; specialized health
procedures; establishment of council of school nurses.
§18-5-39. Establishment of summer school programs; tuition.

§18-5-18. Kindergarten programs.

1 County boards shall provide by the school year one
2 thousand nine hundred eighty-three—eighty-four, and
3 continue thereafter, kindergarten programs for all children
4 who shall have attained the age of five prior to the first
day of September of the school year in which the pupil
6 enters such kindergarten program and may establish kin-
dergarten programs designed for children below the age
8 of five: Provided, That beginning with the school year
9 one thousand nine hundred ninety-six—ninety-seven,
such programs shall be full-day everyday: Provided, how-
ever, That nothing contained herein shall prevent the state
12 superintendent from granting an extension to those coun-
ties currently with building or renovation projects that will
15 provide adequate space or counties having at least two
percent net enrollment increase over the previous five
18 years. The county board must apply with the supporting
data to meet the criteria for which they are eligible on or
19 before the twenty-fifth day of March for the following
school year. The state superintendent shall grant or deny
the requested waiver on or before the fifteenth day of
April of that same year.

22 Persons employed as kindergarten teachers, as distin-
guished from paraprofessional personnel, shall be re-
quired to hold a certificate valid for teaching at the as-
signed level as prescribed by regulations established by
the state board. The state board shall establish and pre-
scribe guidelines and criteria setting forth the minimum
requirements for all paraprofessional personnel employed
in kindergarten programs established pursuant to the pro-
visions of this section and no such paraprofessional per-
sonnel shall be employed in any kindergarten program
unless he meets such minimum requirements.

The state board with the advice of the state superinten-
dent of free schools shall establish and prescribe guide-
lines and criteria relating to the establishment, operation
and successful completion of kindergarten programs in
accordance with the other provisions of this section.
Guidelines and criteria so established and prescribed are
also intended to serve for the establishment and operation
of nonpublic kindergarten programs and shall be used for
the evaluation and approval of such programs, provided
application for such evaluation and approval is made in
writing to the state board by proper authorities in control
of such programs. The state superintendent of free
schools at intervals not to exceed two years shall publish a
list of nonpublic kindergarten programs that have been
approved in accordance with the provisions of this section
and a list of Montessori kindergartens established and
operated in accordance with usual and customary practices
for the use of the Montessori method. Teachers who have
training or experience in the use of the Montessori meth-
od of instruction for kindergartens shall be deemed to be
approved to teach in such kindergartens using the Montes-
sori method without additional certification.

Pursuant to such guidelines and criteria, and only
pursuant to such guidelines and criteria, the county boards
may establish programs taking kindergarten to the homes
of the children involved, using educational television,
paraprofessional personnel in addition to and to supple-
ment regularly certified teachers, mobile or permanent
classrooms and other means developed to best carry kin-
dergarten to the child in its home and enlist the aid and
involvement of its parent or parents in presenting the pro-
garm to the child; or may develop programs of a more
formal kindergarten type, in existing school buildings, or
both, as such county board may determine, taking into
collection the cost, the terrain, the existing available
facilities, the distances each child may be required to travel,
the time each child may be required to be away from
home, the child's health, the involvement of parents and
such other factors as each county board may find pertinent. Such determinations by any county board shall be
final and conclusive.

Funds for implementing the kindergarten programs
during the fiscal year one thousand nine hundred
seventy-two, and thereafter, shall be allocated to counties
from a special appropriation to the state department from
the general revenue fund: Provided, That except for ex-
penditures from the general revenue funds for regional
kindergarten demonstration centers, in no event shall any
state money from the general fund be expended under the
provisions of this section unless federal funds are available
for the purposes of this section.

Allocations to counties will be made on the basis of
approved kindergarten programs. The state board shall
establish criteria and standards necessary to guide counties
in developing approvable kindergarten programs and shall
determine funding levels of said programs on local oper-
ating costs.

An additional appropriation shall be made to the state
department from the general revenue fund to establish and
operate during the fiscal year one thousand nine hundred
seventy-two, regional kindergarten demonstration centers
in educational regions three, four, five, six and seven, and
thereafter in regions one through seven. Said funds shall
be allocated to said regions for establishing and operating
regional demonstration centers in accordance with criteria
and standards established by the state board. Said region-
al centers shall be established to provide exemplary and
innovative kindergarten programs, to provide laboratory
experiences for preservice and in-service education for
professional personnel and staff development programs
for training paraprofessional personnel, to establish orga-
nizational and administrative machinery designed to pro-
mote cooperation between and among all agencies in-
involved in the education and development of young children and to promote cooperation between counties in providing high cost supervisory, developmental, research and evaluative services not currently available to individual counties.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

County boards shall provide proper medical and dental inspections for all pupils attending the schools of their county and shall further have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

Each county board shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: *Provided,* That each county shall employ full time at least one school nurse: *Provided, however,* That a county board may contract with a public health department for services considered equivalent to those required by this section in accordance with a plan to be approved by the state board: *Provided further,* That the state board shall promulgate rules requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils.

Any person employed as a school nurse shall be a registered professional nurse properly licensed by the West Virginia board of examiners for registered professional nurses in accordance with article seven, chapter thirty of this code.

Specialized health procedures that require the skill, knowledge and judgment of a licensed health professional, shall be performed only by school nurses, other licensed school health care providers as provided for in this section, or school employees who have been trained and retrained every two years who are subject to the supervision and
approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student’s physician, parents and in some instances an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, considered competent, have consultation with, and be monitored or supervised by the school nurse: Provided, That nothing herein shall prohibit any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section "specialized health procedures" means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding. "School employee" means "teachers", as defined in section one, article one of this chapter and "aides", as defined in section eight, article four, chapter eighteen-a of this code.

Any school employee who elects, or is required by this section, to undergo training or retraining to provide, in the manner specified in this section, the specialized health care procedures for those students for which the selection has been approved by both the principal and the county board, shall receive additional pay of at least one pay grade higher than the highest pay grade for which the employee is paid: Provided, That any training required in this section may be considered in lieu of required in-service training of the school employee and a school employee may not be required to elect to undergo the training or retraining: Provided, however, That commencing with the first day of July, one thousand nine hundred eighty-nine, any newly employed school employee in the field of special education shall be required to undergo the training and retraining as provided for in this section: Provided further, That if an employee who holds a class title of an aide is employed in a school and such aide has received the training, pursuant to this section, then an employee in the field of special education shall not be required to perform the specialized health care procedures.
Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses established under this section.

There shall be established a council of school nurses which shall be convened by the state board of education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the director of the state division of health who shall consult with the state department of education. The state division of health then has the authority to promulgate rules to implement the training and to create standards used by those school nurses and school employees performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

The state board of education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the council of school nurses and implemented by the state division of health.

§18-5-39. Establishment of summer school programs; tuition.

Inasmuch as the present county school facilities for the most part lie dormant and unused during the summer months, and inasmuch as there are many students who are in need of remedial instruction and others who desire accelerated instruction, it is the purpose of this section to provide for the establishment of a summer school program, which is to be separate and apart from the full school term as established by each county.

The board of any county has the authority to establish a summer school program utilizing the public school facilities and to charge tuition for students who attend the summer school. The tuition may not exceed in any case the actual cost of operation of the summer school program: Provided, That any deserving pupil whose parents, in the judgment of the board, are unable to pay the tuition, may attend the summer school program at a reduced
charge or without charge. The county board shall have
the authority to determine the term and curriculum of the
summer schools based upon the particular needs of the
individual county. The curriculum may include, but is not
limited to, remedial instruction, accelerated instruction and
the teaching of manual arts. The term of the summer
school program may not be established in such a manner
as to interfere with the regular school term.

The county boards may employ any certified teacher
as teachers for this summer school program. Certified
teachers employed by the county board to teach in the
summer school program shall be paid an amount to be
determined by the county board and shall enter into a
contract of employment in such form as is prescribed by
the county board: Provided, That teachers who teach
summer courses of instruction which are offered for credit
and which are taught during the regular school year shall
be paid at the same daily rate they would receive if paid in
accordance with the then current minimum monthly salary
in effect for teachers in that county.

Any funds accruing from the tuitions shall be credited
to and expended within the existing framework of the
general current expense fund of the county board.

Notwithstanding any other provision of this code to
the contrary, the board shall fill professional positions
established pursuant to the provisions of this section on
the basis of certification and length of time the profession-
al has been employed in the county's summer school pro-
gram. In the event that no employee who has been previ-
ously employed in the summer school program holds a
valid certification or licensure, a board shall fill the posi-
tion as a classroom teaching position in accordance with
section eight-b, article four, chapter eighteen-a of this
code.

Notwithstanding any other provision of the code to
the contrary, the county board is authorized to employ
school service personnel to perform any related duties
outside the regular school term as defined in section eight,
article four, chapter eighteen-a of this code. An employee
who was employed in any service personnel job or posi-
tion during the previous summer shall have the option of retaining the job or position if the job or position exists during any succeeding summer. If the employee is unavailable or if the position is newly created, the position shall be filled pursuant to section eight-b, article four, chapter eighteen-a of this code. When any summer employee who is employed in a summer position is granted a leave of absence for the summer months, the board shall give regular employment status to the employee for that summer position which shall be filled under the procedure set forth in section eight-b, article four, chapter eighteen-a of this code. The summer employee on leave of absence shall have the option of returning to that summer position if the position exists the succeeding summer or whenever the position is reestablished if it were abolished. The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed and persons employed in those positions are entitled to all rights, privileges and benefits provided in sections five-b, eight, eight-a, ten and fourteen, article four, chapter eighteen-a of this code: Provided, That those persons are not entitled to a minimum employment term of two hundred days for their summer position.

If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in that position in previous summers, the reductions in force and priority in reemployment to that summer position shall be based upon the length of service time in the particular summer program or classification.

For the purpose of this section, summer employment for service personnel includes, but is not limited to, filling jobs and positions as defined in section eight, article four, chapter eighteen-a of this code and especially established for and which are to be predominantly performed during the summer months to meet the needs of a county board.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26n. Supplemental benefits for certain teachers who retired on or after July 1, 1984, but prior to July 1, 1986.
§18-7A-26o. Supplemental benefits for certain teachers who retired prior to July 1, 1986.

§18-7A-26n. Supplemental benefits for certain teachers who retired on or after July 1, 1984, but prior to July 1, 1986.

As an additional supplement to other retirement allowances provided, each annuitant who retired on or after the first day of July, one thousand nine hundred eighty-four, and before the first day of July, one thousand nine hundred eighty-six, shall receive a monthly amount equal to two dollars multiplied by his or her total service credit.

§18-7A-26o. Supplemental benefits for certain teachers who retired prior to July 1, 1986.

As an additional supplement to other retirement allowances provided, each annuitant who retired before the first day of July, one thousand nine hundred eighty-six, and who is receiving a monthly pension of three hundred dollars or less, shall receive a monthly total amount equal to one dollar multiplied by his or her total service credit.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.


§18-9A-10. Foundation allowance to improve instructional programs.

(a) For the school year beginning on the first day of July, one thousand nine hundred ninety-four, and thereafter, the sum of the allocations shall be in an amount at least equal to the amount appropriated by the Legislature, in addition to funds which accrue from balances in the general school fund, or from appropriations for such purposes:

(1) One hundred fifty thousand dollars shall be allocated to each county;

(2) Distribution to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding
year and the county's second month net enrollment.

Moneys allocated by provision of this section shall be used to improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided, That notwithstanding any other provision of this code to the contrary, moneys allocated by provision of this section may also be used in the implementation and maintenance of the uniform integrated regional computer information system; and

(3) Up to twenty-five percent of this allocation may be used to employ professional educators and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: Provided, That for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, up to an additional twenty-five percent of this allocation may be used to employ classroom teachers, as defined in section one, article one, chapter eighteen-a of this code, and/or service personnel in counties after all applicable provisions of sections four and five of this article have been fully utilized: Provided, however, That service personnel employed with the additional twenty-five percent for the school year beginning on the first day of July, one thousand nine hundred ninety-six, only, may not include directors, coordinators or supervisors.

Prior to the use of any funds from this section for personnel costs, the county board must receive authorization from the state superintendent of schools. The state superintendent shall require the district board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; and (3) sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local district board budget. District boards shall make application for available funds for the next fiscal year by the first day of May of each year. On or before the first day of June, the state superintendent shall review all applications
and notify applying district boards of the distribution of
the allocation: Provided, That for the school year begin-
ing on the first day of July, one thousand nine hundred
ninety-three, only, the state superintendent shall review all
applications and notify applying district boards of the
distribution of the allocation on or before the first day of
July, one thousand nine hundred ninety-three. Such
funds shall be distributed during the fiscal year as appro-
priate. The state superintendent shall require the county
board to demonstrate the need for an allocation for per-
sonnel based upon the county's inability to meet the re-
quirements of state law or state board policy: Provided,
however, That the funds available for personnel under this
section may not be used to increase the total number of
professional noninstructional personnel in the central
office beyond four. Such instructional improvement plan
shall be made available for distribution to the public at the
office of each affected county board.

(b) Commencing with the school year beginning on
the first day of July, one thousand nine hundred
ninety-three, an amount not less than the amount required
to meet debt service requirements on any revenue bonds
issued prior to the first day of January, one thousand nine
hundred ninety-four, and the debt service requirements on
any revenue bonds issued for the purpose of refunding
revenue bonds issued prior to the first day of January, one
thousand nine hundred ninety-four, shall be paid into the
school building capital improvements fund created by
section six, article nine-d of this chapter, and shall be used
solely for the purposes of said article. The school build-
ing capital improvements fund shall not be utilized to
meet the debt services requirement on any revenue bonds
or revenue refunding bonds for which moneys contained
within the school building debt service fund have been
pledged for repayment pursuant to said section.

§18-9A-25. State allowance for state teacher of the year sala-
ry.

To provide for the support of a sabbatical for the state
teacher of the year, there shall be appropriated for that
purpose from the general revenue fund an amount equal
to the state average contractual salary for teachers for the year in which the teacher is selected as state teacher of the year.

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND THE BLIND.

§18-17-2. Admission and record of applicants; special programs and services.

Deaf and/or blind youth residents in the state, between the ages of five and twenty-three, inclusive, shall be enrolled in the schools on application to the superintendent, until the schools are filled. Applicants shall be admitted by the superintendent on the basis of need and degree of impairment as determined by the schools' admissions committee. It shall be the duty of the superintendent to keep a careful record of the names of all applicants with the dates of their admission and discharge, their ages, post-office addresses, the names of their parents or guardians, and the degree, cause and circumstances of their deafness or blindness.

Nothing in this section shall be construed to prevent the school from providing special education programs including, but not limited to, classes, parent education, home teaching or visiting teacher services for deaf and blind children from birth. The schools may also enter into contractual arrangements with counties to provide evaluation, short-term instruction and other educational services, including direct instruction.

Any deaf or blind youth who is not a resident of the state of West Virginia may apply to the state board for admission to the school. The state board may approve such admission. Provided, That such youth shall be required to pay all related costs of attending the school.
ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-13. Recommended guidelines for full-day and half-day cooks.

The following guidelines are optional guidelines that county boards may use when scheduling full-day and half-day cooks:

<table>
<thead>
<tr>
<th>Number of Meals</th>
<th>Number of Cooks</th>
<th>Average Number of Meals Served Per Cook's Hours Worked</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-90</td>
<td>1</td>
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</tr>
<tr>
<td>91-135</td>
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<td>12.00</td>
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<tr>
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<tr>
<td>181-225</td>
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<td>12.00</td>
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<tr>
<td>226-270</td>
<td>3</td>
<td>12.00</td>
</tr>
<tr>
<td>271-315</td>
<td>3.5</td>
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<td>316-360</td>
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<td>361-405</td>
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<td>406-450</td>
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<td>12.00</td>
</tr>
<tr>
<td>451-495</td>
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<td>12.00</td>
</tr>
<tr>
<td>496-540</td>
<td>6</td>
<td>12.00</td>
</tr>
<tr>
<td>541-585</td>
<td>6.5</td>
<td>12.00</td>
</tr>
<tr>
<td>586-630</td>
<td>7</td>
<td>12.00</td>
</tr>
<tr>
<td>631-675</td>
<td>7.5</td>
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<td>676-720</td>
<td>8</td>
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<td>721-765</td>
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<td>811-855</td>
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<tr>
<td>856-900</td>
<td>10</td>
<td>12.00</td>
</tr>
</tbody>
</table>
A meal prepared for a school lunch shall be established as a whole meal. Other meals shall be equal to three fourths of a school lunch meal.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.
§18A-4-3. State minimum annual salary increments for principals and assistant principals.
§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-8b. Seniority rights for school service personnel.
§18A-4-8g. Determination of seniority for service personnel.
§18A-4-8h. Limitation on number of school service personnel positions to be held by an employee.
§18A-4-15. Employment of service personnel substitutes.
§18A-4-16. Extracurricular assignments.

§18A-4-2. State minimum salaries for teachers.

(a) Each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

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<th>Exp.</th>
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<th>Class (2)</th>
<th>Class (3)</th>
<th>Class (4)</th>
<th>Class (5)</th>
<th>Class (6)</th>
<th>Class (7)</th>
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</table>
§18A-4-3. State minimum annual salary increments for principals and assistant principals.

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, one thousand nine hundred ninety-six, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal, a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred ninety-six, from state funds appropriated for the salary increments.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment in this section for each principal shall be determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of the principal as prescribed in this article, by the appropriate percentage rate prescribed in this section according to the number of teachers supervised.

---

**STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS**

<table>
<thead>
<tr>
<th>No. of Teachers</th>
<th>Rates</th>
</tr>
</thead>
<tbody>
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<tr>
<td></td>
<td>1-7</td>
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<tr>
<td>26</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>8-14</td>
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<td>15-24</td>
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<td>30</td>
<td>39-57</td>
</tr>
<tr>
<td>31</td>
<td>58 and up</td>
</tr>
</tbody>
</table>

The salary increment in this section for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for the principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: *Provided,* that if there is a change in circumstances because of consolidation or catastrophe, the county board shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county may reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred ninety-six, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making the reduction.
Nothing in this section prevents a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-8. Employment term and class titles of service personnel; definitions.

The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may be no less than ten months. A month is defined as twenty employment days: Provided, That the county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

Service personnel employed in the same classification for more than the two hundred-day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred-day minimum employment term.

No service employee, without his or her agreement, may be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one half day of work for each day he or she reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

Custodians, aides, maintenance, office and school lunch employees required to work a daily work schedule
that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds: Provided, That when engaged in duties of transporting students exclusively, aides shall not be regarded as working an interrupted schedule.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, the employee's salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon the employee's advanced classification and allowable years of employment.

An employee's contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel.

"Years of employment" means the number of years which an employee classified as service personnel has been employed by a board in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States, if the employee were employed at the time of his or her induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

"Class title" means the name of the position or job held by service personnel.
"Accountant I" means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

"Accountant III" means personnel who are employed in the county board office to manage and supervise accounts payable and/or payroll procedures.

"Aide I" means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

"Aide II" means those personnel referred to in the "Aide I" classification who have completed a training program approved by the state board, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title may be employed as an aide in any special education program.

"Aide III" means those personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate, and have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year's experience as an aide in special education.

"Aide IV" means personnel referred to in the "Aide I" classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.
"Audiovisual technician" means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

"Auditor" means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

"Autism mentor" means personnel who work with autistic students and who meet standards and experience to be determined by the state board: Provided, That the state board shall determine these standards and experience on or before the first day of July, one thousand nine hundred ninety-two: Provided, however, That if any employee has held or holds an aide title and becomes employed as an autism mentor, the employee shall hold a multiclassification status that includes aide and autism mentor titles, in accordance with section eight-b of this article.

"Braille or sign language specialist" means personnel employed to provide braille and/or sign language assistance to students: Provided, That if any employee has held or holds an aide title and becomes employed as a braille or sign language specialist, the employee shall hold a multiclassification status that includes aide and braille or sign language specialist title, in accordance with section eight-b of this article.

"Bus operator" means personnel employed to operate school buses and other school transportation vehicles as provided by the state board.

"Buyer" means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

"Cabinetmaker" means personnel employed to construct cabinets, tables, bookcases and other furniture.

"Cafeteria manager" means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approv-
ing requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

"Computer operator" means qualified personnel employed to operate computers.

"Cook I" means personnel employed as a cook's helper.

"Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if the personnel have not been elevated to this classification within that period of time.

"Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

"Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.
"Custodian I" means personnel employed to keep buildings clean and free of refuse.

"Custodian II" means personnel employed as a watchman or groundsman.

"Custodian III" means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

"Custodian IV" means personnel employed as head custodians. In addition to providing services as defined in "Custodian III", their duties may include supervising other custodian personnel.

"Director or coordinator of services" means personnel who are assigned to direct a department or division. Nothing herein may prohibit professional personnel or professional educators as defined in section one, article one of this chapter, from holding this class title, but professional personnel may not be defined or classified as service personnel unless the professional personnel held a service personnel title under this section prior to holding class title of "director or coordinator of services": Provided, That funding for professional personnel in positions classified as directors or coordinators of services who were assigned prior to the first day of May, one thousand nine hundred ninety-four, may not be required to be redirected from service personnel categories as a result of this provision until the first day of July, one thousand nine hundred ninety-six. Thereafter, directors or coordinators of service positions shall be classified as either a professional personnel or service personnel position for state aid formula funding purposes and funding for directors or coordinators of service positions shall be based upon the employment status of the director or coordinator either as a professional personnel or service personnel.

"Draftsman" means personnel employed to plan, design and produce detailed architectural/engineering drawings.
"Electrician I" means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

"Electrician II" means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

"Electronic technician I" means personnel employed at the apprentice level to repair and maintain electronic equipment.

"Electronic technician II" means personnel employed at the journeyman level to repair and maintain electronic equipment.

"Executive secretary" means personnel employed as the county school superintendent's secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

"Food services supervisor" means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system's food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports.

"Foremen" means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

"General maintenance" means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

"Glazier" means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

"Graphic artist" means personnel employed to prepare graphic illustrations.
"Groundsmen" means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

"Handyman" means personnel employed to perform routine manual tasks in any operation of the county school system.

"Heating and air conditioning mechanic I" means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heating and air conditioning mechanic II" means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

"Heavy equipment operator" means personnel employed to operate heavy equipment.

"Inventory supervisor" means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

"Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.
"Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

"Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

"Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

"Mechanic assistant" means personnel employed as a mechanic apprentice and helper.

"Multiclassification" means personnel employed to perform tasks that involve the combination of two or more class titles in this section. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.

"Office equipment repairman I" means personnel employed as an office equipment repairman apprentice or helper.

"Office equipment repairman II" means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

"Painter" means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

"Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervi-
tion of pupils under the direction of a principal, a teacher
or another designated professional educator: Provided,
That no person employed on the effective date of this
section in the position of an aide may be reduced in force
or transferred to create a vacancy for the employment of a
paraprofessional: Provided, however, That if any employ-
ee has held or holds an aide title and becomes employed
as a paraprofessional, the employee shall hold a
multiclassification status that includes aide and paraprofes-
sional titles in accordance with section eight-b of this arti-
cle: Provided further, That once an employee who holds
an aide title becomes certified as a paraprofessional and is
required to perform duties that may not be performed by
an aide without paraprofessional certification, he or she
shall receive the paraprofessional title pay grade.

"Plumber I" means personnel employed as an appren-
tice plumber and helper.

"Plumber II" means personnel employed as a journey-
man plumber.

"Printing operator" means personnel employed to
operate duplication equipment, and as required, to cut,
collate, staple, bind and shelve materials.

"Printing supervisor" means personnel employed to
supervise the operation of a print shop.

"Programmer" means personnel employed to design
and prepare programs for computer operation.

"Roofing/sheet metal mechanic" means personnel
employed to install, repair, fabricate and maintain roofs,
gutters, flashing and duct work for heating and ventilation.

"Sanitation plant operator" means personnel employed
to operate and maintain a water or sewage treatment plant
to ensure the safety of the plant's effluent for human con-
sumption or environmental protection.

"School bus supervisor" means qualified personnel
employed to assist in selecting school bus operators and
routing and scheduling of school buses, operate a bus
when needed, relay instructions to bus operators, plan
emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

"Secretary I" means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

"Secretary II" means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent the employees from holding or being elevated to a higher classification.

"Secretary III" means personnel assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of "Secretary II" or "Secretary III" herein for eight years.

"Supervisor of maintenance" means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system.
"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee is, notwithstanding any provisions in this code to the contrary, entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by the job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order county boards to correct immediately
any improper classification matter and with the assistance
of the attorney general shall take any legal action neces-
sary against any county board to enforce the order.

No service employee, without his or her written con-
sent, may be reclassified by class title, nor may a service
employee, without his or her written consent, be relegated
to any condition of employment which would result in a
reduction of his or her salary, rate of pay, compensation
or benefits earned during the current fiscal year or which
would result in a reduction of his or her salary, rate of pay,
compensation or benefits for which he or she would quali-
fy by continuing in the same job position and classifica-
tion held during that fiscal year and subsequent years.

Any board failing to comply with the provisions of
this article may be compelled to do so by mandamus, and
is liable to any party prevailing against the board for court
costs and the prevailing party's reasonable attorney fee, as
determined and established by the court.

Notwithstanding any provisions in this code to the
contrary, service personnel who hold a continuing contract
in a specific job classification and who are physically
unable to perform the job's duties as confirmed by a phy-
sician chosen by the employee shall be given priority
status over any employee not holding a continuing con-
tract in filling other service personnel job vacancies if
qualified as provided in section eight-e of this article.

§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE

2 Years of

3 Employment

4 A  B  C  D  E  F

5 0 1,040.00 1,060.00 1,100.00 1,150.00 1,200.00 1,260.00

6 1 1,066.00 1,086.00 1,126.00 1,176.00 1,226.00 1,286.00

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<td>Autism Mentor</td>
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<td>Braille or Sign Language Specialist</td>
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90 Clerk II .................................................. C
91 Computer Operator ..................................... E
92 Cook I .................................................... A
93 Cook II .................................................... B
94 Cook III ................................................... C
95 Crew Leader .............................................. F
96 Custodian I ............................................... A
97 Custodian II ............................................... B
98 Custodian III .............................................. C
99 Custodian IV ............................................. D
100 Director or Coordinator of Services .............. H
101 Draftsman ................................................ D
102 Electrician I ............................................ F
103 Electrician II ............................................ G
104 Electronic Technician I .............................. F
105 Electronic Technician II ............................. G
106 Executive Secretary .................................. G
107 Food Services Supervisor ............................ G
108 Foreman ................................................... G
109 General Maintenance ................................. C
110 Glazier .................................................... D
111 Graphic Artist .......................................... D
112 Groundsman ............................................. B
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<td>135</td>
<td>Programmer</td>
<td>H</td>
</tr>
<tr>
<td>136</td>
<td>Roofing/Sheet Metal Mechanic</td>
<td>F</td>
</tr>
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<td>137</td>
<td>Sanitation Plant Operator</td>
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<tr>
<td>138</td>
<td>School Bus Supervisor</td>
<td>E</td>
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<td>139</td>
<td>Secretary I</td>
<td>D</td>
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</table>
(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade" set forth in this section.

(2) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) An additional ten dollars per month shall also be added to the minimum monthly pay of each service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(4) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.
(5) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

(6) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid shall be paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(7) No service employee may have his or her daily work schedule changed during the school year without the employee's written consent, and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(8) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if so requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or
related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee's regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of certificated professional personnel" means that certificated professional personnel is present, with and accompanying the aide.

§18A-4-8b. Seniority rights for school service personnel.
A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight of this article, that relates to the promotion or vacancy. If requested by the employee, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he or she applies.

Applicants shall be considered in the following order:

1. Regularly employed service personnel;
2. Service personnel whose employment has been discontinued in accordance with this section;
3. Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
4. Substitute service personnel; and
5. New service personnel.

The county board may not prohibit a service employee from retaining or continuing his employment in any positions or jobs held prior to the effective date of this section and thereafter.

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category of employment and shall include a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment. Each class title
listed in section eight of this article shall be considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which shall be considered a single classification of employment. The cafeteria manager class title shall be included in the same classification category as cooks. The executive secretary class title shall be included in the same classification category as secretaries. Paraprofessional, autism mentor and braille or sign language specialist class titles shall be included in the same classification category as aides.

For purposes of determining seniority under this section an employee's seniority begins on the date that he or she enters into his assigned duties.

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle then shall be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, "extra-duty assignments" are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

Boards shall be required to post and date notices of all job vacancies of established existing or newly created positions in conspicuous working places for all school service employees to observe for at least five working days. The notice of the job vacancies shall include the job description, the period of employment, the amount of pay
and any benefits and other information that is helpful to
the employees to understand the particulars of the job.
After the five day minimum posting period all vacancies
shall be filled within twenty working days from the post-
ing date notice of any job vacancies of established existing
or newly created positions.

All decisions by county boards concerning reduction
in work force of service personnel shall be made on the
basis of seniority, as provided in this section.

The seniority of any service personnel shall be deter-
mined on the basis of the length of time the employee has
been employed by the county board within a particular
job classification. For the purpose of establishing seniori-
ty for a preferred recall list as provided in this section,
when an employee has been employed in one or more
classifications, the seniority accrued in each previous clas-
sification shall be retained by the employee.

If a county board is required to reduce the number of
employees within a particular job classification, the em-
ployee with the least amount of seniority within that classi-
fication or grades of classification shall be properly re-
leased and employed in a different grade of that classifica-
tion if there is a job vacancy: Provided, That if there is no
job vacancy for employment within the classification or
grades of classification, he or she shall be employed in
any other job classification which he or she previously
held with the county board if there is a vacancy and shall
retain any seniority accrued in the job classification or
grade of classification.

If two or more employees accumulate identical seniori-
ity, the priority shall be determined by a random selection
system established by the employees and approved by the
county board.

All employees whose seniority with the county board
is insufficient to allow their retention by the county board
during a reduction in work force shall be placed upon a
preferred recall list and shall be recalled to employment
by the county board on the basis of seniority.
Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any lateral position for which the employee is qualified or to a lateral area for which an employee has certification and/or licensure.

Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

The county board shall notify all employees on the preferred recall list of all position openings that from time to time exist. The notice shall be sent by certified mail to the last known address of the employee; it is the duty of each such employee to notify the county board of any change in the address of the employee.

No position openings may be filled by the county board, 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.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party’s reasonable attorney fee, as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds. Further, the board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8g. Determination of seniority for service personnel.

The seniority for service personnel shall be determined in the following manner:

Seniority accumulation for a regular school service employee begins on the date the employee enters upon regular employment duties pursuant to a contract as pro-
vided in section five, article two of this chapter and con-

 tinues until the employee's employment as a regular employ-

 ee is severed with the county board. Seniority shall not

 cease to accumulate when an employee is absent without

 pay as authorized by the county board or the absence is

 due to illness or other reasons over which the employee

 has no control as authorized by the county board. Senior-

 ity accumulation for a substitute employee shall begin

 upon the date the employee enters upon the duties of a

 substitute as provided in section fifteen of this article, after

 executing with the board a contract of employment as

 provided in section five, article two of this chapter. The

 seniority of a substitute employee, once established, shall

 continue until such employee enters into the duties of a

 regular employment contract as provided in section five, 

 article two of this chapter or employment as a substitute

 with the county board is severed. Seniority of a regular or

 substitute employee shall continue to accumulate except

 during the time when an employee is willfully absent from

 employment duties because of a concerted work stoppage

 or strike or is suspended without pay.

 For all purposes including the filling of vacancies and

 reduction in force, seniority shall be accumulated within

 particular classification categories of employment as those

 classification categories are referred to in section eight-e

 of this article: Provided. That when implementing a re-

 duction in force, an employee with the least seniority with-

 in a particular classification category shall be properly

 released and placed on the preferred recall list. The par-

 ticular classification title held by an employee within the

 classification category shall not be taken into consider-

 ation when implementing a reduction in force.

 On or before the first day of September and the fif-

 teenth day of January of each school year, county boards

 shall post at each county school or working station the 

 current seniority list or lists of each school service classifi-

 cation. Each list shall contain the name of each regularly

 employed school service personnel employed in each

 classification and the date that each employee began per-

 forming his or her assigned duties in each classification. 

 Current seniority lists of substitute school service person-


nel shall be available to employees upon request at the county board office.

The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment shall be calculated as follows:

The county board shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return to the class title or classification category of employment. This number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date. The seniority of an employee who has had a break in the accumulation of seniority as a result of being willfully absent from employment duties because of a concerted work stoppage or strike shall be calculated in the same manner.

A substitute school service employee shall acquire regular employment status and seniority if said employee receives a position pursuant to subsections (2) and (5), section fifteen of this article: Provided, That a substitute employee who accumulates regular employee seniority while holding a position acquired pursuant to said subsections shall simultaneously accumulate substitute seniority. County boards shall not be prohibited from providing any benefits of regular employment for substitute employees, but the benefits shall not include regular employee status and seniority.

If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the county board.

A board shall conduct the random selection within thirty days upon the employees establishing an identical seniority date. All employees with an identical seniority
date within the same class title or classification category shall participate in the random selection. As long as the affected employees hold identical seniority within the same classification category, the initial random selection conducted by the board shall be permanent for the duration of the employment within the same classification category of the employees by the board. This random selection priority shall apply to the filling of vacancies and to the reduction in force of school service personnel: Provided, That if another employee or employees subsequently acquire seniority identical to the employees involved in the original random selection, a second random selection shall be held within thirty days to determine the seniority ranking of the new employee or employees within the group. The priority between the employees who participated in the original random selection shall remain the same. The second random selection will be performed by placing numbered pieces of paper equal to the number of employees with identical seniority in a container. The employees who were not involved in the original random selection will draw a number from the container which will determine their seniority within the group as a whole. This process will be repeated if additional employees subsequently acquire identical seniority. The same process will be utilized if additional employees are subsequently discovered to have the same seniority as the original group of employees but who did not participate in the original random selection through oversight or mistake.

Service personnel who are employed in a classification category of employment at the time when a vacancy is posted in the same classification category of employment shall be given first opportunity to fill the vacancy.

Seniority acquired as a substitute and as a regular employee shall be calculated separately and shall not be combined for any purpose. Seniority acquired within different classification categories shall be calculated separately: Provided, That when a school service employee makes application for a position outside of the classification category currently held, if the vacancy is not filled by an applicant within the classification category of the vacancy, the applicant shall combine all regular employment
seniority acquired for the purposes of bidding on the position.

School service personnel who hold multi-classification titles shall accrue seniority in each classification category of employment which said employee holds and shall be considered an employee of each classification category contained within his or her multi-classification title. Multi-classified employees shall be subject to reduction in force in any category of employment contained within their multi-classification title based upon the seniority accumulated within said category of employment: Provided, That if a multi-classified employee is reduced in force in one classification category, said employee shall retain employment in any of the other classification categories that he holds within his multi-classification title. In such a case, the county board shall delete the appropriate classification title or classification category from the contract of the multi-classified employee.

When applying to fill a vacancy outside the classification categories held by the multi-classified employee, seniority acquired simultaneously in different classification categories shall be calculated as if accrued in one classification category only.

The seniority conferred in this section applies retroactively to all affected school service personnel, but the rights incidental thereto shall commence as of the effective date of this section.

§18A-4-8h. Limitation on number of school service personnel positions to be held by an employee.

Upon the effective date of this section, no school service personnel shall be permitted to become employed in more than one regular full-day position, nor more than two one-half day positions at the same time: Provided, That nothing herein shall be construed to prohibit a school service personnel from holding an extracurricular assignment or assignments, as provided in section sixteen of this article, or summer positions, as provided in section thirty-nine, article five, chapter eighteen of this code, nor from performing extra-duty assignments, as provided in
section eight-b of this article, in addition to his or her
regular position.

§18A-4-15. Employment of service personnel substitutes.

The county board shall employ and the county super­
tendent, subject to the approval of the county board,
shall assign substitute service personnel on the basis of
seniority to perform any of the following duties:

(1) To fill the temporary absence of another service
employee;

(2) To fill the position of a regular service employee
on leave of absence: Provided, That if such leave of ab­
sence is to extend beyond thirty days, the board, within
twenty working days from the commencement of the leave
of absence, shall give regular employee status to a person
hired to fill such position. The person employed on a
regular basis shall be selected under the procedure set
forth in section eight-b of this article. The substitute shall
hold such position and regular employee status only until
the regular employee shall be returned to such position
and the substitute shall have and shall be accorded all
rights, privileges and benefits pertaining to such position:
Provided, however, That if a regular or substitute employ­
ee fills a vacancy that is related to a leave of absence in
any manner as provided herein, upon termination of the
leave of absence said employee shall be returned to his or
her original position;

(3) To perform the service of a service employee who
is authorized to be absent from duties without loss of pay;

(4) To temporarily fill a vacancy in a permanent posi­
tion caused by severance of employment by the resigna­
tion, transfer, retirement, permanent disability, dismissal
pursuant to section eight, article two of this chapter, or
death of the regular service employee who had been as­
signed to fill such position: Provided, That within twenty
working days from the commencement of the vacancy, the
board shall fill such vacancy under the procedures set out
in section eight-b of this article and section five, article two
of this chapter and such person hired to fill the vacancy
shall have and shall be accorded all rights, privileges and
benefits pertaining to such position;
(5) To fill the vacancy created by a regular employee's suspension: Provided, That if the suspension is for more than thirty working days the substitute service employee shall be assigned to fill the vacancy on a regular basis and shall have and be accorded all rights, privileges and benefits pertaining to such position until such termination by the county board becomes final. If the suspended employee is not returned to his job, the board shall fill the vacancy under the procedures set out in section eight-b of this article and section five, article two of this chapter; and

(6) To temporarily fill a vacancy in a newly created position prior to employment of a service personnel on a regular basis under the procedure set forth in section eight-b of this article.

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b of this article. All substitutes shall be employed on a rotating basis according to the length of their service time until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence.

The salary of a substitute service employee shall be based upon his years of employment as defined in section eight of this article and as provided in the state minimum pay scale set forth in section eight-a of this article and shall be in accordance with the salary schedule of persons regularly employed in the same position in the county in which he is employed.
Before any substitute service employee enters upon his or her duties, he shall execute with the county board a written contract as provided in section five, article two of this chapter.

To establish a uniform system of providing a fair and equitable opportunity for substitutes to enter upon their duties for the first time, the following method shall be used: The initial order of assigning newly employed substitutes shall be determined by a random selection system established by the affected substitute employees and approved by the county board. This initial priority order shall be in effect only until the substitute service personnel have entered upon their duties for the first time.

Substitute service employees who have worked thirty days for a school system shall have all rights pertaining to suspension, dismissal and contract renewal as is granted to regular service personnel in sections six, seven, eight and eight-a, article two of this chapter.

§18A-4-16. Extracurricular assignments.

1. (1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis: Provided, That all school service personnel assignments shall be considered extracurricular assignments, except such assignments as are considered either regular positions, as provided by section eight of this article, or extra-duty assignments, as provided by section eight-b of this article.

2. (2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.
(3) The terms and conditions of the agreement between the employee and the board shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section and shall not be conditioned upon the employee's acceptance or continuance of any extracurricular assignment proposed by the superintendent, a designated representative, or the board.

(5) The board shall fill extracurricular school service personnel assignments and vacancies in accordance with section eight-b of this article: Provided, That an alternative procedure for making extracurricular school service personnel assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board and by an affirmative vote of two thirds of the employees within that classification category of employment.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

(a) Within the limitations provided herein, any aide who agrees to do so shall stand in the place of the parent or guardian and shall exercise such authority and control over pupils as is required of a teacher as defined and provided in section one of this article. The principal shall designate aides in the school who agree to exercise that authority on the basis of seniority as an aide and shall enumerate the instances in which the authority shall be exercised by an aide when requested by the principal, assistant principal or professional employee to whom the aide is assigned: Provided, That the authority does not extend to suspending or expelling any pupil, participating in the administration of corporal punishment or performing instructional duties as a teacher or substitute teacher.

An aide designated by the principal under this subsection shall receive a salary not less than one pay grade above the highest pay grade held by the employee under section eight-a, article four of this chapter, and any county salary schedule in excess of the minimum requirements of this article.
(b) An aide may not be required by the operation of this section to perform noninstructional duties for an amount of time which exceeds that required under the aide's contract of employment or that required of other aides in the same school, unless the assignment of such duties is mutually agreed upon by the aide and the county superintendent, or the superintendent's designated representative, subject to board approval. The terms and conditions of the agreement shall be in writing, signed by both parties, and may include additional benefits. The agreement shall be uniform as to aides assigned similar duties for similar amounts of time within the same school. Aides shall have the option of agreeing to supervise students and of renewing related assignments annually: Provided, That should an aide elect not to renew the previous agreement to supervise students, the minimum salary of the aide shall revert to the pay grade specified in section eight-a, article four of this chapter for the classification title held by the aide and any county salary schedule in excess of the minimum requirements of this article.

(c) For the purposes of this section, aide shall mean and include any aide class title as defined in section eight, article four of this chapter, regardless of numeric classification.

(d) An aide may transfer to another position of employment one time only during any one half of a school term, unless otherwise mutually agreed upon by the aide and the county superintendent, or the superintendent's designee, subject to board approval: Provided, That during the first year of employment as an aide, an aide may not transfer to another position of employment during the first one-half school term of employment, unless mutually agreed upon by the aide and county superintendent, subject to board approval.

(e) Regular service personnel employed in a category of employment other than aide who seek employment as an aide shall hold a high school diploma or shall have received a general educational development certificate and shall have the opportunity to receive appropriate training pursuant to subsection (10), section thirteen, article five, chapter eighteen of this code and section two, article twenty of said chapter.
CHAPTER 112
(Com. Sub. for S. B. 300—By Senators Tomblin, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 8, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and four, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article two of said chapter; to amend and reenact sections four, five and seven, article two-e of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend and reenact section four, article five-a of said chapter; to amend and reenact section one, article one, chapter eighteen-a of said code; to amend article three of said chapter by adding thereto a new section, designated section two-c; to amend and reenact section one, article three-a of said chapter; to further amend said article by adding thereto a new section, designated section two-b; and to amend article one, chapter eighteen-b of said code by adding thereto a new section, designated section one-e, all relating to creating jobs through education; defining "career clusters" and "work-based learning"; requiring the state board to report progress toward meeting educational goals; replacing certificates of proficiency with an electronic portfolio system; including information on statewide school report cards; establishing school accreditation and education standards; providing for high quality basic skills development and remediation in all public schools; utilizing technology in middle schools, junior high schools and high schools; stating comprehensive goals for jobs through education; increasing academic expectations and career development for all students; assessing student performance by grade level; focusing on basic skills in kindergarten through fourth grade; developing a rigorous curriculum; exploring career options; implementing an individualized student transition plan; choosing career majors; reporting by state school-to-work steering committee; increasing the ability of all students to meet higher academic expectations and become independent learners; establishing partnerships; creating guidelines for
work-based learning; creating work-based opportunities in rural areas; creating guidelines for certification on the electronic portfolio of student skills, competencies and readiness for employment; addressing staff development; requiring a state board rule; establishing criteria for selecting schools of excellence; defining "principals academy" and "center for professional development"; requiring training through the principals academy; creating the "Principals Standards Advisory Council"; creating the "Principals Academy" within the center for professional development and adding penalties for failure to comply; requiring public education and higher education collaboration for the preparation of students for college and other post-secondary education; and requiring the higher education governing boards to promulgate a joint rule.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.
18A. School Personnel.
18B. Higher Education.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter; Goals for Education.
ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.

§18-1-1. Definitions.

§18-1-4. Education improvement plan.

*§18-1-1. Definitions.

The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School" means the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

(b) "District" means county school district;

(c) "State board" means the West Virginia board of education;

(d) "Board" means the county board of education;

(e) "State superintendent" means the state superintendent of free schools;

(f) "Superintendent" means the county superintendent of schools;

(g) "Teacher" means teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" means all nonteaching school employees not included in the above definition of "teacher";

(i) "Regular full-time employee" means any person employed by a county board of education who has a reg-

*Clerk’s Note: This section was also amended by H. B. 4065 (Chapter 113), which passed subsequent to this act.
ular position or job throughout his employment term, without regard to hours or method of pay;

(j) "Career clusters" means broad groupings of related occupations; and

(k) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity.

§18-1-4. Education improvement plan.

(a) The governor, the Legislature, the state board and the people of West Virginia agree that the education of their children is of utmost importance to the future well-being of the state and that the purpose of enacting education laws and providing funding to support a system of free schools is to assure that all of our children have every opportunity to secure an education which is thorough and is provided in an efficient manner. The governor, the Legislature, the state board and the people of West Virginia further agree that improvements are needed in the education system of West Virginia if these objectives are to be met.

(b) Therefore, the governor, the Legislature, the state board and the people of West Virginia have established goals for themselves which are measurable and achievable through the combined efforts of the government, the school system and the people through an increased focus on the needs of children. These goals are:

(1) All children entering the first grade will be ready for the first grade;

(2) All students will have equal education opportunity;

(3) Student performance on national measures of student performance will equal or exceed national averages and the performance of students falling in the lowest quartile will improve by fifty percent;

(4) Ninety percent of ninth graders will graduate from high school;
(5) High school graduates will be fully prepared for college, other post-secondary education or gainful employment. The number of high school graduates entering post-secondary education will increase by fifty percent; and

(6) All working age adults will be functionally literate.

The intent of the governor, the Legislature and the state board is to pursue the accomplishment of these goals through strategies which focus on: (i) Early childhood development; (ii) improving the quality of teaching; (iii) technology and learning; (iv) helping at-risk students; (v) work force preparation; and (vi) restructuring and accountability in the education system.

(c) The state board shall report progress toward meeting and achieving the goals, as set forth in subsection (b) of this section, to the governor and the Legislature at the beginning of the legislative session in each of the next four years, beginning in the year one thousand nine hundred ninety-seven, and shall include in such report how the legislative priorities of the board address attainment of the goals.

ARTICLE 2. STATE BOARD OF EDUCATION.

*§18-2-6. Classification and standardization of schools; standards for degrees and diploma.

The state board shall make rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for the granting of diplomas and certificates of proficiency by those schools. Not later than the school year one thousand nine hundred ninety-one, certificates of proficiency including specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education shall be granted, along with the diploma, to every eligible high school graduate.

No institution of less than collegiate or university status may grant any diploma or certificate of proficiency.

*Clerk's Note: This section was also amended by H. B. 4065 (Chapter 113), which passed subsequent to this act.
on any basis of work or merit below the minimum standards prescribed by the state board.

No charter or other instrument containing the right to issue diplomas or certificates of proficiency shall be granted by the state of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing such diplomas or other certificates of proficiency has first been approved in writing by the state board.

Notwithstanding any other provisions of this section to the contrary, the requirement for granting certificates of proficiency shall be replaced by the requirement that information be provided on an electronic portfolio system established by the state board pursuant to section eight, article two-e of this chapter and issued to every high school graduate by the appropriate county board: Provided, That the requirements for granting certificates of proficiency shall be continued until such time as the electronic portfolio system has been made available to the county boards.

ARTICLE 2E. HIGH QUALITY EDUCATION PROGRAMS.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

§18-2E-7. Providing for high quality basic skills development and remediation in all public schools.

§18-2E-8. Creating jobs through education.

*§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning

*Clerk's Note: This section was also amended by S. B. 104 (Chapter 114), which passed prior to this act.
the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.

(b) The school report cards shall include information as shall be prescribed by lawfully promulgated rule by the state board to give the parents of students at the school and the general public an indication of the quality of education at the school and other programs supportive of community needs, including, but not limited to, the following:

(1) Indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable, including student performance by grade level in the various subjects measured pursuant to a uniform statewide assessment program adopted by the state board; school attendance rates; the percent of students not promoted to next grade; and the graduation rate;

(2) Indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable, including average class size; percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percentage distribution of students by career cluster as indicated on the individualized student transition plan; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;

(3) The names of the members of the local school improvement council, created pursuant to section two, article five-a of this chapter; and
(4) The name or names of the business partner or partners of the school.

In addition, every county board shall annually determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and shall also include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each county board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of any child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them.
The report cards shall be completed and disseminated prior to the first day of January, one thousand nine hundred eighty-nine, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list: (1) The names of the members of the county board, the dates upon which their terms expire and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia school board association or other approved organizations, and other school board member training programs; and (2) the names of the county school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended. The information shall also be reported by district in the statewide school report card.

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

(a) The purpose of this section is to provide assurances that a thorough and efficient system of education is being provided for all West Virginia public school students on an equal education opportunity basis and that the high quality standards are being met. A system for the review of school district education plans, performance-based accreditation and periodic, random, unannounced on-site effectiveness reviews of district education systems, including individual schools within the districts, shall provide assurances that the high quality standards established in this section are being met.
(b) On or before the first day of November, one thousand nine hundred ninety-six, the state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish and adopt high quality education standards in the following areas:

1. Curriculum;
2. Workplace readiness skills;
3. Finance;
4. Transportation;
5. Special Education;
6. Facilities;
7. Administrative practices;
8. Training of county board members and administrators;
9. Personnel qualifications;
10. Professional development and evaluation;
11. Student and school performance;
12. A code of conduct for students and employees; and
13. Any other such areas as determined by the state board.

The standards shall assure that all graduates are prepared for gainful employment or for continuing post-secondary education and training and that schools and school districts are making progress in achieving the education goals of the state. Each school district shall submit an annual improvement plan designed around locally identified needs showing how the education program of each school in the district will meet or exceed the high quality standards.

A performance-based accreditation system shall be the only statewide system used for accrediting or classifying the public schools in West Virginia. The state board shall establish a schedule and shall review each school within a
district and each county board for accreditation based on information submitted to the board under the performance-based accreditation system as set forth in subsection (c) of this section.

(c) On or before the first day of September, one thousand nine hundred ninety-six, the state board shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish by rule a system which measures the quality of education and preparation of students at each school based on measures of student and school performance, including, but not limited to, the following:

1. The acquisition of student proficiencies as indicated by student performance by grade level measured, where possible, by a uniform statewide assessment program;
2. School attendance rates;
3. Student dropout rate;
4. Percent of students promoted to next grade;
5. Graduation rate;
6. Average class size;
7. Pupil-teacher ratio and number of exceptions to ratio requested by county boards and number granted;
8. Number of split-grade classrooms;
9. Percentage of graduates who enrolled in college; the percentage of graduates who enrolled in other post-secondary education; and the percentage of graduates who become fully employed within one year of high school graduation all as reported by the graduates on the assessment form attached to their individualized student transition plan, pursuant to section eight of this article and the percentage of graduates reporting;
10. Pupil-administrator ratio;
11. Parent involvement;
(12) Parent, teacher and student satisfaction;
(13) Operating expenditures per pupil;
(14) Percentage of graduates who attain the minimum level of performance in the basic skills recognized by the state board as laying the foundation for further learning and skill development for success in college, other post-secondary education and gainful employment and the grade level distribution in which the minimum level of performance was met; and
(15) Percentage of graduates who received additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the minimum foundation level of basic skills.

The state board annually shall review the information submitted for each school and shall issue to every school:
(i) Full accreditation status; or (ii) probationary accreditation status.

Full accreditation status shall be given to a school when the school's performance on the above indicators is at a level which would be expected when all of the high quality education standards are being met. Probationary accreditation status shall be given to a school when the measure of the school's performance is below such level.

Whenever a school is given probationary accreditation status, the county board shall implement an improvement plan which is designed to increase the performance of the school to a full accreditation status level within one year.

(d) The state board shall establish and adopt standards of performance to identify seriously impaired schools and the state board may declare a school seriously impaired whenever extraordinary circumstances exist as defined by the state board. Whenever the state board determines that the quality of education in a school is seriously impaired, the state superintendent, with approval of the state board, shall appoint a team of three improvement consultants to make recommendations within sixty days of appointment for correction of the impairment. Upon approval of the recommendations by the state board, the recommenda-
tions shall be made to the county board. If progress in correcting the impairment is not made within six months of receipt of the recommendations, the state superintendent shall provide consultation and assistance to the county board to: (1) improve personnel management; (2) establish more efficient financial management practices; (3) improve instructional programs and rules; or (4) make such other improvements as may be necessary to correct the impairment. If the impairment is not corrected within one year of receipt of the recommendations, the district shall be given probationary approval status or nonapproval status.

(e) Whenever a school is given probationary status or is determined to be seriously impaired and fails to improve its status within one year, any student attending such school may transfer once to the nearest fully accredited school, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(f) The state board shall issue one of the following accreditation levels to each county board: (1) Full approval; (2) conditional approval; (3) probationary approval; or (4) nonapproval.

Full approval shall be given to a county board whose education system meets or exceeds all of the high quality standards adopted by the state board and whose schools have all been given full accreditation status. Full approval shall be for a period not to exceed four years.

Conditional approval shall be given to a county board whose education system meets at least ninety-five percent of the high quality standards adopted by the state board and in which at least ninety percent of the schools have been given full accreditation status provided no school is seriously impaired. Conditional approval shall be for a period not to exceed one year: Provided, That for counties that have fewer than ten schools, the state board may grant conditional approval without regard to the ninety percent based on the total quality of the county education program.
Probationary approval shall be given to a county board whose education system has met less than ninety-five percent of the high quality standards, or which has eleven percent or more schools in the district given probationary status or serious impairment. Probationary approval is a warning that the county board must make specified improvements. If the number of schools in the district given probationary status is not reduced to a number that would allow full accreditation to be granted in the following year, the county board shall be automatically given nonapproval. In addition, nonapproval shall be given to a county board which fails to submit an annual program plan or fails to demonstrate a reasonable effort to meet the high quality standards. The state board shall establish and adopt standards to identify school districts in which the program may be nonapproved or the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(g) Whenever nonapproval status is given to a county, the state board shall declare a state of emergency in the district and may intervene in the operation of the district to: (1) Limit the authority of the county superintendent and county board as to the expenditure of funds, the employment and dismissal of personnel, the establishment and operation of the school calendar, the establishment of instructional programs and rules and such other areas as may be designated by the state board by rule; (2) take such direct action as may be necessary to correct the impairment; and (3) declare that the office of the county superintendent is vacant.

(h) To assist the state board in determinations of the accreditation status of schools and the approval status of school districts under this section, the state board shall from time to time appoint an education standards compliance review team to make unannounced on-site reviews of the education programs in any school or school district in the state to assess compliance of the school or district with the high quality standards adopted by the state board, including, but not limited to, facilities, administrative procedures, transportation, food services and the audit of all
matters relating to school finance, budgeting and adminis-
stration.

The teams shall be composed of not more than ten
persons, not more than half of whom may be members of
or currently employed by the state board, who possess the
necessary knowledge, skills and experience to make an
accurate assessment of such education programs. The
education standards compliance team shall report the
findings of its on-site reviews to the state board for inclu-
sion in the determination of a school's or district's accredi-
tation or approval status as applicable. The state board
shall encourage the sharing of information to improve
school effectiveness among the districts.

The state board shall make accreditation information
available to the Legislature, the governor, the general pub-
lic and to any individuals who request such information.

(i) The state board shall fully implement the accredita-
tion system established under this article for all schools on
the first day of July, one thousand nine hundred
ninety-one, and may pilot test the system prior to that
date. The state board shall adopt rules in accordance with
the provisions of article three-b, chapter twenty-nine-a of
this code necessary to implement the provisions of this
article.

§18-2E-7. Providing for high quality basic skills development
and remediation in all public schools.

(a) The Legislature finds that teachers must be provid-
ed the support, assistance and teaching tools necessary to
meet individual student instructional needs on a daily basis
in a classroom of students who differ in learning styles,
learning rates and in motivation to learn. The Legislature
further finds that attaining a solid foundation in the basic
skills of reading, composition and arithmetic is essential
for advancement in higher education, occupational and
avocational pursuits and that computers are an effective
tool for the teacher in corrective, remedial and enrichment
activities. Therefore, the state board shall develop a plan
which specifies the resources to be used to provide services
to students in the earliest grade level and moving upward
as resources become available based on a plan developed by each individual school team.

This plan must provide for standardization of computer hardware and software, and for technology upgrade and replacement, for the purposes of achieving economies of scale, facilitating teacher training, permitting the comparison of achievement of students in schools and counties utilizing the hardware and software, and facilitating the repair of equipment and ensuring appropriate utilization of the hardware and software purchased for remediation and basic skills development.

The state board shall determine the computer hardware and software specifications after input from practicing teachers at the appropriate grade levels and with the assistance of education computer experts and the curriculum technology resource center.

Computer hardware and software shall be purchased either directly or through a lease-purchase arrangement pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

The state board shall develop and provide through the state curriculum technology resource center a program to ensure adequate teacher training, continuous teacher support and updates.

To the extent practicable, such technology shall be utilized to enhance student access to learning tools and resources outside of the normal school day, such as: Before and after school; in the evenings, on weekends and during vacations; and for student use for homework, remedial work, independent learning and career planning and adult basic education.

(b) The Legislature finds that the continued implementation of computer utilization under this section for high quality basic skills development and remediation in the middle schools, junior high schools and high schools
is necessary to meet the goal that high school graduates will be prepared fully for college, other post-secondary education or gainful employment. Further, such implementation should provide a technology infrastructure at the middle schools, junior high schools and high schools that has multiple applications in enabling students to achieve at higher academic levels. The technology infrastructure should facilitate student development in the following areas:

(1) Attaining basic computer skills such as word processing, spreadsheets, data bases, internet usage, telecommunications and graphic presentations;

(2) Learning critical thinking and decision-making skills;

(3) Applying academic knowledge in real life situations through simulated workplace programs;

(4) Understanding the modern workplace environment, particularly in remote areas of the state, by bringing the workplace to the school;

(5) Making informed career decisions based upon information on labor markets and the skills required for success in various occupations;

(6) Gaining access to labor markets and job placement;

(7) Obtaining information and assistance about college and other post-secondary education opportunities and financial aid; and

(8) Other uses for acquiring the necessary skills and information to make a smooth transition from high school to college, other post-secondary education or gainful employment.

Therefore, the state board shall extend the plan as set forth in subsection (a) of this section, and consistent with the terms and conditions in said subsection, to address the findings of this subsection regarding the continued implementation of computer hardware and software, and techni-
cal planning support in the middle schools, junior high
schools and high schools of the state.

§18-2E-8. Creating jobs through education.

(a) Findings and intent. — The Legislature finds that
the governor, the Legislature, the state board and the peo-
ple of West Virginia established goals for education
through an education summit and series of town meetings
in the summer of the year one thousand nine hundred
ninety, and that these goals were codified in section four,
article one of this chapter during the third extraordinary
session of the Legislature of that year. Among these goals
is the goal that high school graduates will be prepared
fully for college, other post-secondary education or gain-
ful employment and that the number of high school grad-
uates entering post-secondary education will increase by
fifty percent. The Legislature finds that this goal reflects a
fundamental belief that the result of a thorough and effi-
cient system of free schools is that the youth of the state
exit the system equipped with the skills, competencies and
attributes necessary to succeed, to continue learning
throughout their lifetimes and to attain economic
self-sufficiency.

The Legislature further finds that the full preparation
of youth as indicated in these findings cannot be accom-
plished by the school system alone, but requires the full
and active partnership with parents and people from busi-
ness, labor, higher education, economic development and
other organizations and entities in the community that
have an interest in providing quality education. Therefore,
the intent of this section is to establish a policy framework
and strategy for the state board in fulfilling its responsibil-
ity for the general supervision of free schools in order to
encourage and utilize actively involved partnerships in the
formulation of rules and practices to achieve the goal that
high school graduates will be prepared fully for college,
other post-secondary education or gainful employment,
particularly in the delivery of programs that provide
work-based learning opportunities for students within the
school or at the workplace. The Legislature recognizes
that many skilled jobs require education beyond the high
school level, that the goals of West Virginia include increased post-secondary attendance and that the goals for post-secondary education as set forth in section one-a, article one, chapter eighteen-b of this code include an increased focus within higher education on relevancy, responsiveness to business, industry, labor and community needs, and on the current and future work force needs of the state. Therefore, it is further the intent of this section to enhance the linkages between secondary and post-secondary education.

(b) Comprehensive goals for jobs through education. — The Legislature hereby establishes the following goals to be accomplished by the year two thousand one for all students in all schools:

(1) The elimination of student grouping or tracking systems that result in high school students completing a general curriculum that does not prepare them fully for college, other post-secondary education or gainful employment;

(2) The replacement of the general curriculum, as stated in subdivision (1) of this subsection, with a system of career clusters and education majors that increases the academic expectations for all students, includes a system of career information and guidance and incorporates structured work-based learning;

(3) The requirement that every student, in consultation with his or her parents and school advisor, establish an individualized student transition plan covering grades nine through twelve and the first year beyond graduation from high school;

(4) The active involvement of partners at the state, regional and local levels in assuring the full preparation of graduates for college, other post-secondary education or gainful employment;

(5) The creation of a process through which qualified graduates will receive a portable credential that is recognized and valued by employers as an indicator of the
skills, competence and readiness for employment of the graduates; and

(6) The implementation of continuous program assessment, program improvement and staff development.

(c) Increased academic expectations and career development for all students. — The Legislature finds that there is a need to establish higher academic expectations and a system of career development for all students that contains the following elements:

(1) Assessment. — The implementation of an assessment program that measures student performance by grade level and assesses student attainment of the basic academic foundation skills;

(2) Focus on basic skills in kindergarten through fourth grade. — The strengthening and refocusing of kindergarten through fourth grade in order to assure that all students perform at grade level at the completion of the fourth grade by concentrating on teaching the basics of reading, writing, mathematics and computer skills;

(3) Development of rigorous curriculum. — The development and implementation of a rigorous and relevant curriculum of basic academic requirements that lays a foundation for further learning and skill development. The proficiencies of the students shall be assessed at the end of the eighth grade and all students should attain the basic academic requirement levels by no later than the end of the tenth grade;

(4) Career exploration in grades five through eight. — The exploration by students in the fifth through eighth grades of their interests and abilities in career clusters through accessing information about occupational skills and labor markets;

(5) Creation and initial implementation of individual student transition plan for grades nine and ten. — The creation, by the end of the eighth grade, of the first two years of an individualized student transition plan that builds upon career awareness and exploration activities in the earlier grades and enables the student in consultation
with his or her parents and school advisor to select a broad career cluster for further exploration in grades nine and ten;

(6) Choosing career majors for grades eleven through post-secondary. — The creation of the second part of the individualized student transition plan by the end of the tenth grade. The second part of the individualized student transition plan shall establish a career major for the final years of high school and the first year after high school that will prepare the student for college, other post-secondary education or gainful employment;

(7) Implementation of career majors. — The fulfillment of the secondary education component of the career major in grades eleven and twelve, including the successful completion of the necessary curriculum and participation in work-based learning experiences; and

(8) Completion of individualized student transition plan and assessment. — The completion of the individualized student transition plan in the first year following graduation from high school by attending college, other post-secondary education or securing gainful employment. The state board shall provide an assessment form to be completed by the student and returned to the high school upon the completion of the individualized student transition plan. The form shall provide for the student to report his or her success in completing the plan and the strengths and weaknesses of his or her education preparation.

(d) Report of recommendations on comprehensive career development. — To assist in the establishment of a comprehensive career development system, the state school-to-work steering committee shall report to the state board and the legislative oversight commission on education accountability by the first day of November, one thousand nine hundred ninety-six, the recommendations of the career guidance committee established pursuant to the state school-to-work implementation plan.

(e) Guidelines for increasing the ability of all students to meet higher academic expectations and become
self-motivated learners. — Practices that increase the academic expectations for all students and help them to succeed in achieving those higher expectations include, but are not limited to:

(1) Utilizing instructional methods that require the student to be a worker who is actively engaged in the learning process;

(2) Utilizing methodologies that require students to apply academic knowledge in practical situations and problem solving;

(3) Utilizing computers and other technologies to provide opportunities for creative instruction, both individually and in groups in all subjects;

(4) Providing structured opportunities for students to participate in credit and noncredit learning activities outside the school that are integrated with and are an extension of the school-based program of study for the student through such activities as field trips, job shadowing, community service, entrepreneurship development, mentoring, internships, apprenticeships, school-based enterprises in partnership with the private sector and other cooperative learning experiences connected to student education majors and school-based instructional programs;

(5) Integrating and interrelating academic and technical content throughout the curriculum and ensuring numerous opportunities for cross-disciplinary learning to emphasize the importance of reading, writing, speaking, listening and viewing; and

(6) Encouraging teachers to plan and work together and exercise their professional judgment in the classroom.

(f) Establishing partnerships. — As soon as practicable following the effective date of this section, the governor shall appoint or designate a "Jobs Through Education Employer Panel", to assure the high quality preparation of our youth for college, other post-secondary education or gainful employment. The jobs through education employer panel shall advise and assist the state board, the higher education governing boards and institutions, other
post-secondary education training programs and agencies and employers in assuring that graduates are prepared fully for further education and training or gainful employment and shall perform other functions as set forth in this section. In providing such advice and assistance and in the performance of such other functions, the jobs through employer panel shall solicit input from the county steering committees.

As soon as practicable, following the effective date of this section, county boards shall appoint a county steering committee that includes parents and people from business, labor, higher education, economic development, local school improvement councils, faculty senates and other organizations and entities in the community as valuable partners in developing and implementing a system within the county that meets the intent of this section and adheres to the rules of the state board. The membership of the county steering committee and participation in the community and technical college district consortia committee, as created by section three-a, article three, chapter eighteen-b of this code, shall be coordinated to the extent that it is practical.

(g) Guidelines for work-based learning. — Work-based learning is a structured activity that correlates with and is mutually supportive of school-based learning for the student, and includes specific objectives to be mastered by the student as a result of the activity. It is central to the education preparation process to develop within the student an awareness of the work environment and how the skills the student is acquiring will be applied in that environment. Broadly defined, work-based learning opportunities are activities that assist students to gain an awareness of the workplace, develop an appreciation of the relevancy of academic subject matter to workplace performance and gain valuable work experience and skills while exploring their occupational interests and abilities. Incorporating work-based learning as a central part of the education process and also as a final step in the formal education process includes, but is not limited to:
(1) Providing students in the early grades with activities such as field trips, career-oriented speakers in the classroom, courses such as junior achievement which are taught by volunteers in the classroom, job shadowing and other such activities to increase student awareness of the workplace; and

(2) Providing students in the later grades, including college and other post-secondary education, with activities such as structured community service, apprenticeships, internships, clinical experiences, cooperative education and other work-site placements, school-based enterprises, workplace simulations and entrepreneurial development, that provide students with more specific work experience in an occupational area associated with their education major.

To the extent possible, student work-based learning, and particularly workplace learning, should be jointly assessed by a school-based educator or advisor and a work-based mentor who possesses the skills set forth in the work-based learning objectives of the student, and who has been trained in mentoring and assessing student performance.

(h) Special consideration for providing work-based learning in counties with few opportunities for employment. — Providing work-based learning opportunities for all students in counties with few employers will be particularly difficult. While the following additional examples of ways to increase opportunities for work-based learning are applicable for all counties, they are most important in counties with few employers. Additional examples include, but are not limited to:

(1) Computer software that simulates workplace situations and problem solving;

(2) Interactive and other technology to bring an exposure to the workplace into the classroom;

(3) Community service;

(4) Partnerships with city, state and county government for work-based placements;
(5) Volunteer programs, such as junior achievement and other programs that utilize volunteers trained to deliver work-related instruction;

(6) Assumption of recordkeeping and other measures by the schools, or through the use of community-based organizations or other intermediaries, that make it easier for small businesses to participate in accepting students for workplace learning;

(7) Rural entrepreneurship through action learning programs;

(8) School-based enterprises;

(9) Projects through 4-H, scouts, junior ROTC and other school and nonschool student and civic organizations;

(10) Multiple partnerships with existing employers, such as hospitals that have multiple departments;

(11) Agricultural education, FFA projects and supervised work experience programs; and

(12) Programs at vocational-technical education centers.

The state board shall make recommendations to the Legislature by the first day of November, one thousand nine hundred ninety-six, on any further actions that may be appropriate to assist counties with few employers in providing work-based learning opportunities for all students.

(i) **Electronic portfolio of student accomplishments and preparation.** — For the purpose of better documenting the preparation of high school graduates for college, other post-secondary education or gainful employment, the state board shall develop an electronic portfolio which will be a permanent record for every student. The electronic portfolio shall be issued by the appropriate county board and shall include the accomplishments of the student during his or her education preparation. Upon request, students shall receive the contents of the electronic portfolio in written or computer readable form. The elec-
The electronic portfolio shall include, but not be limited to:

1. Documentation of attendance, grades, accomplishments, education plans, education major interests, curriculum, special activities, honors and advanced education and other items appropriate for inclusion in the portfolio as determined by state board rule to present the accomplishments and achievements of the student;

2. A separate area for the student to enter presentations, examples and other information on his or her special areas of interest and advanced achievement;

3. Certification of student attainment of the minimum level of proficiency in the basic skills that lays the foundation for further learning and skill development for success in college, other post-secondary education or gainful employment; and

4. Certification of the skills, competence and readiness for college, other post-secondary education or employment, as indicated by: (i) College entrance tests; (ii) specialized assessments that measure the attainment of necessary skills and competencies required in the workplace; (iii) the attainment of industry recognized credentials, licensure or certification; (iv) the completion of nationally accredited technical education programs; (v) performance in specialized learning experiences such as paid and unpaid structured work-based learning in the private or public sectors, including, but not limited to, registered youth apprenticeships, internships, cooperative education, community service, entrepreneurship development and school-based enterprises in partnership with the private sector; and (vi) other indicators relevant to the student's skills, competence and readiness for college, other post-secondary education or gainful employment.

(j) Guidelines for certification on the electronic portfolio of student skills, competencies and readiness for employment. — The certification of student skills, competencies and readiness for a particular industry or occupation
to be included on the electronic portfolio, including certification offered by an institution of higher education or other job training programs, shall require the approval of an appropriate entity designated by the jobs through education employer panel. Local education agencies, institutions of higher education and other job training programs desiring to issue such certification to meet local labor market or community needs and circumstances may apply to the panel for such approval. To the extent possible, such certification shall provide the student with a proficiency credential that is widely recognized and accepted within an industry or occupational area as a reliable indicator of the ability of the student. The jobs through education employer panel shall consult other established skill standards for use in certifying proficiency in skills, competencies and readiness within specific industries and occupations. The intent of these provisions is to provide a formal mechanism for the ongoing alignment of the certification of student skills, competencies and readiness with current minimum requirements for success in the industry or occupational area for which the student is preparing, including requirements which will be met through additional education in college or other post-secondary education.

(k) Staff development. — Meeting the intent and objectives of this section will require a continued focus on staff development to increase the ability of teachers and administrators to employ various methodologies for strengthening the rigor, content and relevance of the learning process and help all students achieve at higher levels. Teachers and administrators must know about workplace requirements to help students internalize the relationship between learning in school and success in the careers they envision for themselves in adult life. The use of student assessment and program evaluation information continually to check and improve the curriculum, instruction, school climate and school organization and management, is critical to maintaining high quality instruction that is relevant to changing workplace requirements. Staff development opportunities shall include, but not be limited to:
(1) Designation by the state board of exemplary counties and schools that have implemented comprehensive school-to-work systems as model demonstration sites to be visited and observed;

(2) Collaboration and utilization of the resources of the state department of education, institutions of higher education, the center for professional development and county staff development councils for both in-service and preservice preparation programs;

(3) Teacher and business exchange programs that enable teachers to gain exposure and experience in the workplace and business persons to gain exposure and experience in the schools;

(4) Structured programs or institutes that take educators into the workplace to observe the work environment and skills necessary to perform work tasks; and

(5) Staff development activities which include joint participation by public school, college and other post-secondary faculty where appropriate.

(I) Study committee for staff development credits.—There is hereby created a study committee to make recommendations on the feasibility of, and the possible process for, crediting staff development activities toward fulfilling the requirement for renewal of certificates, pursuant to section three, article three, chapter eighteen-a of this code, and the progression through the state minimum salary schedule, pursuant to section two, article four of said chapter. The committee shall consist of the chancellor of the university of West Virginia board of trustees, or a designee; the state superintendent, or a designee, who shall serve as chair of the committee; a member of the state board, to be selected by the state board; a representative of West Virginia university to be selected by the president of the university; a representative of Marshall university, to be selected by the president of the university; a representative of the West Virginia graduate college, to be selected by the president of the college; four classroom teachers to be appointed by the governor within thirty days of the effective date of this section; and the director of the center for professional development or a designee. Such committee shall report its recommendations to the
legislative oversight commission on education accountability by the first day of January, one thousand nine hundred ninety-seven.

(m) State board rule. — On or before the first day of November, one thousand nine hundred ninety-six, the state board, with advice from the jobs through education employer panel, and in consultation with the higher education governing boards, shall adopt a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the implementation of this section. The rule shall allow flexibility for local variation to meet local circumstances and shall establish a five-year plan for phased implementation. The proposed rule developed pursuant to this section shall contain a financial impact statement as well as a job impact statement.

(n) Any study groups or committees created by the state board to assist in development of policies or rules for the implementation of this section shall contain significant representation by classroom teachers as defined by section one, article one, chapter eighteen-a of this code. Further, the state board shall include in its annual budget request sufficient funds to implement programs, policies or rules adapted to meet the goals set out in this section: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-4. State board to establish criteria for selecting schools of excellence; annual school of excellence awards.

The state board of education shall promulgate rules, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, outlining criteria for the identification of schools of excellence. Such criteria shall include, but not be limited to, improvement in student achievement in comparison to state and national norms, improvement in reducing drop-out rates, improvement in standardized test scores, implementation of advanced or innovative programs, implementation of the goals and purposes of jobs through education as provided in section
eight, article two-e of this chapter, improvement in parent
and community involvement, improvement in parent,
teacher and student satisfaction, improvement in student
attendance and other factors which promote excellence in
education. Such rules shall be promulgated by the first
day of January, one thousand nine hundred ninety-one.
Such rules may not prohibit any school from applying for
consideration as a school of excellence.

Each year, the state board shall select one high school,
one middle or junior high school and one elementary
school within each regional educational service agency
district, and one vocational school selected on a statewide
basis to be awarded school of excellence status.

The rules promulgated by the state board shall outline
appropriate methods of recognizing and honoring the
students, teachers and other employees and parents or
members of the school community who have contributed
to excellence in education at the school.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
3. Training, Certification, Licensing, Professional Development.
3A. Center for Professional Development.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

The definitions contained in section one, article one,
chapter eighteen shall be applicable to this chapter. In
addition, the following words used in this chapter and in
any proceedings pursuant thereto shall, unless the context
clearly indicates a different meaning, be construed as
follows:

(a) "School personnel" means all personnel employed
by a county board of education whether employed on a
regular full-time basis, an hourly basis or otherwise.
School personnel shall be comprised of two categories:
Professional personnel and service personnel.
(b) "Professional personnel" means persons who meet the certification and/or licensing requirements of the state, and shall include the professional educator and other professional employees.

(c) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher" — The professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his time in this capacity.

(2) "Principal" — The professional educator who as agent of the board has responsibility for the supervision, management and control of a school or schools within the guidelines established by said board. The major area of such responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel.

(3) "Supervisor" — The professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and/or other personnel in instructional and other school improvement.

(4) "Central office administrator" — The superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the county-wide school system.

(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and shall include a registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program.
"Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides.

"Principals academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter.

"Center for professional development" means the center created pursuant to section one, article three-a of this chapter.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-2c. Training through the principals academy.

(a) Principal training required. — After the first day of January, one thousand nine hundred ninety-seven, and subject to the provisions of subsection (c) of this section, every principal shall complete a training program through the principals academy at least once every four years.

(b) Admission to academy. — The academy and the persons attending such academy shall adhere to the following guidelines for admission to the academy:

(1) All persons assigned as a principal for the first time in a West Virginia school after the first day of March, one thousand nine hundred ninety-six, shall complete training through the academy: Provided, That if training through the academy is scheduled to begin within ninety days from the date of assignment, such person may complete the next scheduled training through the academy;

(2) All principals of schools which are designated by the state board as being on probationary status or as being seriously impaired, in accordance with section five, article two-e, chapter eighteen of this code, shall complete the next regularly scheduled training through the academy following the date of such designation: Provided, That if training through the academy is scheduled to begin within thirty days from the date of such designation, such princi-
pal may complete the next scheduled training through the academy;

(3) All principals who are subject to an improvement plan, in accordance with section twelve, article two of this chapter, shall complete the next regularly scheduled training through the academy: *Provided,* That if training through the academy is scheduled to begin within thirty days from the date the principal is first subject to the improvement plan, then such principal may complete the next scheduled training through the academy;

(4) All principals who transfer to a school with a significantly different grade configuration shall complete the next regularly scheduled training through the academy: *Provided,* That if training through the academy is scheduled to begin within ninety days from the date such principal is transferred, then such principal may complete the next scheduled training through the academy; and

(5) All persons serving as school principals who are not described in subdivisions (1) through (4) of this subsection shall complete training through the academy at least once every four years from and after the first day of January, one thousand nine hundred ninety-seven.

(c) *Academy and attendance subject to funding.* —

The requirement that principals attend the academy shall be subject to the availability of funds for the principals academy from legislative appropriation or from other sources. If such funds are insufficient to provide for the total cost of admission to the academy for those required to complete training, then the academy shall admit the persons described in subdivisions (1) through (5), subsection (b) of this section according to the priority in which the subdivisions appear in said subsection. If such funds are insufficient to provide for the admission of all the persons described in one or more of subdivisions (1) through (5), subsection (b) of this section, the academy is authorized to determine which persons described within the said subdivision or subdivisions shall be admitted and which shall not be admitted: *Provided,* That the principals academy shall make every effort to ensure that all principals attend once every four years from and after the first
day of January, one thousand nine hundred ninety-seven: Provided, however, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

(d) Principals standards advisory council. — To assist the state board in the performance of the duties described in subsection (e) of this section, there is hereby created a "Principals Standards Advisory Council", which shall consist of nine persons, as follows: The executive director, or designee, of the center for professional development, who shall serve as the ex-officio chair; three principals, one from an elementary school, one from a middle school or a junior high school, and one from a high school, and one county school superintendent, nominated by the state board and appointed by the governor; two representatives from higher education who teach in principal preparation programs, nominated by the chancellor of the state university system and appointed by the governor; and two citizen representatives who are knowledgeable on issues addressed in this section, appointed by the governor. Of the initial appointments, three of the members appointed shall serve for a term of three years, three members shall serve for a term of two years, and two members shall serve for a term of one year. All successive appointments shall be for a term of three years. Members of the council who are public employees shall be granted release time from their employment for attending meetings of the council. Members may be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties by the center for professional development.

(e) Establishment of standards. — On or before the first day of October, one thousand nine hundred ninety-six, the state board shall approve and promulgate rules regarding the minimum qualities, proficiencies and skills that will be required of principals after the first day of January, one thousand nine hundred ninety-seven. The state board shall promulgate such rules after consultation with the principals standards advisory council created in subsection (d) of this section. The rule developed by the state board shall address at least the following:
(1) Staff relations, including, but not limited to, the development and use of skills necessary to make a positive use of faculty senates, to manage faculty and staff with courtesy and mutual respect, coach and motivate employees and to build consensus as a means of management;

(2) School community leadership qualities, including, but not limited to, the ability to organize and leverage community initiative, communicate effectively, work effectively with local school improvement councils, manage change, resolve conflict and reflect the highest personal values;

(3) Educational proficiencies, including, but not limited to, knowledge of curriculum, instructional techniques, student learning styles, student assessment criteria, school personnel performance, evaluation skills and family issues; and

(4) Administrative skills, including, but not limited to, organizational, fiscal, public policy and total quality management skills and techniques.

(f) **Waivers.** — Any person desiring to be relieved of the requirements of all or any part of this section may apply in writing to the state board for a waiver. Upon a showing of reasonable cause why relief should be granted, the state board may grant a waiver, upon such terms and conditions as the state board shall determine proper, as to all or any part of this section.

(g) **Failure to comply.** — Any person who fails or refuses to complete training through the academy, as required by the provisions of this section, and who fails to obtain a waiver, as described in subsection (f) of this section, shall be ineligible to be employed as, or serve in the capacity of, a principal.

(h) **Tracking of requirement.** — On or before the first day of January, one thousand nine hundred ninety-seven, the state board shall establish a system to track the progress of each person required to complete training through the academy and shall regularly advise such persons of their progress.
(i) Payment of reasonable and necessary expenses and stipends. — The center for professional development may reimburse persons attending the academy for reasonable and necessary expenses. Additionally, any person whose attendance occurs outside his or her employment term, as defined in section fifteen, article five, chapter eighteen of this code, may be entitled to a stipend to be determined by and paid by the center for professional development: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development continued; intent; advisory council.


§18A-3A-1. Center for professional development continued; intent; advisory council.

(a) Teaching is a profession that directly correlates to the social and economic well-being of a society and its citizens. Superior teaching is essential to a well educated and productive populace. The intent of this article is to recognize the value of professional involvement by experienced educators in building and maintaining a superior teaching force and to establish avenues for applying such involvement.

In furtherance of this intent, the center for professional development is continued and reestablished. The general mission of the center is to study matters relating to the quality of teaching and management in the schools of West Virginia and to promote the implementation of programs and practices to assure the highest quality in teaching and management. The center shall also perform such duties as are assigned to it by law.

The center shall consist of nine persons as members: The secretary of education and the arts, ex officio; the state superintendent of schools, ex officio; one member of the state board of education, elected by the state board; two experienced educators, of whom one shall be a working classroom teacher, appointed by the governor by and with the advice and consent of the Senate; and four citi-
zens of the state who are knowledgeable in matters rele-
vant to the issues addressed by the center appointed by the
governor by and with the advice and consent of the Sen-
ate. No two appointees shall be residents within the same
region. The state superintendent of schools shall convene
the first meeting of the center to elect a chair, vice chair
and secretary.

The election and appointment of members shall be
made as soon as possible after the effective date of this
section. Of the initial appointed members, three shall be
appointed for two-year terms and four shall be appointed
for four-year terms. All successive appointments shall be
for four-year terms.

The center for professional development shall meet at
least quarterly and the appointed members shall be reim-
bursed for reasonable and necessary expenses actually
incurred in the performance of their official duties from
funds appropriated or otherwise made available for such
purposes upon submission of an itemized statement there-
for.

The center may employ and fix the compensation of
an executive director and such other persons as may be
necessary to carry out the mission and duties of the center.
When practical, personnel employed by state higher edu-
cation agencies and state, regional and county public edu-
cation agencies shall be made available to the center to
assist in the operation of projects of limited duration.

The center shall contract with existing agencies or
agencies created after the effective date of this section or
others to provide training programs in the most efficient
manner. Existing programs currently based in agencies of
the state shall be continued in the agency of their origin
unless the center establishes a compelling need to transfer
or cancel the existing program. The center shall recom-
mend to the governor the transfer of funds to the provid-
ing agency, if needed, to provide programs approved by
the center.

(b) To assist the center for professional development
in the performance of its duties related to teacher educa-
tion and professional development, there is continued an advisory council on professional development which shall consist of eleven persons as follows: An employee of the center who shall chair the advisory council; two shall be professors or associate or assistant professors of teacher education, one from a public institution and one from a private institution of higher education in this state offering programs leading to certification to teach in the public schools of this state; two county school superintendents, one of whom shall be from a district with a student enrollment above the statewide average and one of whom shall be from a district with a student enrollment below such average; two school principals, one of whom shall be from a school including elementary grade levels and one of whom shall be from a school including secondary grade levels; and four professional instructional personnel, two of whom shall be from a school including elementary grade levels and two of whom shall be from a school including secondary grade levels. To the extent possible, the principals and instructional personnel shall be appointed from the members of county staff development councils. Except for the employee of the center, the members shall be appointed jointly by the secretary of education and the arts and the state superintendent for two-year terms which overlap so that one member from each of the classes shall be appointed in each successive year, except that two members from the professional instructional personnel class shall be appointed in each successive year. No two members of the council shall be from the same college or university or school district. Members of the council shall be granted release time from their employment for attending meetings of the council.

Pursuant to the provisions of article ten, chapter four of this code, the center for professional development and advisory council shall continue to exist until the first day of July, two thousand one.

(c) On or before the first day of January, one thousand nine hundred ninety-seven, the center for professional development shall develop and communicate to the state board a curriculum for the principals academy. The curriculum shall be based upon the minimum qualities,
proficiencies and skills necessary for principals and recommended by the state board, pursuant to the terms of section two-c, article three of this chapter.

(d) In accordance with section two-c, article three of this chapter, the center shall be responsible for paying reasonable and necessary expenses and any stipends for persons attending the principals academy: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature.


There is hereby established within the center for professional development the "Principals Academy". Training through the principals academy shall include at least the following:

(a) Training designed to build within principals the minimum qualities, proficiencies and skills that will be required of all principals pursuant to the rules of the state board;

(b) Intensive summer training institutes; and

(c) Specialized training and professional development programs for all principals, with special programs for the following principals:

(1) Newly appointed principals;

(2) Principals of schools designated by the state board as on probation or as seriously impaired;

(3) Principals subject to improvement plans; and

(4) Principals of schools with significantly different grade level configurations.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

§18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.
(a) *Purpose.* — The purpose of this section is as follows:

1. To assist students in the planning and preparation for success in college and other post-secondary education if their education major interests require such formal education after high school;

2. To establish the minimum expected level of knowledge, skill and competency a student must possess to be prepared fully for college and other post-secondary education at state institutions of higher education;

3. To implement a method for communicating the minimum level of knowledge, skill and competency to students, parents, educators and counselors in the public schools, and admissions officers, advisors and faculty in the higher education institutions; and

4. To assure that the teacher preparation programs in state institutions of higher education prepare educators to, at a minimum, deliver instruction necessary to prepare students fully for college and other post-secondary education or gainful employment consistent with the provisions of section eight, article two-e, chapter eighteen of this code.

(b) *Joint rule.* — On or before the first day of October, one thousand nine hundred ninety-six, the higher education governing boards shall promulgate a joint rule to achieve the purposes of subsection (a) of this section. In the development of such rule, the governing boards shall consult with the state board and the jobs through education employer panel, established pursuant to section eight, article two-e, chapter eighteen of this code, and shall collaborate with the state board in the establishment of compatible practices within their separate systems.

(c) *Assessment of student readiness.* — To provide continuous assessment and program improvement in the preparation of high school students for success in college or other post-secondary education, the higher education governing boards shall communicate to the state board and the legislative oversight commission on education
accountability by the first day of December in each year,
beginning in December, one thousand nine hundred
ninety-seven, or as soon thereafter as the establishment of
an electronic portfolio system permits, the number of
graduates from the public schools in the state by high
schools who were accepted in the last calendar year for
enrollment at each of the state institutions of higher edu-
cation within one year of graduation, whose electronic
portfolio indicated readiness for college or other
post-secondary education, and whose knowledge, skill and
competency were below the minimum expected levels for
full preparation as defined by the governing boards. The
governing boards also shall report the areas in which the
knowledge, skill and competency of the students were
below the minimum expected level. The state board shall
provide information to each of the high schools of the
state for graduates from the high school.

CHAPTER 113

(Com. Sub. for H. B. 4065—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact sec-
tion six, article two of said chapter; to further amend said
article by adding thereto two new sections, designated sec-
tions six-a and thirteen-h; to amend and reenact section nine-
teen, article five of said chapter; to amend article nine-a of
said chapter by adding thereto a new section, designated
section twenty-one; to amend and reenact section one-a,
article five, chapter eighteen-a of said code; and to further
amend said article by adding thereto a new section, designat-
ed section one-b, all relating to definitions of "career clus-
ters", "work-based learning", "school-age juveniles" and "stu-
dent with a disability"; the state board of education's rule-making authority for the accreditation, classification and standardization of the state's schools; the establishment of an electronic portfolio system; the sale of soft drinks in high schools and allocation of profits; the state board of education's policy-making authority for the approval of alternative education programs for disruptive students; the state board of education's and the department of health and human resources' responsibility for the provision of educational services for school-age juveniles who have been placed in residential facilities; the county boards of education's authority to expand school activities or to use school property for public meetings or other purposes; the state board of education's authority to distribute money to county boards of education to provide for alternative education programs; students' expulsion or suspension from the school or school bus, the notification procedures for certain pupil transfers; alternative procedures for expulsion hearings by county boards; and authority to employ hearing examiners.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel.

CHAPTER 18. EDUCATION.

Article

1. Definitions; Limitations of Chapter; Goals for Education.

2. State Board of Education.
5. County Board of Education.
9A. Public School Support.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER;
GOALS FOR EDUCATION.

*§18-1-1. Definitions.

1 The following words used in this chapter and in any
2 proceedings pursuant thereto shall, unless the context
3 clearly indicates a different meaning, be construed as
4 follows:
5   (a) "School" means the pupils and teacher or teachers
6     assembled in one or more buildings, organized as a unit;
7     (b) "District" means county school district;
8     (c) "State board" means the West Virginia board of
9     education;
10     (d) "Board" means the county board of education;
11     (e) "State superintendent" means the state superinten-
12     dent of free schools;
13     (f) "Superintendent" means the county superintendent
14     of schools;
15     (g) "Teacher" means teacher, supervisor, principal,
16     superintendent, public school librarian; registered profes-
17     sional nurse, licensed by the West Virginia board of exam-
18     iners for registered professional nurses and employed by a
19     county board of education, who has a baccalaureate de-
20     gree; or any other person regularly employed for instruc-
21     tional purposes in a public school in this state;
22     (h) "Service personnel" means all nonteaching school
23     employees not included in the above definition of "teacher";
24     (i) "Regular full-time employee" means any person
25     employed by a county board of education who has a reg-
26     ular position or job throughout his employment term,
27     without regard to hours or method of pay;
28     (j) "Career clusters" means broad groupings of related
29     occupations;

*Clerk's Note: This section was also amended by S. B. 300 (Chapter
112), which passed prior to this act.
(k) "Work-based learning" means a structured activity that correlates with and is mutually supportive of the school-based learning of the student and includes specific objectives to be learned by the student as a result of the activity;

(l) "School-age juveniles" means any individual who is entitled to attend or who, if not placed in a residential facility, would be entitled to attend public schools, in accordance with: (1) Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter; or (3) section one, article twenty of this chapter; and

(m) "Student with a disability" means an exceptional child, other than gifted, pursuant to section one, article twenty of this chapter.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; establishment of alternative education programs.

§18-2-6a. Sale of soft drinks.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

*§18-2-6. Classification and standardization of schools; standards for degrees and diploma; establishment of alternative education programs.

The state board shall make rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for the granting of diplomas and certificates of proficiency by those schools. Not later than the school year one thousand nine hundred ninety-one, certificates of proficiency including specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education shall be granted, along with the diploma, to every eligible high school graduate.

No institution of less than collegiate or university status may grant any diploma or certificate of proficiency on any basis of work or merit below the minimum stan-

Clerk's Note: This section was also amended by S. B. 300 (Chapter 112), which passed prior to this act.
No charter or other instrument containing the right to issue diplomas or certificates of proficiency shall be granted by the state of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing such diplomas or other certificates of proficiency has first been approved in writing by the state board.

Notwithstanding any other provisions of this section to the contrary, the requirement for granting certificates of proficiency shall be replaced by the requirement that information be provided on an electronic portfolio system established by the state board pursuant to section eight, article two-e of this chapter and issued to every high school graduate by the appropriate county board: Provided, That the requirements for granting certificates of proficiency shall be continued until such time as the electronic portfolio system has been made available to the county boards.

The state board also may establish policies and procedures for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure. These policies and procedures may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

§18-2-6a. Sale of soft drinks.

In order to generate funding for necessary programs and supplies, county boards may permit the sale of soft drinks in county high schools except during breakfast and lunch periods. The sale of such soft drinks shall be in compliance with the rules of the national school lunch program and the school breakfast program of the state board and the nutrition service of the United States department of agriculture, which became effective on the seventeenth day of June, one thousand nine hundred eighty-
Provided, That, if under such rules, the sale of soft drinks shall become prohibited, such rules shall not prohibit the sale of soft drinks in high schools in the state of West Virginia. Seventy-five percent of the profits from the sale of soft drinks shall be allocated by a majority vote of the faculty senate of each school and twenty-five percent of the profits from the sale of soft drinks shall be allocated to the purchase of necessary supplies by the principal of the school.

§18-2-13h. Provision of educational services for school-age juveniles placed in residential facilities for custody and treatment.

(a) The state board of education and the department of health and human resources are authorized to provide for adequate and appropriate education opportunities for school-age juveniles placed in the following residential facilities as a result of proceedings commenced under the provisions of chapters twenty-seven and forty-nine of this code: Davis-Stuart, Inc., located in Lewisburg, West Virginia; the Elkins Mountain School, located in Elkins, West Virginia; the Abraxas Foundation of West Virginia, located in Waverly, West Virginia; and the Barboursville School, located in Barboursville, West Virginia.

(b) Subject to appropriations by the Legislature, the state board shall have the following authority: (1) To provide education programs and services for school-age juveniles on the grounds of residential facilities, pursuant to agreements with the department of health and human resources and the licensed child-care agencies of such department; (2) to hire classroom teachers and other school personnel necessary to provide adequate and appropriate education opportunities to these juveniles; and (3) to provide education services for school-age juveniles in residential facilities on a twelve-month basis.

(c) The department of health and human resources shall cooperate with the state board and the state superintendent in the establishment and maintenance of education programs authorized under this section. Subject to appropriations by the Legislature, the department of health and human resources shall provide, or cause to be provided,
adequate space and facilities for such education programs. The state board shall not be required to construct, improve or maintain any building, other improvement to real estate or fixtures attached thereto at any residential facility for the purpose of establishing and maintaining an education program.

(d) The state board of education and the department of health and human resources are authorized to enter into agreements to provide adequate and appropriate education opportunities for school-age juveniles who are placed in residential facilities other than the facilities identified in this section.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19. Night schools and other school extension activities; use of school property for public meetings, etc.

County boards shall have authority to establish and maintain evening classes or night schools, continuation or part-time day schools, alternative schools, and vocational schools, wherever practicable to do so, and shall admit thereto adult persons and all other persons, including persons of foreign birth. County boards may admit school-age children and youth to these classes or schools under the circumstances prescribed by a state board of education policy governing alternative education programs. County boards shall have authority to use school funds for the financial support of such schools and to use the schoolhouses and their equipment for such purposes. Any such classes of schools shall be conducted in accordance with the rules of the state board.

County boards shall have authority to provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assemble and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home or in the community.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

For the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, an appropriation may be made to the state department to be distributed to county boards for the operation of alternative education programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature: Provided, however, That ninety percent of any appropriation which may be made for the purposes set forth in this section shall be distributed to county boards on the basis of net enrollment and ten percent of this appropriation shall be distributed on a competitive basis to county boards for the operation of pilot or innovative alternative education programs. Each county board shall apply to the state superintendent for receipt of its share of the distribution in the manner set forth by the state superintendent which is consistent with the policies and procedures adopted by the state board for the establishment and maintenance of alternative education programs.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§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-5-1b. Alternative procedures for expulsion hearings by county boards.
(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 that the student be expelled. Upon such a request by a principal, the county superintendent shall recommend to the county board that the student be expelled. Upon such recommendation, the county board 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-sponsored function a controlled substance governed by the Uniform Controlled Substances Act as described in chapter 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 that the student be expelled. Upon such recommendation by the county superintendent, the county board may hold a hearing in accordance with the provisions of subsections (e) and (f) of this section to determine if the student com-
mitted the alleged violation. If the county board finds that
the student did commit the alleged violation, the county
board 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 that the student be expelled. Upon such recommend-
dation by the county superintendent, the county 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 finds that the student did commit the alleged viola-
tion, the county board may expel the student.

(d) The actions of any pupil which may be grounds
for his or her suspension or expulsion under the provi-
sions 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 suspen-
sion.
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: Provided, That certified mail is not required if one or both of the parents, guardians, or custodians of the pupil are present at the time the suspension is decided upon, or if any one of them acknowledges receipt of the report by signing and dating a copy of the report. The suspension also shall be reported 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, the county board 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 county board 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 con-
front and cross-examine witnesses supporting the charge
against him or her. The hearing shall be recorded by me-
chanical means, unless recorded by a certified court re-
porter. The hearing may be postponed for good cause
shown by the pupil but he or she shall remain under sus-
pension until after the hearing. The state board may adopt
other supplementary rules of procedure to be followed in
these hearings. At the conclusion of the hearing the county
board 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 reduc-
tion of the period of expulsion, the county superintendent
shall prepare a written statement setting forth the circum-
stances 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, 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 been classified as a student with a
disability, prior to performing the actions giving rise to
this section, special consideration shall be given to such
pupil as hereinafter provided:

(1) Regardless of whether or not the misconduct is the
proximate result of the disability of a student, a student
with a disability may be suspended immediately for up to
ten consecutive days for each occurrence of misconduct
or when it is necessary for the protection of the student,
the protection of school personnel, or the protection of
other students;

(2) If the misconduct is found to be the proximate result of the disability of the student, then, subject to the provisions of subsection (3) of this section, the student may not be suspended or expelled for more than ten consecutive days for each occurrence of misconduct or for each occurrence when it is necessary for the protection of the student, the protection of school personnel, or the protection of other students;

(3) A student with a disability who has committed a violation involving the possession of a firearm, as defined in section two, article seven, chapter sixty-one of this code, on the school premises or at a school-sponsored function 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 calendar days. During this time, if a parent, guardian, or custodian requests a due process hearing to contest placement of the student, the student shall remain in the alternative education setting during the pendency of any proceeding, unless the parents and the county board agree otherwise. At the conclusion of the proceeding, if it is determined that the student with a disability committed a violation involving the possession of a firearm and the violation is not the proximate result of the disability of the student, the student with a disability shall be expelled from school for the period set forth in the applicable provisions of this section: Provided, That special education and related services must be provided during this additional period of expulsion;

(4) If the behavior giving rise to the violation or activity is not the proximate result of the disability of the student, a student with a disability who has committed a violation involving the possession of a deadly weapon, as defined in section two, article seven, chapter sixty-one of this code, other than a firearm, or who has committed a violation or has engaged in any other activity for which suspension or expulsion is a punishment under the provisions of this article, shall be suspended or expelled from school in the manner described in this section. In addition, special
education and related services must be provided during
the period of a suspension or expulsion exceeding ten
days; and

(5) If the student with a disability has been suspended,
and it is determined that the misconduct is the proximate
result of the disability of the student, it is recommended
that school officials determine whether the student is re-
ceiving appropriate instructional and related services in the
current placement. In addition, the violations may be ad-
dressed through strategies, including, but not limited to,
the following: (i) Conflict management and behavior man-
agement strategies which are not inconsistent with the
individualized education program of the student; (ii) stu-
dent and teacher training initiatives which are not inconsis-
tent with the individualized education program of the
student; (iii) an initiation by professional educators, at any
time, of a change in the placement of the student through
an individualized education program meeting to be held
within twenty-one days, subject to the applicable proce-
dural safeguards; and (iv) an initiation of a court order to
remove the student from school, if there is belief that
maintaining the student in the current educational place-
ment is substantially likely to cause injury to the student
or others.

(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) If a pupil transfers to another school in West Vir-
ginia, the principal of the school from which the pupil
transfers shall provide a written record of any disciplinary
action taken against the pupil to the principal of the
school to which the pupil transfers.

(l) 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.
§18A-5-1b. Alternative procedures for expulsion hearings by county boards.

The county boards may employ a hearing examiner to conduct the expulsion hearings required by this article. The hearing examiner shall be an attorney, duly licensed to practice law in the state of West Virginia and shall not be employed by the state or county boards for any other reason.

The hearing examiner shall conduct hearings in compliance with the guidelines of section one-a of this article. All hearings shall be recorded by mechanical means, unless recorded by a certified court reporter. The hearing examiner shall issue a decision and written findings of fact and conclusions of law within five days of the conclusion of the hearing. Hearings by a hearing examiner shall have the same force and effect as a decision made by a county board. Upon the written request of a parent, guardian, or custodian of the student, or the county superintendent, the county board shall review the decision of the hearing examiner. Within ten calendar days from the date of the request of the review, the county board shall enter an order affirming, reversing, or modifying the decision of the hearing examiner. A county board may, in its own discretion, hold a hearing to determine any issues in question.

The authority of the county superintendent shall be the same as contained in section one-a of this article.

CHAPTER 114

(Com. Sub. for S. B. 104—By Senators Miller, Wagner, Bowman, Bailey, Boley, Buckalew, Kimble, Minear, Plymale, Deem, Schoonover, Blatnik and Love)

[Passed February 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal section three, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact sections two and four of said article, all relating to eliminating the statewide testing of educational
progress program (WV-STEP); creating a new section requiring the state board of education to recommend an assessment program and report to the legislative oversight commission on education accountability; creating an advisory council for the purpose of consulting with the state board and state superintendent regarding the recommendation of the assessment program; providing an option for teachers to administer the WV-STEP test in the 1995-96 school year; and renaming section two of said article to retain the requirement of the national assessment of educational progress program testing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-1a. Recommendation of assessment program; advisory council established.

§18-2E-2. National assessment of educational progress program testing.

§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

§18-2E-1a. Recommendation of assessment program; advisory council established.

(a) In order to further the purposes of this article, the state board shall recommend to the legislative oversight commission on education accountability an assessment program for the measurement of the educational progress of public school students in attaining a high quality education. A model of such program shall be presented to the legislative oversight commission on education accountability on or before the first day of November, one thousand nine hundred ninety-six.

(b) An advisory council is hereby established for the purpose of consulting with and advising the state superintendent of schools and the state board of education regarding the establishment of the assessment program mentioned in subsection (a) of this section. Members of the
council shall be appointed by the state superintendent and shall include the following: Two county superintendents, two school principals, three classroom teachers, and two members of the public at large who are also members of local school improvement councils. Upon recommendation of the assessment program to the legislative oversight commission on education accountability by the state board, the advisory council shall be terminated.

(c) Nothing in this section shall be construed to prevent any teacher from administering the statewide testing of educational progress program (WV-STEP) during the school year of one thousand nine hundred ninety-five—ninety-six: Provided, That the cost of duplicating the test and all other related expenses shall be borne by the state board of education.

§18-2E-2. National assessment of educational progress program testing.

Beginning in the school year one thousand nine hundred ninety-one, and continuing thereafter, national assessment of educational progress program tests shall be administered in academic areas at the various grades designated by the national assessment of educational progress officials to provide comparisons of West Virginia students to a national sample.

*§18-2E-4. Better schools accountability; school, school district and statewide school report cards.

(a) For the purpose of providing information to the parents of public school children and the general public on the quality of education in the public schools which is uniform and comparable between schools within and among the various school districts, the state board shall prepare forms for school, school district and statewide school report cards and shall promulgate rules concerning the collection and reporting of data and the preparation, printing and distribution of report cards under this section. The forms shall provide for brief, concise reporting in nontechnical language of required information. Any technical or explanatory material a county board wishes to include shall be contained in a separate appendix available to the general public upon request.

*Clerk’s Note: This section was also amended by S. B. 300 (Chapter 112), which passed subsequent to this act.
(b) The school report cards shall include:

1. The following indicators of student performance at the school in comparison with the county, state, regional and national student performance, as applicable: School attendance rates; the percent of students not promoted to next grade; the graduation rate; and student mobility (turnover shown as a percent of transfers out and a percent of transfers in); and

2. The following indicators of school performance in comparison with the aggregate of all other schools in the county and the state, as applicable: Average class size; percent of enrollments in courses in high school mathematics, science, English and social science; amount of time per day devoted to mathematics, science, English and social science at middle, junior high and high school grade levels; percent of enrollments in college preparatory, general education and vocational education programs; pupil-teacher ratio; number of exceptions to pupil-teacher ratio requested by the county board and the number of exceptions granted; the number of split-grade classrooms; pupil-administrator ratio; operating expenditure per pupil; county expenditure by fund in graphic display; and the average degree classification and years of experience of the administrators and teachers at the school;

(3) Every county board of education shall annually determine the number of administrators, classroom teachers and service personnel employed that exceeds the number allowed by the public school support plan and determine the amount of salary supplements that would be available per state authorized employee if all expenditures for the excess employees were converted to annual salaries for state authorized administrators, classroom teachers and service personnel within their county. The information shall be published annually in each school report card of each such county.

(c) The school district report card shall include the data for each school for each separately listed applicable indicator and the aggregate of the data for all schools, as applicable, in the county for each indicator. The statewide school report card shall include the data for each county
for each separately listed indicator and the aggregate for all counties for each indicator.

(d) The report cards shall be prepared using actual local school, county, state, regional and national data indicating the present performance of the school and shall also include the state norms and the upcoming year's targets for the school and the county board.

The state board shall provide technical assistance to each county board in preparing the school and school district report cards.

Each school district board shall prepare report cards in accordance with the guidelines set forth in this section. The school district report cards shall be presented at a regular school board meeting subject to applicable notice requirements and shall be made available to a newspaper of general circulation serving the district. The school report cards shall be mailed directly to the parent or parents of any child enrolled in that school. In addition, each county board shall submit the completed report cards to the state board which shall make copies available to any person requesting them.

The report cards shall be completed and disseminated prior to the first day of January, one thousand nine hundred eighty-nine, and in each year thereafter, and shall be based upon information for the current school year, or for the most recent school year for which the information is available, in which case the year shall be clearly footnoted.

(e) In addition to the requirements of subsection (c) of this section, the school district report card shall list: (1) The names of the members of the district school board, the dates upon which their terms expire and whether they have attended an orientation program for new members approved by the state board and conducted by the West Virginia school board association or other approved organizations, and other school board member training programs; and (2) the names of the district school superintendent and every assistant and associate superintendent and any training programs related to their area of school administration which they have attended. The information
shall also be reported by district in the statewide school report card.

(f) The state board shall develop and implement a separate report card for nontraditional public schools pursuant to the appropriate provisions of this section to the extent practicable.

CHAPTER 115

(H. B. 4663—By Delegates Kiss, Browning, Compton, Doyle, Mezzatesta, Border and Miller)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code West Virginia, one thousand nine hundred thirty-one, as amended; to amend article nine-a of said chapter by adding thereto a new section, designated section fourteen; to amend and reenact sections three, six and fifteen, article nine-d of said chapter; to further amend said article by adding thereto a new section, designated section four-a, all relating to the authority of county boards of education generally; allowance for county transfers; powers of the school building authority; savings from issuance of refunding bonds; school building capital improvements fund in the state treasury; school construction fund in state treasury; school building debt service fund in the state treasury; school improvement fund in the state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis; and distribution of money by the school building authority.

Be it enacted by the Legislature of West Virginia:

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

Article

5. County Board of Education.
9A. Public School Support.
9D. School Building Authority.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 The boards, subject to the provisions of this chapter and the rules of the state board, has authority:

3 (1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection with the schools and school interests, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit the records and to conserve the funds, which shall be considered quasi-public moneys, including securing surety bonds by expenditure of board moneys;

16 (2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

21 (3) To close any school which is unnecessary and to assign the pupils of the school to other schools: Provided, That the closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in April, in the same manner as provided in section four of this article, except in an emergency,
subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such rules as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto at public expense, by rules and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by the commission, or the local or county chapter of the commission: Provided, however, That in all cases the school buses owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That the county board may provide, under rules established by the state board, for the certification of professional employees as drivers of board-owned vehicles with a seating capacity of less than ten passengers used for the transportation of pupils for school-sponsored activities other than transporting students between school and home: And provided further, That the use of the vehicles shall be limited to one for each school-sponsored activity: And provided further, That buses shall be used for extracurricular activities as provided in this section only
when the insurance provided for by this section is in effect;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (8) of this section;

(7) (a) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules established by the board. All costs and expenses incurred by or incidental to the transportation of the children shall be borne by the lessee;

(b) To contract with any college or university or officially recognized campus organizations to provide transportation for college or university students, faculty or staff to and from the college or university: Provided, That only college and/or university students, faculty and staff are being transported. The contract shall include consideration and compensation for bus operators, repairs and other costs of service, insurance and any rules concerning student behavior;

(8) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils is contracted, then the contract for the transportation shall provide that the contractor shall carry insurance against negligence in an amount specified by the board;

(9) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia public employees insurance act;

(10) To employ teacher aides, to provide in-service training for teacher aides, the training to be in accordance
with rules of the state board and, in the case of service personnel assuming duties as teacher aides in exceptional children programs, to provide a four-clock-hour program of training prior to the assignment which shall, in accordance with rules of the state board, consist of training in areas specifically related to the education of exceptional children;

(11) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach in the high school or post high school program;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service personnel;

(14) To provide at public expense and under rules as established by any county board of education for the payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board of education;

(15) To allow or disallow their designated employees to use publicly provided carriage to travel from their residences to their workplace and return: Provided, That the usage is subject to the supervision of the board and is directly connected with and required by the nature and in the performance of the employee's duties and responsibilities;

(16) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees;

(17) To enter into agreements with one another to provide, on a cooperative basis, improvements to the instructional needs of each county. The cooperative agreements may be used to employ specialists in a field of academic study or support functions or services, for the academic study. The agreements are subject to approval by the state board of education;
(18) To provide information about vocational or higher education opportunities to students with handicapping conditions. The board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state funded institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education; and

(19) To enter into agreements with one another, with the approval of the state board, for the transfer and receipt of any and all funds determined to be fair when students are permitted or required to attend school in a county other than the county of their residence.

"Quasi-public funds" as used in this section means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under rules it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


In order to encourage county boards to utilize fully their facilities and to provide county boards with fiscal flexibility, county boards that agree to transfer students to another county pursuant to an agreement approved by the state board after the effective date of this article, pursuant to subsection (19), section thirteen, article five, chapter eighteen of this code, shall forward in the year in which the transfers occur to the receiving county the amount agreed upon in the agreement, not to exceed the per pupil allocation in the state aid formula. Subject to appropriations by the Legislature, funds equal to the agreed upon amount will be provided to the county which transfers
students as an allowance for facility efficiency in the year
in which the transfers occur. Subject to appropriations by
the Legislature, for the first year after the transfers occur,
the county board shall receive one-half the amount pro­
vided for in the agreement. Subject to appropriations by
the Legislature, for the second year after the transfers
occur, the county board shall receive one-fourth the
amount provided for in the agreement. If professional or
service personnel obtain full-time employment pursuant to
the terms of section eight-i, article four, chapter eighteen-a
of this code, then the state board shall deduct an appropri­
ate amount from the funds to be received pursuant to this
section.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.


§18-9D-4a. Savings from issuance of refunding bonds.

§18-9D-6. School building capital improvements fund in state treasury;
school construction fund in state treasury; school building debt
service fund in state treasury; school improvement fund in state
treasury; collections to be paid into special funds; authority to
pledge such collections as security for refunding revenue
bonds; authority to finance projects on a cash basis.

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


1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase not to exceed
6 a term of twenty-five years, or otherwise, real property or
7 rights or easements necessary or convenient for its corpo­
8 rate purposes and to exercise the power of eminent do­
9 main to accomplish those purposes;

10 (4) To acquire, hold and dispose of real and personal
11 property for its corporate purposes;

12 (5) To make bylaws for the management and rule of
13 its affairs;
(6) To appoint, contract with and employ attorneys, bond counsel, accountants, construction and financial experts, underwriters, financial advisers, trustees, managers, officers and such other employees and agents as may be necessary in the judgment of the authority and to fix their compensation: Provided, That contracts entered into by the school building authority in connection with the issuance of bonds under this article to provide professional and technical services, including, without limitation, accounting, actuarial, underwriting, consulting, trustee, bond counsel, legal services and contracts relating to the purchase or sale of bonds are subject to the provisions of article three, chapter five-a of this code: Provided, however, That notwithstanding any other provisions of this code, any authority of the attorney general of this state relating to the review of contracts and other documents to effectuate the issuance of bonds under this article shall be exclusively limited to the form of the contract and document: Provided further, That the attorney general of this state shall complete all reviews of contracts and documents relating to the issuance of bonds under this article within ten calendar days of receipt of the contract and document for review;

(7) To make contracts and to execute all instruments necessary or convenient to effectuate the intent of and to exercise the powers granted to it by this article;

(8) To renegotiate all contracts entered into by it whenever, due to a change in situation, it appears to the authority that its interests will be best served;

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

(10) To require proper maintenance and insurance of any project authorized under this section;

(11) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved, in whole or in part, with the revenues of the authority;
(12) To assist any county board of education that chooses to acquire land, buildings and capital improvements to existing school buildings and property for use as public school facilities, by lease from a private or public lessor for a term not to exceed twenty-five years with an option to purchase pursuant to an investment contract with the lessor on such terms and conditions as may be determined to be in the best interests of the authority, the state board of education and the county board of education, consistent with the purposes of this article, by transferring funds to the state board of education as provided in subsection (d), section fifteen of this article for the use of the county board of education;

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

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

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

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

(17) To transfer moneys to custodial accounts maintained by the school building authority with a state financial institution from the school construction fund and the school improvement fund created in the state treasury pursuant to the provisions of section six of this article, as necessary to the performance of any contracts executed by the school building authority in accordance with the provisions of this article;

(18) To enter into agreements with county boards and persons, firms or corporations to facilitate the development of county board projects and county board facilities plans. The county board participating in an agreement shall pay at least twenty-five percent of the cost of the agreement. Nothing in this section shall be construed to supersede, limit or impair the authority of county boards to develop and prepare their projects or plans; and

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

§18-9D-4a. Savings from issuance of refunding bonds.

Any aggregate savings resulting from the issuance of refunding bonds pursuant to section four of this article shall be retained by the school building authority. Any savings shall be utilized solely for the construction and maintenance of schools and may not be used to fund administrative costs of the authority.

§18-9D-6. School building capital improvements fund in state treasury; school construction fund in state treasury; school building debt service fund in state treasury; school improvement fund in state treasury; collections to be paid into special funds; authority to pledge such collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

(a) There is continued in the state treasury a school building capital improvements fund to be expended by the authority as provided in this article. The school build-
The school building authority has authority to pledge all or such part of the revenues paid into the school building capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article prior to the twentieth day of July, one thousand nine hundred ninety-three, or revenue bonds issued to refund revenue bonds issued prior to that date, including the payment of principal of, interest and redemption premium, if any, on the 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 the revenue bond issue or issues when other moneys pledged may be insufficient for the payment of the principal, interest and redemption premium, including such additional protective pledge of revenues as the authority in its discretion has provided by resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bond issue. The authority may further provide in the resolution and in the trust agreement for such priorities on the revenues paid into the school building capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the school building capital improvements fund after the authority has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, pursuant to this article have been satisfied, may be used for the redemption of any of the outstanding bonds issued under this article which by their terms are then redeemable, or for the purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds are in the same year redeemable, and all bonds redeemed or purchased shall immediately be canceled and shall not again be issued.
The school building authority, in its discretion, may use the moneys in the school building capital improvements fund to finance the cost of projects on a cash basis. Any pledge of moneys in the fund for revenue bonds issued prior to the twentieth day of July, one thousand nine hundred ninety-three, is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis: Provided, That any expenditures from the fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

(b) There is hereby continued in the state treasury a special revenue fund named the school building debt service fund into which shall be deposited on and after the first day of April, one thousand nine hundred ninety-four, the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article: Provided, That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to the first day of January, one thousand nine hundred ninety-four. The authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the school building debt service fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to the first day of May of each year, commencing the first day of May, one thousand nine hundred ninety-four, the authority shall certify to the state lottery director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after the first day of January, one thousand nine hundred ninety-four, and for which moneys deposited in the school
building debt service fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article, and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the school building debt service fund may be used for the redemption of any of the outstanding bonds issued under this article which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(c) There is hereby continued in the state treasury a special revenue fund named the school construction fund into which shall be deposited on and after the first day of July, one thousand nine hundred ninety-four, the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated thereto by the Legislature. Expenditures from the school construction fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code, pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The school construction fund shall be an interest bearing account, with the interest credited to and deposited in the school construction fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the school con-
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struction fund are subject to the provisions of subsection (i), section fifteen of this article.

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(d) There is hereby continued in the state treasury a special revenue fund named the school major improve-

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ment fund into which shall be deposited on and after the first day of July, one thousand nine hundred ninety-four, the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the school major improvement fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code, pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The school major improvement fund shall be an interest bearing account, with interest being credited to and deposited in the school major improvement fund and expended in accordance with the provisions of this article.

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(e) The Legislature hereby finds and declares that the supreme court of appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the school building authority act, as enacted in this article prior to the twentieth day of July, one thousand nine hundred ninety-three, constituted an indebtedness of the state in violation of section 4, article X of the constitution of West Virginia, but that revenue bonds issued under this article prior to the twentieth day of July, one thousand nine hundred ninety-three, are not invalid. The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds
instead of criteria related to educational needs or upon the
ability of the school building authority created in this
article to issue bonds that comply with the holding of the
West Virginia supreme court of appeals or otherwise assist
counties with the financing of facilities construction and
improvement. The Legislature hereby further finds and
declares that this section, as well as section eighteen, article
twenty-two, chapter twenty-nine of this code, have been
reenacted during the first extraordinary session of the
West Virginia Legislature in the year one thousand nine
hundred ninety-four, in an attempt to comply with the
holding of the supreme court of appeals of West Virginia.

The Legislature hereby further finds and declares that
it intends, through the reenactment of this section and
section eighteen, article twenty-two, chapter twenty-nine of
this code, to dedicate a source of state revenues to special
revenue funds for the purposes of paying the debt service
on bonds and refunding bonds issued subsequent to the
first day of January, one thousand nine hundred
ninety-four, the proceeds of which will be utilized for the
construction and improvement of school building facili-
ties. The Legislature hereby further finds and declares that
it intends, through the reenactment of this section and
section thirty, article fifteen, chapter eleven of this code
and section eighteen, article twenty-two, chapter
twenty-nine of this code, to appropriate revenues to two
special revenue funds for the purposes of construction and
improvement of school building facilities. Furthermore,
the Legislature intends to encourage county boards of
education to maintain existing levels of county funding
for construction, improvement and maintenance of school
building facilities and to generate additional county funds
for such purposes through bonds and special levies when-
ever possible. The Legislature further encourages the
school building authority, the state board of education and
county boards of education to propose uniform project
specifications for comparable projects whenever possible
to meet county needs at the lowest possible cost.

The Legislature hereby further finds and declares that
it intends, through the reenactment of this section and
section eighteen, article twenty-two, chapter twenty-nine of
this code, to comply with the provisions of sections 4 and 6, article X; and section 1, article XII of the constitution of West Virginia.

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

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

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys paid into the school major improvement fund pursuant to section six of this article, may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this section moneys for school major improvement projects proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively: Provided, That the authority may not expend any moneys for a school major
improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year school major improvement plan, to be updated annually, pursuant to section sixteen of this article: Provided, however, That the authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is no more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the school building authority.

(d) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from: (1) Moneys paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter; (2) the issuance of revenue bonds for which moneys in the school building debt service fund are pledged as security; (3) moneys paid into the school construction fund pursuant to section six of this article; and (4) any other moneys received by the authority, except moneys deposited into the school major improvement fund, shall be allocated and expended on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

(e) If a county board of education proposes to finance a project that is approved pursuant to section sixteen of
this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may allocate no moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board of education, which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have such terms and conditions as are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board of education and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, such county board and a lessor: Provided, That in the event a county board of education, which has received a loan from the state building authority for a one-time payment at the beginning of the lease term, does not renew the subject lease annually until performance of the investment contract in its entirety is completed: Provided, however, That if a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises: Provided further, That the failure of the county board to make a scheduled payment pursuant to the investment contract shall constitute an event of default under the loan agreement: And provided further, That upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall at the option of the authority, in consultation with the state board, become due
and payable immediately or subject to renegotiation among the state board, the authority and the county board: And provided further, That if the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this subsection, any county board failing to expend money within three years of the allocation to the county board shall forfeit the allocation and thereafter shall be ineligible for further allocations pursuant to this subsection until the county board is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the school construction fund of the authority for future allocation and distribution.

(f) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the school major improvement fund pursuant to section six of this article shall be allocated and distributed on the basis of need and efficient use of resources, the basis to be determined by the authority in accordance with the provisions of section sixteen of this article: Provided, That the moneys may not be distributed to any county board that does not have an approved school major improvement plan or to any county board that is not prepared to commence expenditures of the funds during the fiscal year in which the mon-
eyes are distributed: Provided, however, That any moneys
allocated to a county board and not distributed to that
county board shall be deposited in an account to the credit
of that county board, the principal amount to remain to
the credit of and available to the county board for a peri-
od of two years. Any moneys which are unexpended after
a two-year period shall be redistributed on the basis of
need from the school major improvement fund in that
fiscal year.

(g) No local matching funds may be required under
the provisions of this section. However, the responsibilities
of the county boards of education to maintain school
facilities shall not be negated by the provisions of this
article, and therefore, to be eligible to receive an allocation
of school major improvement funds from the authority, a
county board must have expended in the previous fiscal
year an amount of county moneys equal to or exceeding
the lowest average amount of money included in the
county board's maintenance budget over any three of the
previous five years and must have budgeted an amount
equal to or greater than the average in the current fiscal
year: Provided, That the state board of education shall
promulgate rules relating to county boards' maintenance
budgets, including items which shall be included in the
budgets.

(h) Any county board may use moneys provided by
the authority under this article in conjunction with local
funds derived from bonding, special levy or other sources.
Distribution to a county board, or to the state board or the
administrative council of an area vocational educational
center pursuant to subsection (b) of this section, may be in
a lump sum or in accordance with a schedule of payments
adopted by the authority pursuant to such guidelines as it
shall adopt.

(i) Funds in the school construction fund shall first be
transferred and expended as follows:

Any funds deposited in the school construction fund
shall be expended first in accordance with an appropria-
tion by the Legislature. To the extent that funds are avail-
able in the school construction fund in excess of that
amount appropriated in any fiscal year, the excess funds may be expended in accordance with the provisions of this article. Any projects which the authority identified and announced for funding on or before the first day of August, one thousand nine hundred ninety-five, or identified and announced for funding on or before the thirty-first day of December, one thousand nine hundred ninety-five, shall be funded by the authority in an amount which is not less than the amount specified when the project was identified and announced.

(j) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant such preference to those projects which involve multi-county arrangements as the authority shall determine reasonable and proper.

CHAPTER 116

(Com. Sub. for H. B. 4064—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen-d, relating to limiting the liability of boards of education generally.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen-d, to read as follows:
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-19d. Conditional immunity from liability for community activities; liability insurance; authority of state board of risk and insurance management.

(a)(1) If the requirements of this subsection are met, the board of education is not liable under any theory of vicarious or imputed liability for the acts or omissions of:

(A) Any person, organization or association using school property for a community activity described in section nineteen of this article;

(B) Any member, employee or agent of such person, organization or association; or

(C) Any person attending or participating in the community activity other than an employee of the board while acting within the scope of employment.

(2) The limitation of liability extended the board of education pursuant to this subsection does not apply unless:

(A) The person, organization or association using school property for a community activity has in effect, at the time of the act or omission described in subdivision (1) of this subsection, a contract of insurance which provides general comprehensive liability coverage of any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person arising out of the use of school property for a community activity described in subdivision (1) of this subsection;

(B) The contract of insurance provides for the payment of any attorney fees, court costs and other litigation expenses incurred by the board in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act; and

(C) The insurance coverage is in the amounts specified in the provisions of section five-a, article twelve, chapter twenty-nine of this code.

(3)(A) The insurance described in subdivision (2) of
this subsection may be obtained privately or may be obtained pursuant to the provisions of this subdivision. If requested by any person, organization or association seeking such insurance coverage, the state board of risk and insurance management is authorized to provide such insurance and to enter into any necessary contract of insurance to further the intent of this subdivision.

(B) Where provided by the state board of risk and insurance management, the cost of the insurance, as determined by the such board, shall be paid by the person, organization or association and may include administrative expenses. All funds received by such board shall be deposited with the West Virginia board of investments for investment purposes.

(C) The state board of risk and insurance management is hereby authorized and empowered to negotiate and effect settlement of any and all claims covered by the insurance provided by such board pursuant to this subdivision to the extent the board is authorized and empowered to negotiate and effect settlement of claims described in section five, article twelve, chapter twenty-nine of this code.

(4) As used in this subsection, "organization" or "association" means a bona fide, not for profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or 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.

(b) Nothing in this section shall affect the rights, duties, defenses, immunities or causes of action under other statutes or the common law of this state which may be applicable to boards of education.
CHAPTER 117

(S. B. 584—By Senators Jackson, Blatnik, Plymale, Boley, Minear, Wagner, Dugan, White, Bailey, Oliverio, Schoonover, Helmick, Miller and Grubb)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a; and to amend and reenact section seventeen, article four, chapter eighteen-a of said code, all relating to personnel employed by the division of rehabilitation services.

Be it enacted by the Legislature of West Virginia:

That article ten-a, 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 two-a; and that section seventeen, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 10A. VOCATIONAL REHABILITATION.


1 Notwithstanding any other provision of this code to the contrary, beginning the first day of July, one thousand nine hundred ninety-six, rehabilitation teachers shall be paid at the equivalent rate of pay of teachers, pursuant to section two, article four of this chapter: Provided, That rehabilitation teachers shall be paid outside the public school support plan, defined in section one, article nine-a of this chapter, and shall receive the equivalent of the salary supplement paid to teachers employed by the county board within the county where the facility of the division is located, pursuant to section five-a, article four of this chapter: Provided, however, That any person who received an increase in salary, pursuant to section seven-
teen, article four, chapter eighteen-a of this code, prior to the first day of July, one thousand nine hundred ninety-six, shall continue to receive the increased salary level.

For purposes of this section, the following words shall be construed as follows:

(a) "Rehabilitation teacher" means any person employed by the division and who meets the certification requirements of section two-a, article three, chapter eighteen-a of this code, or who has been certified to teach by a state or nationally recognized organization, as approved by the office of the secretary of education and the arts. Such teachers shall maintain current certification in their teaching areas in order to remain employed. Such persons also shall teach only in the areas in which they are certified: Provided, That teachers who were employed on or before the first day of April, one thousand nine hundred ninety-five, shall be exempt from the following requirements: (1) Certification pursuant to section two-a, article three, chapter eighteen-a of this code; (2) maintenance of current certification in their teaching areas in order to remain employed; and (3) teaching only in the areas in which they are certified.

(b) "Equivalent rate of pay" means an annualized rate based on a two hundred forty-day teaching schedule and includes pay for vacation and legal state holidays.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-17. Health and other facility employee salaries.

(a) The minimum salary scale for professional personnel and service personnel employed by the state department of education to provide education and support services to residents of state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders and in the West Virginia schools for the deaf and the blind shall be the same as set forth in sections two, three and eight-a of this article. Additionally, such personnel shall receive the equivalent of salary supplements paid to professional and service personnel employed by the county board of education in
the county wherein each facility is located, as set forth in sections five-a and five-b of this article. Professional personnel and service personnel in these facilities who earn advanced classification of training after the effective date of this section shall be paid such advanced salary from the date such classification of training is earned. Such professional personnel shall be required to be certified, licensed or trained, and/or shall meet other eligibility classifications as may be required by the provisions of this chapter and by state board regulations for comparable instructional personnel who are employed by county boards of education, and shall be paid at the equivalent rate of pay of teachers as set forth in section two of this article, but outside the public support plan, plus the equivalent of the salary supplement paid to teachers employed by the county board of education in the county wherein each facility is located, as set forth in section five-a of this article.

(b) Professional personnel employed by the department to provide educational service to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders or in the West Virginia schools for the deaf and the blind shall be afforded all the rights, privileges and benefits established for such professional personnel under this article: Provided, That such benefits shall apply only within the facility at which employed: Provided, however, That benefits shall exclude salaries unless explicitly provided for under this or other sections of this article: Provided further, That seniority for such professional personnel shall be determined on the basis of the length of time that the employee has been professionally employed at the facility, regardless of which state agency was the actual employer.

(c) Nothing contained in this section shall be construed to mean that professional personnel and service personnel employed by the department of education to provide educational and support services to residents in state department of health and human resources facilities, corrections facilities providing services to juvenile and youthful offenders and the West Virginia schools for the deaf and the blind are other than state employees.
CHAPTER 118
(S. B. 42—By Senators Craigo, Ross, Sharpe, Walker, Plymale, Oliverio, Kimble, Love and Schoonover)

[Passed March 8, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty-five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing county boards of education, the teachers retirement board, the West Virginia board of education and the department of education and the arts to allow its employees to participate in certain tax deferred investments; specifying the terms of the investment and the amount of the reduction; and providing that the transaction of making an investment imposes no liability or responsibility on the state agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25. TAX DEFERRED INVESTMENTS FOR TEACHERS AND OTHER EMPLOYEES.

§18-25-1. Authority to make tax deferred investments for teachers and other employees.

A county board of education, the teachers retirement board, the West Virginia board of education and the department of education and the arts and their agencies may provide by written agreement between the department, any such board or agency and any teacher or other employee to reduce the cash salary payable to the teacher or other employee, and, in consideration thereof, to pay an amount equal to the amount of the reduction as premiums on an annuity contract or investments into a custodial account or other investment owned by the teacher or other employee. The annuity contract, custodial account or other investment shall be in such form and upon such terms as will qualify the payments thereon for tax deferment under the
United States Internal Revenue Code. The amount of the
reduction may not exceed the amount excludable from
income under Section 403(b) of the United States Internal
Revenue Code, and amendments and successor provisions
thereto, and shall be considered a part of the teachers or
employees salary for all purposes other than federal and
state income tax.

The transaction of making the tax deferred investment
for a teacher or other employee by a board of education,
the teachers retirement board, the West Virginia board of
education and the department of education and the arts
and their agencies imposes no liability nor responsibility
whatsoever on the boards, department or members thereof
except to show that the payments have been remitted for
the purposes for which deducted.

CHAPTER 119

(S. B. 591—Originating in the Committee on Finance)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirteen, article two, chapter eighteen
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to repeal section one, article fifteen
of said chapter; to amend and reenact sections one-c, one-d,
two and eight-a, article one, chapter eighteen-b of said code;
to further amend said article by adding thereto a new section,
designated section eight-b; to amend article two of said chap­
ter by adding thereto a new section, designated section nine;
to amend and reenact sections one, two and three-a, article
three of said chapter; to amend and reenact section one,
article four of said chapter; to amend and reenact sections
two, three and four, article six of said chapter; and to amend
and reenact section one, article eight of said chapter, all relat­
ing to higher education generally; repealing obsolete lan­
guage; strategic plans submitted by institutions of higher
education; changing the submission dates for strategic plans
and the requirements for approval of such plans; contents of
statewide report cards; changing the submission dates for statewide report cards required to be submitted by institutions of higher education; allocating funds appropriated to the higher education efficiency fund; transferring West Virginia Institute of Technology to the board of trustees; recon­stituting the Board of Directors and providing for the election of a chairman; establishing institutional control accounts; community and technical college education; terms of office and election of the chairman of advisory councils of faculty; terms of office and election of the chairman of advisory councils of students; terms of office and election of the chairman of advisory councils of classified employees; establishing a coordinate affiliation between Marshall university and West Virginia graduate college; promulgation of legisla­tive rules; updating language concerning the vice chancellor of health sciences; and defining institutions.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Governance.

2. University of West Virginia Board of Trustees.

3. Board of Directors of the State College System.

4. General Administration.

6. Advisory Councils of Faculty.

8. Higher Education Full-Time Faculty Salaries.

ARTICLE 1. GOVERNANCE.
§18B-1-lc. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

§18B-1-ld. Increasing flexibility and capacity for change.

§18B-1-2. Definitions.

§18B-1-8a. Higher education accountability; institutional and statewide report cards.

§18B-1-8b. Coordinate affiliation between Marshall university and West Virginia graduate college.

§18B-1-lc. Strategically focusing resources to maximize opportunity; institution plans; resource allocation exceptions.

(a) Purpose of strategic plans. — 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 university 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. The plans shall specifically state how the institution will, over a five-year period, refocus its mission and leadership and restructure its existing resources and programs 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, Potomac state college of West Virginia university and West Virginia university institute of technology 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 educa-
tion board region; (2) achieve full funding of the uniform
employee classification system and salary policy for clas-
sified employees adopted by the respective governing
boards pursuant to section four, article nine of this chap-
ter; (3) eliminate duplicative programs and services, acting
alone or in conjunction with another institution, and elimi-
nate under-utilized or unnecessary programs; (4) may
combine administrative functions among other institu-
tions; and (5) use admission and exit standards for stu-
dents, incentives and staff development for assuring quali-
ty 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 sav-
ings and costs associated with achieving any other goals
specified in the plan and how the funds are to be redirect-
ed. 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 president's report to the board. Beginning
the first day of July, one thousand nine hundred
ninety-six, the budgets of state institutions of higher edu-
cation 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) Submission of strategic plans. — 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 hundred ninety-five, and
every year thereafter, through and including the fiscal
year two thousand—two thousand one: Provided, That
community and technical college education shall not be
required to be segregated in the plan until the first day of
November, one thousand nine hundred ninety-six.

(c) Approval of strategic plans by the governing
boards. — The governing boards shall approve or disap-
prove the plans within sixty days of receipt of the plans
and notify the institution president or administrative head of its decision. Approval or disapproval of the plan of each institution shall be decided by a vote of the appropriate governing board and shall be made part of its minute record: Provided, That if the plan submitted by the institution includes retirement and separation incentives pursuant to section one-d of this article, that portion of the plan shall be submitted by the governing board to the legislative joint standing committee on pensions and retirement, and the time required for review by the committee shall not be included in the sixty days.

(d) Approval of original strategic plans by the secretary of education and the arts. — Once the appropriate governing board approves the original plan, for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, it shall submit the plan to the secretary of education and the arts, as established in section two, article one, chapter five-f of this code, and hereby known as the "secretary" for purposes of this section, for approval or disapproval. The secretary shall approve or disapprove the plan and notify the appropriate governing board of the decision within thirty calendar days. Upon such approval the institution shall receive its share of the funds from the "higher education efficiency fund", pursuant to subsection (j) of this section. If an original plan from any institution is disapproved by the secretary, the secretary shall notify the appropriate governing board and shall return the plan to the institution for revision and resubmission to the appropriate governing board. When an institution resubmits its original strategic plan to the appropriate governing board, the board shall vote to approve or disapprove the plan pursuant to subsection (c) of this section. Once the original plan has been approved by the appropriate governing board, the governing board shall resubmit the plan to the secretary for approval or disapproval. The secretary shall notify the appropriate governing board within twenty calendar days of his or her action. Upon such approval the institution shall receive its share of the funds from the "higher education efficiency fund", pursuant to subsection (j) of this section.
(e) Disapproval of strategic plans by the governing boards. — If disapproved, the governing board shall return 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 governing board shall vote, in accordance with subsection (c) of this section, to approve or disapprove the resubmitted plan within thirty calendar days and notify the institution president or administrative head. If the plan has not been approved by the appropriate governing board on or before the first day of February following the November submission date, the board is authorized to develop a plan for the institution. The president or administrative head of every state institution of higher education with an approved plan shall update the plan on an annual basis to reflect performance during the preceding year and make any necessary modifications. The updated plan shall be submitted on the first day of November in each of the subsequent years through and including the fiscal year two thousand—two thousand one, and the governing board shall follow the same procedures for approval or disapproval as provided in this section 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 immediately shall notify affected students, faculty and staff.

(f) Exceptions under the resource allocation model and policies. — 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 the 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 eleventh day of March, one thousand nine hundred ninety-five, which is being eliminated pursuant to that 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.

(g) 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 the 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.

(h) The application for an exception under this subsection shall be submitted to the appropriate governing board 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, and make additional investments in technology and increased access. 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 ad-
ministrative head may modify and resubmit an application
which was disapproved at any time and the governing
board shall approve or disapprove the resubmitted appli-
cation within sixty days and notify the institution president
or administrative head as provided in this subsection for
the original plan.

(i) 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 re-
fect the high costs of a program within the institution's
mission shall be removed from the institutions 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.

(j) Higher education efficiency fund. — It is the ex-
pressed intent of the Legislature, subject to the availability
of funds and appropriations therefor, to increase state
appropriated funds for state institutions of higher educa-
tion in each of the five fiscal years, one thousand nine
hundred ninety-seven, through and including, fiscal year
two thousand—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-
dined by the Legislature to refocus and restructure their
missions, leadership, resources and programs to meet the
plans in accordance with this section. In any fiscal year in
which the state appropriated funds are less than the ex-
pressed intent, the governing boards may adjust the targets
set forth in the strategic plans for change by a like propor-
tion: Provided, That the target shall not be adjusted for
those institutions which have lost funds as a result of fail-
ure to secure approval, pursuant to this section, or failure
to comply with their approved strategic plans. Beginning
with legislative appropriations under this subsection for
the fiscal year one thousand nine hundred ninety-six
—ninety-seven, the Legislature shall appropriate the funds,
if any, to a separate account known as the "higher education efficiency fund" in the state budget. Funds from the higher education efficiency fund shall be allocated in the following manner:

(1) For the fiscal year one thousand nine hundred ninety-six—ninety-seven, appropriations to the fund shall be allocated only to institutions with approved plans, pursuant to this section; and

(2) For the fiscal year one thousand nine hundred ninety-seven—ninety-eight, and every year through and including the fiscal year two thousand—two thousand one, appropriations to the fund shall be allocated only to institutions with approved plans, pursuant to this section, which are in compliance with their strategic plan for change as approved by the appropriate governing board. The allocations shall be made in accordance with the resource allocation model and policies in the following manner:

(i) Any institution with a plan approved by the appropriate governing board by the first day of July of each fiscal year is entitled to its full annual share of the moneys appropriated to the higher education efficiency fund;

(ii) Any institution which fails to secure approval by the appropriate governing board by the first day of July, but secures the approval before the first day of October, is entitled to the remaining three quarters of its annual share of the moneys appropriated to the higher education efficiency fund;

(iii) Any institution which fails to secure approval by the appropriate governing board by the first day of July, but secures approval before the first day of January, is entitled to the remaining one half of its annual share of the moneys appropriated to the higher education efficiency fund; and

(iv) Any institution which fails to secure approval by the appropriate governing board by the first day of July, but secures approval before the first day of April, is entitled to the remaining one quarter of its annual share of the
moneys appropriated to the higher education efficiency fund.

The quarterly share of the higher education efficiency fund of an institution which is not so allocated, by the beginning of each quarter, shall be allocated immediately 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 scholarships and student grant programs.

§18B-1-1d. Increasing flexibility and capacity for change.

(a) Retirement and separation incentives. — Notwithstanding 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 article, policies that offer various incentives for voluntary, early or phased retirement of employees, or voluntary separation from employment, when necessary to implement 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 from employment must be submitted by the governing board to the legislative joint committee on pensions and retirement and approved before such policies are adopted as part of the institution's strategic plan. The policies may include the following provisions:

(1) Payment of a lump sum to an employee to resign or retire;

(2) Continuation of full salary to an employee for a predetermined period of time prior to the employee's resignation or retirement and a reduction in the employee's hours of employment during the predetermined period of time;

(3) Continuation of insurance coverage pursuant to the provisions of article sixteen, chapter five of this code for a predetermined period;
(4) Continuation of full employer contributions to an employee's retirement plan during a phased retirement period; and

(5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee's retirement plan prior to the statutorily designated retirement date without terminating their service with the institution.

No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals and objectives set forth in this article.

No incentive proposed by an institution pursuant to this section shall become a part of the institution's approved strategic plan or be implemented without approval of the legislative joint committee on pensions and retirement.

Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the public employees insurance agency unless those costs are paid entirely by the institutions.

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.

The West Virginia network for educational telecomputing may utilize the incentives contained in any policy approved by the legislative joint committee on pensions and retirement pursuant to this section.
(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
of regional 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
accordance with the provisions of section three-a, article
three of this chapter;

(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 educa-
tion shall be delivered through a system which includes
eleven community and technical college districts assigned
to state institutions of higher education under the jurisdic-
tion 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 pur-
suant to article three of this chapter or the members there-
of;
(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, 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;
("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, West Virginia university institute of technology 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, community and technical education programs at Potomac state college of West Virginia university and West Virginia university institute of technology community and technical college under the jurisdiction of the university of West Virginia board of trustees and all their associated branches, centers and off-campus locations; and

(s) "Regional campus" means West Virginia university at Parkersburg, Potomac state college of West Virginia university, and West Virginia University institute of technology. The chief executive officer of a regional campus shall be known as "campus president", shall serve at the will and pleasure of the president of West Virginia university, and shall report to the president of West Virginia university or his or her designee in the method specified by West Virginia university. The board of advisors for West Virginia university established pursuant to section one, article six of this chapter shall serve as the advisory board for West Virginia university and its regional campuses. The advisory boards previously appointed for each regional campus shall be known as "Boards of Visitors" and shall provide guidance to the regional campus presi-
dents. Each regional campus shall adopt separate strategic plans required by section one-c of this article.

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 the 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 the 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 considered necessary for inclusion in a higher education report card. Upon approval of the rule by the legislative oversight commission on education accountability and the state department of education, the provisions of subsection (c) of this section are null and void: The 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. The 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, con-
cise 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 the time as the governing board may establish. The governing boards shall prepare institutional report cards for institutions under their jurisdiction and systemwide report cards which shall include the information required in the following subdivisions:

(1) For all undergraduate students and for all institutions 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 measures; the graduation or completion rate as may be 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, percentage and dollar value of tuition fee waivers categorized by whether the 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 professions 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 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 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 those 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 consider 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. The report shall state the entity, the amount of funds paid to the 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 the 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, the 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 the 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. The 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 consider 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 perfor-
mance in comparison with the aggregate of all other institutions 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 re-
view 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 is 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 under this section. 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 January, one thousand nine hundred ninety-seven, 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 the 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.

§18B-1-8b. Coordinate affiliation between Marshall university and West Virginia graduate college.

There is hereby established a coordinate affiliation between Marshall university and the West Virginia graduate college to insure a jointly planned and operated program of graduate education in the Charleston-Huntington region of West Virginia. The two institutions, while maintaining their individual identities, missions, faculty, curricula and budgets, shall share facilities as appropriate, develop integrated information technology systems, operate joint programs where efficient and practicable, develop joint electronic administrative and library systems, and
engage in joint appointment of faculty and administrators as feasible and where cost effective.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-9. West Virginia University institute of technology.

(a) Notwithstanding any other provisions of this code to the contrary, the authority to establish, maintain and operate West Virginia institute of technology is hereby transferred to the board of trustees effective the first day of July, one thousand nine hundred ninety-six. West Virginia institute of technology shall henceforth be known as West Virginia university institute of technology and shall be operated as a regional campus of West Virginia university under the same procedures, policies, rules and practices utilized by West Virginia university and the board of trustees in operating West Virginia university at Parkersburg and Potomac state college of West Virginia university.

(b) Notwithstanding any other provisions of this code to the contrary and notwithstanding the resource allocation policy of the board of trustees, in allocating funds to the institutions under its jurisdiction, the board of trustees, through the first day of July, two thousand one, shall ensure that each institution receives no less than the amount of funds that each institution would have received if West Virginia institute of technology had not been transferred to the jurisdiction of the trustees.

(c) Title to all property previously transferred to or vested in the board of directors for the exclusive use or benefit of West Virginia institute of technology is hereby transferred to the board of trustees. Each valid agreement, obligation or claim entered into or incurred by the board of directors on behalf of West Virginia institute of technology is hereby transferred to the board of trustees.

(d) Revenues of West Virginia institute of technology previously pledged to pay off the indebtedness of revenue bonds issued by the board of directors shall continue to be paid to the board of directors until the existing debt is
fully paid. An annual payment of three hundred seventy-three thousand eighty-nine dollars for each of the years remaining on the present system bond issue of the board of directors shall constitute the debt of West Virginia university institute of technology to the board of directors under this subsection. If the board of directors approves, the board of trustees or West Virginia university institute of technology may discharge this indebtedness through alternative payment plans or methods, including prepayment discounted appropriately.

(e) To compensate the other state college institutions for the amount that would have been reallocated under the resource allocation policy of the board of directors if West Virginia institute of technology had remained under the jurisdiction of the board of directors, West Virginia university institute of technology shall transfer two hundred eighty-four thousand five-hundred twenty-five dollars to the board of directors for each of the fiscal years one thousand nine hundred ninety-six-ninety-seven, one thousand nine hundred ninety-seven-ninety-eight, and one thousand nine hundred ninety-eight-ninety-nine.

(f) West Virginia university institute of technology shall retain the same or a lower type of southern regional education board classification as an institution until at least the first day of July, two thousand.

(g) Until at least the first day of July, one thousand nine hundred ninety-seven, West Virginia university institute of technology shall retain the same promotion and tenure process in place prior to the transfer effectuated by this section.

(h) For the purposes of meeting the requirements of section one, article seven of this chapter, West Virginia university institute of technology, West Virginia university at Parkersburg, and Potomac state college of West Virginia university shall be considered separate institutions of higher education.

(i) Any new moneys appropriated to or received by West Virginia university institute of technology shall be
allocated to West Virginia university institute of technology under the policies of the board of trustees.

It is the intent of the Legislature in implementing the merger of West Virginia university and West Virginia institute of technology that new graduate programs offered by West Virginia university at the West Virginia university institute of technology will not duplicate existing graduate programs currently offered by Marshall university and the West Virginia graduate college. Before any graduate programs are offered by West Virginia university at the West Virginia university institute of technology, they must be approved by the board of trustees.

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-3-2. Meetings and compensation.

§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level administration and governance; programs; district consortia; implementation process; and implementation team.

§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 sixteen 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 ten directors shall be citizens of the state, appointed by the gover-
nor, by and with the advice and consent of the Senate. On
or after the tenth day of March, one thousand nine hun-
dred ninety-six, the board shall be reconstituted and all
terms of members appointed by the governor prior to the
tenth day of March, one thousand nine hundred
ninety-six, shall expire upon the appointment by the gov-
ernor of all the directors required to be appointed by this
section. The governor shall make appointments required
by this section no later than the fifteenth day of March,
one thousand nine hundred ninety-six.

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 baccalau-
reate 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 mem-
bers 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 offi-
cer or member of any political party executive committee,
the holder of any other public office or public employ-
ment under the government of this state or any of its polit-
ical 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 ten directors appointed by the governor
from the public at large, not more than five thereof shall
belong to the same political party and at least three direc-
tors of the board shall be appointed from each congressio-
nal district.

Except as provided in this section, no other person
may be appointed to the board.
(b) The governor shall appoint ten directors as soon after the tenth day of March, one thousand nine hundred ninety-six, 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, three shall be appointed to terms of two years, three shall be appointed to terms of four years and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.

The governor shall appoint a director to fill any vacancy among the ten 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 serves as a director or trustee during all or any part of two consecutive terms beginning after the first day of March, one thousand nine hundred ninety-six, 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-3-2. Meetings and compensation.

(a) The board of directors shall hold at least ten meetings in every fiscal year, including an annual meeting each June: Provided, That a meeting for the purpose of selecting the first chairman shall be held during March, one thousand nine hundred ninety-six. Except for the annual meeting, which may be held at a location anywhere in the state, the meetings shall be held on different campuses of institutions in the state college system on a rotating basis or at the central office. The directors may set aside time at these meetings held at the campuses to afford administrators, faculty, students and classified staff at these institutions an opportunity to discuss issues affecting these groups. The directors shall hold at least one meeting each year with the advisory council of faculty, the advisory council of students and the advisory council of classified employees, each of these bodies to be met with separately. Except as otherwise provided in this section, meetings shall be held on such dates and at such places as the directors may prescribe. In addition to the statutorily required meetings, the directors may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the written request of at least five appointed directors.

Of the thirteen voting members of the board of directors, seven shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the directors.

(b) The directors shall be reimbursed for actual and necessary expenses incident to the performance of such duties, upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the directors.
§18B-3-3a. Community and technical college education; establishment; state level governance; formation of districts; college level administration and governance; programs; district consortia; implementation process; and implementation team.

(a) General. — The purpose of this section is to establish community and technical college education that is well articulated with the public schools and four-year colleges; that makes maximum use of shared facilities, faculty, 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 instrument of economic development; and that has the independence and flexibility to respond quickly to changing needs. The respective governing boards shall provide for community and technical college education at state institutions of higher education under their jurisdiction to have the administrative, programmatic and budgetary control necessary to allow maximum flexibility and responsiveness 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 education and training programs.

(b) State level governance. — The board of directors and the board of trustees shall jointly employ a vice chancellor for community and technical college education. 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; and
(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 established 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 proposed by the governing boards for their respective institutions and appropriated by the Legislature in an institutional control account under the jurisdiction of the board of directors for those institutions governed by the board of directors for their respective institutions and a separate institutional control account under the jurisdic-
tion of the board of trustees for those institutions governed by the board of trustees. The board of directors and the board of trustees shall establish by joint legislative rule a formula for the allocation of such funds to control accounts of 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.

(c) 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 community 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 quali-
fied 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;

5. Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure and literacy training; and

6. 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 insti-
(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:

(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 decisionmaking;

(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 credentialing;

(7) Performance assessment of student knowledge and skills which may be gained from multiple sources so that students gain credit toward program completion and advance 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 services 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 funding for appropriate staff from the public schools and the community and technical colleges for personnel and other costs related to shared facility projects, including recommendations for any necessary legislative enactments; and
   (v) Make recommendations to the governor and Legislature as may be necessary.

(2) One thousand nine hundred ninety-six—ninety-seven:
   (i) Begin separate budgeting; and
   (ii) Begin full operations of the community and technical 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 established 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 accountability no later than the first day of December, in the years one thousand nine hundred ninety-five, one thousand nine hundred ninety-six and one thousand nine hundred ninety-seven, on the status of such implementation and any further needs for legislative enactment. The implementation 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 colleges, one representative of the private sector, one representative of employment and training programs, one representative 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 personnel, equipment and offices of the affected agencies.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

(a) At its annual meeting in June of each year, each governing board shall elect from its members appointed by the governor a president and such other officers as it may consider necessary or desirable: Provided, That the initial annual meeting shall be held during July, one thousand nine hundred eighty-nine. The president and such other officers shall be elected for a one-year term commencing on the first day of July following the annual meeting and ending on the thirtieth day of June of the following year. The president of the board shall serve no more than two consecutive terms.

(b) Each governing board shall employ a chancellor who shall serve at the will and pleasure of the employing board and shall assist the governing board in the performance of its duties and responsibilities. No chancellor may hold or retain any other administrative position within the system of higher education while employed as
chancellor. Each chancellor is responsible for carrying out the directives of the governing board by which he or she is employed and shall work with the board in developing policy options. For the purpose of developing or evaluating policy options, the chancellors may request the assistance 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 vice chancellor for health sciences shall coordinate the West Virginia university school of medicine, the Marshall university school of medicine and the West Virginia school of osteopathic medicine.

(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; the integration of computer usage into all course work; the involvement of faculty in the development and use of technology-based instruction and instructional courseware for community and technical colleges, colleges and universities; and the expansion of 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 vice chancellor shall submit the plan 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 the plan, or portions of the plan, 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 provisions of section three-a, article three of this chapter.

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-2. Advisory councils of faculty.

§18B-6-3. Advisory councils of students.

§18B-6-4. Advisory councils of classified employees.

§18B-6-2. Advisory councils of faculty.

Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of faculty.

During the month of April of each even-numbered year, each president or other administrative head of a state institution of higher education, including Potomac state college of West Virginia university, West Virginia university at Parkersburg, and West Virginia university institute of technology, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the appropriate governing board's advisory council of faculty, which shall consist of one faculty, so elected, from each such institution under the appropriate governing board. Terms of the members of each council shall be for two years and shall begin on the first day of July of each even-numbered year.
and members of each advisory council shall be eligible to succeed themselves.

The advisory councils of faculty shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board: Provided, That the chair shall serve no more than two consecutive terms. No member may vote by proxy at such election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, each council shall elect, in the manner prescribed by this section for the election of a chairman, a member of that council to preside over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy. In electing the chairman of the advisory council for the board of trustees, West Virginia university and its regional campuses shall have a total of two votes, which shall be cast for one individual, and the elected representatives from Marshall university, the West Virginia graduate college, and West Virginia school of osteopathic medicine shall have one vote per school.

Each advisory council of faculty, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the faculty members may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of faculty, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any faculty member of a state institution of higher education.
58 represented on the council. Such minutes shall be for-
59 warded to the advisory council of faculty serving the other
governing board.

§18B-6-3. Advisory councils of students.

1 Effective the first day of July, one thousand nine hun-
2 dred eighty-nine, each governing board shall be assisted
3 by an advisory council of students.

4 The student government organization at each state
5 institution of higher education shall elect a student, who
6 may be the elected head or president of such organization,
7 to serve on the appropriate governing board's advisory
8 council of students, which are hereby created, consisting
9 of the elected representatives of each institution under the
10 appropriate governing board: Provided, That the student
11 government organization at each institution in the univer-
12 sity system, including Potomac state college of West Vir-
13 ginia university, West Virginia university at Parkersburg,
14 and West Virginia university institute of technology, shall
15 elect one student per three thousand students enrolled at
16 each institution with a minimum of one representative
17 from each institution. The student government of each
18 institution shall determine how its representatives shall be
19 elected. Terms of the members of such council shall be
20 for one year and shall begin on the first day of May of
21 each year, and members of the advisory councils shall be
22 eligible to succeed themselves.

23 Each institution shall have only one vote in all matters.
24 The advisory councils of students shall meet at least once
25 each quarter, and shall meet during each month of June, at
26 which meeting each council shall elect a chairman, who
27 prior to such elections must be entitled to vote in the state
28 of West Virginia. By virtue of the office, the chairman
29 shall be a voting member of the appropriate governing
30 board. No member may vote by proxy at such election.
31 In the event of a tie in the last vote taken for such election,
32 a member authorized by the council shall select the chair-
33 man by lot from the names of those persons tied. Immedi-
34 ately following the election of a chairman, each council
35 shall elect, in the manner prescribed by this section for the
36 election of a chairman, a member of that council to pre-
side over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy. In electing the chairman of the advisory council for the board of trustees, West Virginia university and its regional campuses shall have a total of two votes, which shall be cast for one individual, and the elected representatives from Marshall university, the West Virginia graduate college, and West Virginia school of osteopathic medicine shall have one vote per school.

Each advisory council of students, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the students may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of students, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any student of a state institution of higher education represented on the council. Such minutes shall be forwarded to the advisory council of students serving the other governing board.

§18B-6-4. Advisory councils of classified employees.

Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of classified employees.

During the month of April of each even-numbered year, each president or other administrative head of a state institution of higher education, including Potomac state college of West Virginia university, West Virginia university at Parkersburg and West Virginia university institute of technology, at the direction of the councils and in ac-
cordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one classified employee to serve on the appropriate governing board's advisory council of classified employees, which shall consist of one classified employee, so elected, from each such institution under the appropriate governing board. Terms of the members of such councils shall be for two years and shall begin on the first day of July of each even-numbered year, and members of the advisory councils shall be eligible to succeed themselves. For the purpose of this section the term "institution of higher education" includes the facilities and staff supervised by the senior administrator employed by the governing boards, who shall be deemed a part of the state college system, and the West Virginia network for telecomputing, who shall be deemed a part of the state university system.

Each advisory council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of July, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board: Provided, That the chair shall serve no more than two consecutive terms: Provided, however, That the board of directors' advisory council for classified employees' chairman shall not be a member of the staff supervised by the central administrative official. No member may vote by proxy at such election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, each council shall elect, in the manner prescribed by this section for the election of a chairman, a member of the council to preside over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy. In electing the chair of the advisory council for the board of trustees, West Virginia university and its regional campuses shall have a total of two votes, which shall be cast for one individual, and the elected representatives from Marshall university,
the West Virginia graduate college, the West Virginia network for telecomputing and West Virginia school of osteopathic medicine shall have one vote per school.

Each advisory council of classified employees, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the classified employees may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of classified employees, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council. Such minutes shall be forwarded to the advisory council of classified employees serving the other governing board.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-1. Definitions.

As used in this article:

(a) "Schedule" or "salary schedule" means the grid of minimum salary figures listed in section two of this article;

(b) "Academic rank" means the position held by a faculty member as determined by the president, consistent with policy established by the governing board, and includes the positions of professor, associate professor, assistant professor and instructor; all other ranks are excluded from the provisions of this article;

(c) "Years of experience" means the actual number of years a person has been a full-time faculty member at an institution of higher education within this state. Employment for nine months shall equal one year of experience, but no faculty member may accrue more than one year of experience during any given academic year. Employment
for less than full time, or less than nine months during any fiscal year, shall be prorated. In accordance with rules established by the governing boards, a faculty member may be granted additional years of experience for actual years of work or teaching experience at institutions other than institutions of higher education within this state;

(d) "Doctoral institutions" means West Virginia university and Marshall university at Huntington. Doctoral programs at Marshall university shall be selective and nonduplicative of West Virginia university unless an exception is recommended by both institutions and approved by the board of trustees. "Master's II institutions" means West Virginia school of osteopathic medicine and the West Virginia graduate college; "baccalaureate and two-year institutions" means Bluefield state college, Concord college, Fairmont state college, Glenville state college, Shepherd college, West Liberty state college, West Virginia university institute of technology, West Virginia state college, West Virginia university at Parkersburg, Southern West Virginia community college, West Virginia northern community college and Potomac state college of West Virginia university and such other institutions as are designated community colleges by the board of directors;

(e) "Salary" means the total nine-month or ten-month salary paid from state funds to a full-time faculty member, or if other than nine or ten months, adjusted to a nine-month base salary;

(f) "Full-time faculty" means any faculty member designated as such by the president, consistent with approved policy of the appropriate governing board, and those persons with faculty rank who have research or administrative responsibilities;

(g) "Fiscal year" means twelve calendar months and begins on the first day of July and ends on the thirtieth day of June; and

(h) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions, in accordance with policy established by the appropriate governing board.
AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eighteen, relating to creating the science and technology advisory council; stating the legislative purpose; establishing membership of the council; establishing the powers and duties; payment of expenses; compensation of director; creating public-private partnerships; and establishing funding of the council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. HIGHER EDUCATION — INDUSTRY PARTNER­SHIPS.

§18B-18-1. Legislative purpose.
§18B-18-2. Science and technology advisory council; members, appointment and expenses; appointment, duties and compensation of director.
§18B-18-4. Public-private partnerships; funding.

§18B-18-1. Legislative purpose.

1 The Legislature hereby finds that a pressing need
2 exists for a strategy based upon science and technology
3 which promotes a scientifically literate citizenry, encour­
4 ages the creation of higher-paying jobs and enhances the
5 growth of West Virginia's gross state product. To that end,
6 the state recognizes the need for collaborative research
7 and development efforts among institutions of higher
8 education, industry, government and private organizations
which will advance the state's scientific and technological
development. The Legislature further finds that focused
research and technical assistance efforts related to West
Virginia industry will speed such development, improve
technology transfer, assist companies in becoming growth
leaders and link basic research and technological develop-
tment to economic advancement.

The Legislature therefore declares that creation of a
science and technology advisory council will be advanta-
geous to the state by working to move West Virginia into a
strong competitive position in science and technology.
The council shall provide policy advice to the Legislature
and to the governor on scientific and technology subjects
and issues and provide policy advice to the council for
community and economic development on science and
technology issues that will serve to foster economic
growth. The council shall also develop a state science and
technology strategic plan for submission to the Legislature
and the governor.

§18B-18-2. Science and technology advisory council; mem-
bers, appointment and expenses; appointment,
duties and compensation of director.

(a) There is hereby created a science and technology
advisory council, which is a body corporate and politic,
constituting a public corporation and government instru-
mentality. The council shall consist of eleven members
who have professional, labor or managerial knowledge in
science and technology development and operations and
shall represent an equitable balance between academic and
nonacademic persons as follows:

(1) Five members to be appointed by the governor,
with the advice and consent of the Senate, with not more
than three belonging to the same political party, also three
of whom shall be from different congressional districts of
the state, and, as near as may be, provide a broad state
geographical distribution of members of the council;

(2) One member to be appointed by the governor,
with the advice and consent of the Senate, from a list of
two persons recommended by the speaker of the House of
Delegates;
(3) One member to be appointed by the governor, with the advice and consent of the Senate, from a list of two persons recommended by the president of the Senate;

(4) Two members to be appointed by the governor, with the advice and consent of the Senate, from a list of four persons recommended by the chancellor of the university of West Virginia system;

(5) One member to be appointed by the governor, with the advice and consent of the Senate, from a list of two persons recommended by the chancellor of the state college system of West Virginia; and

(6) One member to be appointed by the governor, with the advice and consent of the Senate, from a list of two persons recommended by the council for community and economic development.

(b) Not later than the fifteenth day of April, one thousand nine hundred ninety-six, the governor shall appoint the eleven members of the council for staggered terms. The terms of the council members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of their appointment, three at the end of the first year, four at the end of the second year, and four at the end of the third year. As the original appointments expire, each subsequent appointment shall be for a full three-year term. Any member whose term has expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. A member is eligible for only one successive reappointment. In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of serving members constitutes a quorum for the purpose of conducting business. The governor shall designate a chair, who is not a public official, for a term to run concurrently with the term of office of the member designated. The council shall conduct all meet-
ings in accordance with the open meeting law pursuant to article nine-a, chapter six of this code.

(d) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the governor and to the legislative joint committee on government and finance on or before the fifteenth day of December of each year.

(e) Each year, the council shall submit to the governor a list of science and technology projects recommended for funding. Such projects shall serve to fulfill the policies established by the science and technology strategic plan. The recommendation shall itemize the funds requested and shall identify any expenditures that will be matched by federal funds, or matched by foundation, corporate or by other funds.

(f) The chair of the council also shall serve as the executive director of the council for his or her term of office. He or she shall hold a graduate degree and have professional experience in fields involving science and technology research or development. The expenses of the executive director shall be paid from funds provided by foundation grants, in-kind contributions, or other funds obtained pursuant to subsection (b), section four of this article. The executive director shall provide or obtain scientific and technical information to support the administrative work of the council, and to that end may contract with the university system, a nonprofit organization, or other state agency for research and administrative support.

(g) The executive director of the council shall be available to the governor, the speaker of the House of Delegates, and the president of the Senate, to analyze and comment upon proposed legislation and rules which relate to or materially affect state scientific and technical issues.


(a) The council shall consult with the higher education governing boards and with state business leaders in the exercise of its powers and duties, which shall include, but not be limited to, the following: (1) Preparation of a comprehensive strategic plan and recommendation of pro-
grams in furtherance thereof that will support and foster state science and technology research; (2) cooperation with appropriate state agencies to retain and enlarge existing state industries through technology expansion; and (3) formulation of plans to establish science and technology research centers at state universities and colleges. The council may seek public and private research grants and contracts, matching funds and procurement arrangements from the state and federal government, private industry and other agencies, in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster economic growth in science and technology research and development in the state shall be developed and provided to the governor and the Legislature no later than the first day of July, one thousand nine hundred ninety-seven, and shall include, but not be limited to, the following:

(1) A science and technology policy;

(2) The identification of strengths and weaknesses in the basic science resources and research capabilities in the state;

(3) The identification of methods that will coordinate and engender collaborative research efforts between research entities throughout the state, whether public or private;

(4) The designation of areas for potential scientific and technological development, including those related to and having a direct impact upon the economic development of the state;

(5) Recommendations on how to improve and strengthen the partnership between the private sector, institutions of higher education and government;

(6) Recommendations on how to improve the infrastructure for research and research training;

(7) Recommendations on a system to transfer technology to the private sector in the state;

(8) Recommendations on legislative changes required to improve the overall science and technology environment in the state; and
(9) Other recommendations on science and technology policy and programs as appropriate.

The strategic plan may be updated and refiled on or before the first day of July of each year; an annual work plan shall be submitted each year beginning the first day of July, one thousand nine hundred ninety-eight.

(b) In developing its strategic plan, the science and technology council shall utilize its resources as well as the technical support available to it through the university of West Virginia system, the state college system of West Virginia, the West Virginia development office, the West Virginia experimental program to stimulate competitive research (EPSCoR), federal and state agencies, and other appropriate organizations that have an interest in fostering science and technology research and development in West Virginia.

(c) The council shall undertake to keep abreast of state and national scientific and technological developments and work to establish, foster, and successfully conclude university, college, and other scientific research projects or clusters.

(d) To reduce and avoid duplication of research work and expenditures, the council shall, as a part of its strategic plan, formulate methods that will coordinate and generate collaborative efforts between research entities throughout West Virginia, whether public or private, and foster synergistic relationships among them. Cooperating agencies may contract with the council, as hereinafter provided, so as to participate in science and technology projects, jointly or through the programs of the council with other participating institutions, government units, and private business firms.

§18B-18-4. Public-private partnerships; funding.

(a) In furtherance of its mission, the science and technology council is authorized to enter into contracts or joint venture agreements with federal and state agencies; with nonprofit corporations organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research, make grants, improve educational programs, and work for
the scientific, educational or economic development of this state. All contracts and joint venture agreements must be approved by a majority vote of the council. The council may also enter into such contractual agreements for consideration or recompense to it even though such entities are funded from sources other than the state. Members of the council are not prohibited from sitting on the boards of directors of any contracting private nonprofit corporation, foundation, or firm: Provided, That members of the council shall not be exempt from any of the provisions of chapter six-b of this code.

(b) The council is authorized to receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. Such funds shall be paid into a special account in the state treasury for the use and benefit of the science and technology advisory council.

CHAPTER 121

(Com. Sub. for H. B. 2341—By Delegates Smirl, Kiss, Hutchins, Amores, Leggett and Pino)

[Passed March 9, 1996: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen-a, relating generally to emergency services; authorizing paid leave for not more than fifteen work days for a state employee who is a certified disaster service volunteer of the American Red Cross; requiring American Red Cross to request leave; requiring approval by supervisors; and providing that no loss of pay or benefits will result from leave.

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

ARTICLE 5. EMERGENCY SERVICES.

§15-5-15a. Paid leave for disaster service volunteers.

Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to participate in specialized disaster relief services for the American Red Cross. Leave shall be granted under this section upon the request of the American Red Cross for the services of that employee and only upon the approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in specialized disaster relief shall make a report to the governor which includes the name of the employee and the cost of salary and benefits of that employee during the period of the leave. The governor shall keep a record of the total cost of the salary and benefits of employees who have been granted leave and in no event shall the total cost for all state agencies exceed one hundred thousand dollars: Provided, That upon approval of the governor and repayment of the cost to the employing agency, from the civil contingent fund, leave may be granted in an excess of a total cost of one hundred thousand dollars if a state of emergency has been proclaimed pursuant to section six of this article.
AN ACT to amend and reenact section twenty-two, article five, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to interstate civil defense and disaster compact; adoption by the state of West Virginia of the emergency management assistance compact so as to provide for mutual assistance between the states in managing emergencies or disasters.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EMERGENCY SERVICES.


The "Emergency Management Assistance Compact" is hereby approved, ratified, adopted, enacted into law and entered into by the state of West Virginia with all other jurisdictions legally joining therein in accordance with its terms, in a form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I - PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.
The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II - GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.
On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III - PARTY STATE RESPONSIBILITIES

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency or enemy attack.

(2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue and critical lifeline equipment, services and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for
(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans and resource records relating to emergency capabilities.

ARTICLE IV - LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof: Provided, That it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.
Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V - LICENSES AND PERMITS

Whenever any person holds a license, certificate or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI - LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any
ARTICLE VII - SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party here-to, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII - COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX - REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests: Provided, That any aiding party state may assume, in whole or in part, such loss, damage, expense or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost: Provided, however, That any two or more party states may enter into supplementary agreements establishing a dif-
ferent allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X - EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI - IMPLEMENTATION

(a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the
governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

ARTICLE XII - VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII - ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

ARTICLE XIV - REPORTING TO LEGISLATURE

The director of the office of emergency services shall, on or before the first day of January, one thousand nine hundred ninety-seven, provide to the joint committee on government and finance copies of all mutual aid plans and procedures promulgated, developed or entered into after the effective date of this section. The director shall annually thereafter provide the joint committee on government and finance with copies of all new or amended mutual aid plans and procedures on or before the first day of January of each year.
AN ACT to amend article six, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten, relating to prohibiting persons or organizations from using "911" in their name; directing the public service commission to promulgate legislative rules regarding the acceptable use of "911"; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-10. Prohibition against using "911" in company name.

No person or organization of any kind may use "911" or such other numbers which are similar and calculated to deceive the public as representing "911" services in their name unless the person or organization is authorized to provide emergency telephone services for firefighting, law enforcement and medical personnel. The public service commission shall propose rules for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the acceptable use of "911" and shall have the authority to authorize any organization or person to use "911" for the purposes of promoting the education of the public regarding the "911" service. This section may not be construed as affecting motor vehicle license plate numbers issued by the division of motor vehicles, or race cars that use a "911" logo, when the number is not used for purposes of deceiving the public that the operator or owner operates "911" services. Any person or organization convicted of a violation of this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars per occurrence.
CHAPTER 124

(Com. Sub. for H. B. 4213—By Delegate Kiss)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to laboratory certification; expanding the aggregate amount which can be received annually in the environmental laboratory certification fund; requiring out-of-state laboratories performance testing and payment of certification fees; and allowing the division of environmental protection to expend any interest accumulated in the environmental laboratory certification fund.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories not to exceed an annual program aggregate of three hundred thousand dollars, to be assessed against laboratory owners or operators in an amount necessary to cover the actual costs of administration of this program and the processing of certification applications, to be deposited in the state environmental laboratory certification fund created pursuant to this section. By the first day of July of each year, the director
shall provide to the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: Provided, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory shall not be considered a laboratory for purposes of assessing the fee, but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia pursuant to this section if the laboratories provide written documentation that approval has been received under requirements in their state and determined by the director to be equivalent to the West Virginia laboratory certification program. The reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in the other state and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification remains in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The
(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director is grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test results are invalidated because that person had relied upon a laboratory which loses its certification, shall be granted thirty days after notice of the invalidated test results by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the "environmental laboratory certification fund" shall be continued in the state treasury on the first day of July, one thousand nine hundred ninety-four. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line item appropriation by the Legislature, the director shall expend the proceeds, including the interest thereon, of the environmental laboratory certification fund solely for the administration of the requirements of this section.

(i) For purposes of this section, "covered statutory program" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, article eleven of this chapter; Hazardous Waste Management Act, article eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste Management Act, article
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fifteen of this chapter; or the Groundwater Protection Act, article twelve of this chapter.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal of a certification may appeal to the environmental quality board pursuant to article one, chapter twenty-two-b of this code.

(k) The provisions of this section apply only to tests and analyses of waste or wastewater subject to regulation by the division of environmental protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

CHAPTER 125

(Com. Sub. for S. B. 415—By Senators Ross and Helmick)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, relating generally to creating the West Virginia limited liability for persons responding to oil discharges act; providing definitions; and providing limited immunity from liability for removal costs and damages for those persons responding to oil discharges or the threat of oil discharges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. WEST VIRGINIA LIMITED LIABILITY FOR PERSONS RESPONDING TO OIL DISCHARGES ACT.


1 This article may be cited as the "West Virginia Limited Liability for Persons Responding to Oil Discharges Act".


For the purposes of this article:

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil;

(b) "Discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(c) "Federal on-scene coordinator" means the federal official designated by the lead agency or predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan (NCP);

(d) "National contingency plan" means the national contingency plan prepared and published under Section 311(d) of the federal Water Pollution Control Act, 33 U.S.C. §1321(d), as amended by the Oil Pollution Act of 1990, Public Law No. 101-380, 104 Stat. 484 (1990) as in effect as of the effective date of this article;

(e) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil;

(f) "Person" means an individual, corporation, partnership, association, state, municipality, commission or political subdivision of a state or any interstate body;

(g) "Remove" or "removal" means containment and
removal of oil or a hazardous substance from water and
shorelines or the taking of other actions as may be neces-
sary to minimize or mitigate damage to the public health
or welfare, including, but not limited to, fish, shellfish,
wildlife and public and private property, shorelines and
beaches;

(h) "Removal costs" means the costs of removal that
are incurred after a discharge of oil has occurred or, in
any case in which there is a substantial threat of a dis-
charge of oil, the costs to prevent, minimize or mitigate oil
pollution from such an incident; and

(i) "Responsible party" means a responsible party as
defined under §1001 of the Oil Pollution Act of 1990,


(a) Notwithstanding any other provision of this code
to the contrary, a person engaged in removal activities is
not liable for removal costs or damages which result from
acts or omissions in the course of rendering care, assis-
tance or advice consistent with the national contingency
plan or as otherwise directed by the federal on-scene coor-
dinator or by the state official charged with responsibility
for oil discharge responses.

(b) Subsection (a) of this section does not apply:

(1) To a responsible party;

(2) With respect to personal injury or wrongful death;

or

(3) If the person is grossly negligent or engages in
willful misconduct.

(c) A responsible party is liable for any removal costs
and damages that another person is relieved of under the
provisions of subsection (a) of this section.

(d) Nothing in this section affects the liability of a
responsible party for oil spill response under state law.
AN ACT to amend and reenact section twenty-one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article three-a of said chapter, all relating to the order in which debts of a decedent are to be paid and relieving the decedent's estate and surviving spouse of the obligation to pay the decedent's funeral expenses if payment of those funeral expenses is provided for by an irrevocable pre-need funeral contract or trust.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-21. Order in which debts of decedent are to be paid.

(a) If the applicable assets of the estate are insufficient to pay all claims against the estate in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;
(2) Reasonable funeral expenses;
(3) Debts and taxes with preference under federal law;
(4) Unpaid child support which is due and owing at the time of the decedent's death;

(5) Debts and taxes with preference under other laws of the state of West Virginia;

(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(7) All other claims.

(b) If the applicable assets of the estate are insufficient to pay all claims within a class, those claims within that class shall be paid on a pro-rata basis. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) Notwithstanding the provisions of subsection (a) of this section, if the payment of all funeral expenses of the decedent is provided for by an irrevocable pre-need funeral contract or trust, neither the decedent's estate nor the decedent's surviving spouse shall have any obligation for the payment of such funeral expenses.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEMTS; COUNTY OPTION.

§44-3A-26. Order in which debts of decedent are to be paid.

(a) If the applicable assets of the estate are insufficient to pay all claims against the estate in full, the personal representative shall make payment in the following order:

1 (1) Costs and expenses of administration;

2 (2) Reasonable funeral expenses;

3 (3) Debts and taxes with preference under federal law;

4 (4) Unpaid child support which is due and owing at the time of the decedent's death;
(5) Debts and taxes with preference under other laws of the state of West Virginia;

(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(7) All other claims.

(b) If the applicable assets of the estate are insufficient to pay all claims within a class, those claims within that class shall be paid on a pro-rata basis. No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) Notwithstanding the provisions of subsection (a) of this section, if the payment of all funeral expenses of the decedent is provided for by an irrevocable pre-need funeral contract or trust, neither the decedent's estate nor the decedent's surviving spouse shall have any obligation for the payment of such funeral expenses.

CHAPTER 127

(S. B. 294—By Senators Grubb, Anderson, Bowman, Deem and Schoonover)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section two, article six, chapter forty-four 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 six-c, all to read as follows:

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2. In what securities fiduciaries may invest trust funds.

Any executor, administrator, guardian, curator, committee, trustee or other fiduciary whose duty it may be to loan or invest money entrusted to him as such, may, without any order of any court, invest the same or any part thereof in any of the following securities, and without liability for any loss resulting from investments therein:

Provided, That, except as otherwise provided in article six-c of this chapter, such fiduciary 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:

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Farm Credit Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the federal national mortgage association, securities issued by the federal home loan bank system; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the "International Bank for Reconstruction
and Development" or by the "Inter-American Development Bank" or by the "Asian Development Bank" or by the "African Development Bank";

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of such investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of such state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since the ninth day of May, one thousand nine hundred seventeen;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by such mortgage or trust deed shall not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value shall be the higher, of the real estate covered by such mortgage or trust deed, and when such mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy, showing good title in the mortgagor when making such mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision, in which such investments may be made, shall not be less than three and one-half percent per annum nor greater than the maximum rate of interest which such bonds or negotiable notes may bear under applicable law: Provided, however, That the provisions herein establishing a minimum rate of interest shall not apply to investments in force as of the effective date of this section;
(f) In savings accounts and time deposits of bank or trust companies to the extent that such deposits are insured by the federal deposit insurance corporation, or by any other similar federal instrumentality that may be hereafter created, provided there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon such savings accounts or time deposits shall not be less than the rate paid other depositors in such bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that such shares are insured by the federal savings and loan insurance corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there shall be such an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon such shares shall not be less than the rate paid to other shareholders in such associations; and

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States, including, but not by way of limitation, bonds, debentures, notes, equipment trust obligations or other evidences of indebtedness and shares of common and preferred stocks of such corporations and securities of any open end or closed end management type investment company or investment trust registered under the "Federal Investment Company Act" of one thousand nine hundred forty, as from time to time amended, which men of prudence, discretion and intelligence acquire or retain for their own account, provided, and upon conditions, however, that:

(1) No investment shall be made pursuant to the provisions of this subdivision which, at the time such investment shall be made, will cause the aggregate market value thereof of to exceed fifty percent of the aggregate market value at that time of all of the property of the fund held by such fiduciary. Notwithstanding the aforesaid percentage limitation the cash proceeds of the sale of securities received
or purchased by a fiduciary and made eligible by this subdivision may be reinvested in any securities of the type described in this subdivision;

(2) No bonds, debentures, notes, equipment trust obligations or other evidence of indebtedness of such corporations shall be purchased under authority of this subdivision unless such obligations, if other than issues of a common carrier subject to the provisions of section twenty-a of the "Interstate Commerce Act", as amended, shall be obligations issued, guaranteed or assumed by corporations which have any securities currently registered with the securities and exchange commission; and

(3) No common or preferred stocks, other than bank and insurance company stocks, shall be purchased under authority of this subdivision unless currently fully listed and registered upon an exchange registered with the securities and exchange commission as a national securities exchange. No sale or other liquidation of any investment shall be required solely because of any change in the relative market value of those investments made eligible by this subdivision and those made eligible by the preceding subdivisions of this section. In determining the aggregate market value of the property of a fund and the percentage of a fund to be invested under the provisions of this subdivision, a fiduciary may rely upon published market quotations as to those investments for which such quotations are available, and upon such valuations of other investments as in the fiduciary's best judgment seem fair and reasonable according to available information.

Trust funds received by executors, administrators, guardians, curators, committees, trustees and other fiduciaries may be kept invested in the securities originally received by them, or if the trust funds originally received were stock or securities of a bank, in shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of such bank; unless otherwise ordered by a court having jurisdiction of the matter, as
hereinafter provided, or unless the instrument under which the trust was created shall direct that a change of investment be made, and any such fiduciary shall not be liable for any loss that may occur by depreciation of such securities.

This section shall not apply where the instrument creating the trust, or the last will and testament of any testator or any court having jurisdiction of the matter, specially directs in what securities the trust funds shall be invested, and every such court is hereby given power specially to direct by order or orders, from time to time, additional securities in which trust funds may be invested, and any investment thereof made in accordance with any such special direction shall be legal, and no executor, administrator, guardian, curator, committee, trustee or other fiduciary shall be held for any loss resulting in any such case.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

§44-6C-1. Prudent investor rule.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

§44-6C-3. Diversification.

§44-6C-4. Duties at inception of trusteeship.

§44-6C-5. Loyalty.

§44-6C-6. Impartiality.

§44-6C-7. Investment costs.

§44-6C-8. Reviewing compliance.


§44-6C-10. Language invoking standard of article.

§44-6C-11. Application to existing trusts.

§44-6C-12. Uniformity of application and construction.


§44-6C-14. Severability.

§44-6C-15. Effective date.

§44-6C-1. Prudent investor rule.

(a) Notwithstanding the provisions of section two, article six of this chapter, and except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.
7 (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

1 (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

6 (b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

11 (c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

14 (1) General economic conditions;

15 (2) The possible effect of inflation or deflation;

16 (3) The expected tax consequences of investment decisions or strategies;

18 (4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

22 (5) The expected total return from income and the appreciation of capital;

24 (6) Other resources of the beneficiaries;

25 (7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and
(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

§44-6C-3. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

§44-6C-4. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of this article.

§44-6C-5. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

§44-6C-6. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

§44-6C-7. Investment costs.
In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

§44-6C-8. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.


(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

   (1) Selecting an agent;
   (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
   (3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

§44-6C-10. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified,
§44-6C-11. Application to existing trusts.

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

§44-6C-12. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.


This article may be cited as the "West Virginia Uniform Prudent Investor Act".

§44-6C-14. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§44-6C-15. Effective date.

This article takes effect on the first day of July, one thousand nine hundred ninety-six.
CHAPTER 128

(S. B. 274—By Senators Wooton, Anderson, Bowman, Buckalew, Deem, Dittmar, Grubb, Miller, Ross, Scott, Wagner, Wiedebusch and Yoder)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to clarifying the duties of the trustee of an irrevocable life insurance trust.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-2a. Duties of the trustee of an irrevocable life insurance trust.

(a) Unless otherwise directed by the terms of the trust instrument, the duties of a trustee of an irrevocable life insurance trust with respect to acquiring or retaining a contract of insurance upon the life of the settlor, or the lives of the settlor and the settlor's spouse, do not include a duty: (i) To determine whether any such contract is or remains a proper investment; (ii) to exercise policy options available under any such contract in the event the policy lapses or is terminated due to failure to pay premiums; or (iii) to diversify any such contract. A trustee is not liable to the beneficiaries of the trust or to any other party for any loss arising from the absence of those duties upon the trustee.

(b) The trustee of a trust described under subsection (a) of this section which was established prior to the effective date of this section, shall notify the settlor in writing that, unless the settlor provides written notice to the contrary to the trustee within sixty days of the trustee's notice, the
provisions of subsection (a) of this section shall apply to
the trust. Subsection (a) of this section shall not apply if,
within sixty days of the trustee's notice, the settlor notifies
the trustee that subsection (a) does not apply.

CHAPTER 129

(Com. Sub. for H. B. 4100—By Delegates Love, Pettit and Thomas)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-b, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen, article four, chapter twelve of said code, all relating to volunteer fire companies; authorizing expenditure of state funds or grants for certain filing fees required by the legislative auditor's office and for certain insurance premiums; requiring deposit of filing fees in special revenue account; and authorizing expenditures from said account for payment of costs associated with conducting audits.

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 fourteen, article four, chapter twelve 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 (j) of this section. Such expenditures may be made for the following:

(a) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;

(b) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(c) Compliance with insurance service office recommendations relating to fire departments;

(d) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(e) Capital improvements reasonably required for effective and efficient fire protection service and maintenance thereof;

(f) Retirement of debts;

(g) Payment of utility bills;

(h) Payment of the cost of immunizations, including any laboratory work incident thereto, for firefighters against hepatitis-b and other blood borne pathogens: Provided, That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: Provided, however, That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: Provided further, That in the event any volunteer or part volunteer fire company or
department is unable to obtain no cost administration of
the vaccinations through a local board of health, the
company or department shall seek to obtain the lowest
cost available for the administration of the vaccinations
from a licensed health care provider;

(i) Any filing fee required to be paid to the legislative
auditor's office under section fourteen, article four,
chapter twelve of this code relating to sworn statements of
annual expenditures submitted by volunteer or part
volunteer fire companies or departments that receive state
funds or grants; and

(j) Property/casualty insurance premiums for pro-
tection and indemnification against loss or damage or
liability.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PRO-
VISIONS.

§12-4-14. Audits of corporations, associations or other
organizations which receive state funds or
grants.

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.
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 require-
ments 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
20 the fourteenth day of February of each year, if such
21 volunteer fire department elects not to be audited. The
22 sworn statement of expenditures must be signed by the
23 chief or director of the volunteer fire department, and
24 shall be made under oath and acknowledged before a
25 notary public. The office of the legislative auditor may
26 assign an employee or employees to perform audits per
27 the direction of the legislative auditor of the disbursement
28 of funds or grants to volunteer fire departments. Filing
29 fees paid by volunteer fire departments pursuant to this
30 section shall be paid into a special revenue account created
31 in the state treasury known as the "Special Legislative
32 Audit Fund". Expenditures from the fund are authorized
33 to be made by the legislative auditor's office solely for the
34 purposes of payment of costs associated with the audits
35 conducted pursuant to this section. Any person who files
36 a fraudulent sworn statement of expenditures under this
37 section is guilty of a felony and, upon conviction thereof,
38 shall be fined not less than one thousand dollars nor more
39 than five thousand dollars, or imprisoned in the state
40 penitentiary for a period of time not less than one year
41 nor more than five years, or both fined and imprisoned.

CHAPTER 130

(H. B. 4798—By Delegates Douglas, Ashley and Pino)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of venue following appointment and appointment of new guardian or conservator; appointment of adult protective services; and requirement that adult protective services accept the appointment in limited circumstances.

Be it enacted by the Legislature of West Virginia:
That sections seven and eight, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-7. Transfer of venue following appointment.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

§44A-1-7. Transfer of venue following appointment.

Following the appointment of a full or limited guardian or conservator or committee, the court with jurisdiction over the proceeding may, upon petition, order the transfer of jurisdiction to another circuit court in this state or to an appropriate tribunal in another state if it appears to the court that the interests of the protected person will be best served by such transfer. Upon the transfer, the court shall appoint a new guardian or conservator in the county assuming jurisdiction and shall discharge the original appointee.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

(a) Any adult individual may be appointed to serve as a guardian, a conservator, or both, upon determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person: Provided, That such individual is not employed by or affiliated with any public agency, entity or facility which is providing substantial services or financial assistance to the protected person.

(b) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (c) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator, or both: Provided, That such entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise providing substantial services or financial assistance to the protected person.
(c) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the secretary of health and human resources. The secretary shall propose legislative rules, for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of such nonprofit corporations and shall provide for the review of such licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for such guardianship or conservatorship:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the protected person;

(3) Will protect and advocate the legal human rights of the protected person;

(4) Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

(6) Does not provide educational, vocational, residential or medical services to the protected person; and

(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the department of health and human resources or otherwise becomes unable to serve as guardian.

(d) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator
pursuant to the provisions of this article is entitled to com-
pen-sation in accordance with the provisions of section
thirteen of this article.

(e) Except as provided in section thirteen of this arti-
cle, no guardian or conservator nor any officer, agent,
director, servant or employee of any such guardian or
conservator shall do business with or in any way profit,
either directly or indirectly, from the estate or income of
any protected person for whom services are being per-
formed by such guardian or conservator.

(f) Any bank or trust company authorized to exercise
trust powers or to engage in trust business in this state may
be appointed as a conservator if the court determines it is
capable of providing suitable conservatorship for the pro-
tected person.

(g) The department of adult protective services or a
department designated by the secretary of health and
human resources may be appointed to serve as a guardian,
a conservator, or both, for individuals under its care or to
whom it is providing services or financial assistance, but
such appointment may only be made if there is no other
individual, nonprofit corporation, bank or trust company,
or other public agency that is equally or better qualified
and willing to serve: Provided, That when venue is trans-
ferred pursuant to the provisions of this article and any
sheriff was initially appointed as guardian or conservator
or committee for the person, the department may not
refuse to accept that appointment.

(h) The sheriff of the county in which a court has
assumed jurisdiction may be appointed as a guardian, a
conservator, or both.

(i) Other than a bank or trust company authorized to
exercise trust powers or to engage in trust business in this
state, a person who has an interest as a creditor of a pro-
tected person shall not be eligible for appointment as
either a guardian or conservator of the protected person.
AN ACT to amend article twenty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to the authority of certain hospitals to enter into joint and cooperative undertakings; authorizing certain hospitals to cooperate with both public and private agencies; authorizing the expenditure of public funds, allocation of personnel and contribution of certain property for purposes of joint and cooperative undertakings; and imposing limitations with respect to joint and cooperative undertakings by hospitals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. INTERGOVERNMENTAL RELATIONS — CONTRACTING AND JOINT ENTERPRISES.

§8-23-3a. Joint and cooperative undertakings by certain hospitals.

1 Any county or municipal hospital or hospital created by special act of the Legislature may enter into a joint or cooperative undertaking pursuant to this article and may further enter into joint or cooperative undertakings with private agencies or corporations in accordance with this section. The expenditure of public funds, allocation of personnel and provision of services for joint and cooperative undertakings are authorized. The undertaking may include the creation of a separate entity to carry out the purpose of the undertaking and, if appropriate in connection with the undertaking, may include provision for the ownership or control of all or a portion of the separate...
entity by the hospital. The contribution of funds derived from the operation of a hospital, and real or personal property acquired in connection with the operation of the hospital, may be contributed to the joint undertaking or separate entity, if the hospital owns or controls all or a portion of the separate entity or joint undertaking. All joint and cooperative undertakings are subject to the following limitations:

(1) All joint and cooperative undertakings entered into by a hospital are subject to the provisions of article two-d, chapter sixteen of this code;

(2) For any joint and cooperative undertaking entered into by a hospital, which undertaking involves the expenditure of public funds and includes the creation of a separate entity to carry out the purpose of the undertaking, the separate entity created is subject to the provisions of article nine-a, chapter six and articles five-b and five-g, chapter sixteen of this code;

(3) For any joint and cooperative undertaking entered into by a hospital, which undertaking involves the expenditure of public funds and includes the creation of a separate entity to carry out the purpose of the undertaking, the separate entity created is subject to the same charity care obligation as the hospital;

(4) The board of the hospital must find by resolution that the purposes of the joint and cooperative undertaking further the same public purpose and are in keeping with the mission and vision for which the hospital was created;

(5) Appropriate action by resolution of the governing board of the hospital is necessary before any agreement for a joint or cooperative undertaking may take effect. For any joint and cooperative undertaking which involves the contribution of real property acquired in connection with the operation of the hospital, appropriate action by ordinance, resolution or otherwise pursuant to the law of the governing body of the municipality, in the case of a municipal hospital; by ordinance, resolution or otherwise pursuant to the law of the county commission in the case of a county hospital; or appropriate action by ordinance,
resolution or otherwise pursuant to the law of both the
municipality where the hospital is located and the county
commission of the county where the hospital is located, in
the case of a hospital created by special act of the
Legislature and involving the contribution of public funds
of both counties and municipalities, shall be necessary
before any agreement for a joint or cooperative
undertaking may take effect. An agreement entered into
by a hospital pursuant to this section shall contain
substantially the same provisions as set forth in section
three of this article. No agreement made pursuant to the
provisions of this section shall relieve any hospital of any
obligation or responsibility imposed upon it by law,
except to the extent that actual and timely performance
thereof by a joint board or other legal or administrative
entity created by an agreement made hereunder may be
offered in satisfaction of the obligation or responsibility;
and

(6) No agreement for a joint and cooperative
undertaking entered into pursuant to this article may
contain any provision intended to or having the effect of
reducing reimbursements to local or community-based
emergency services or ambulance providers, or reducing
the extent to which services are provided by local or
community-based emergency services or ambulance
providers in the geographic area served by a provider.

CHAPTER 132
(H. B. 4137—By Delegates Compton, Rowe, Petersen,
Leach, Burke, Hutchins and Wallace)

[Passed March 9, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three and five, article
two-d, chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section two, article five-f of said chapter,
relating to certificate of need standards generally; clarifying
certificate of need standards for hospice agencies and home
health facilities; allowing conversion of certain beds at hospi-
tals; and allowing rate and regulatory relief to be granted by the state agency.

Be it enacted by the Legislature of West Virginia:

That sections two, three and five, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and to amend and reenact section two, article five-f of said chapter, all to read as follows:

Article
2D. Certificate of Need.
5F. Health Care Financial Disclosure.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-3. Certificate of need; new institutional health services defined.
§16-2D-5. Powers and duties of state agency.

§16-2D-2. Definitions.

1 As used in this article, unless otherwise indicated by the context:
2
3 (a) "Affected person" means:
4 (1) The applicant;
5 (2) An agency or organization representing consumers;
6 (3) Any individual residing within the geographic area served or to be served by the applicant;
7 (4) Any individual who regularly uses the health care facilities within that geographic area;
8 (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;
9 (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 purposes 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, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies, hospice 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 en-
rolled participants health care services, including substan-
tially the following basic health care services: Usual physi-
cian 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 para-
graph (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 frequen-
cy, 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 preven-
tive, diagnostic, treatment or rehabilitative services, includ-
ing alcohol, drug abuse and mental health services.

(m) "Home health agency" is an organization primari-
ly engaged in providing professional nursing services
either directly or through contract arrangements and at
least one of the following services: Home health aide ser-
ves, other therapeutic services, physical therapy, speech
therapy, occupational therapy, nutritional services or med-
ical social services to persons in their place of residence on
a part-time or intermittent basis.
(n) "Hospice agency" means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in such persons' temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing, social work services, the general practice of medicine or osteopathy and pastoral or spiritual counseling.

(o) "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.

(p) "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.

(q) "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.

(r) "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.

(s) "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).

(t) "New institutional health service" means such service as described in section three of this article.

(u) "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.

(v) "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.

(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 integrated 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 statewide health coordinating council, or that document as approved by the governor after amendment by the health care planning council or its successor agency.

(ee) "Health care planning council" means the body established by section five-a of this article to participate in the preparation and amendment of the state health plan and to advise the state agency.

(ff) "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 reassigns existing beds as swing beds between acute care and long-term care categories: Provided-
ed, That a decrease in bed capacity in response to federal rural health initiatives shall be excluded from this definition.

(gg) "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: Provided, That "substantial change to the health services" does not include the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(hh) "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; new institutional health services defined.

(a) Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this section is legally unenforceable.

(b) For purposes of this article, a proposed "new institutional health service" includes:
(1) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(2) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(3) 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;

(A) 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;

(B) 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

(C) In the case of donated property, on the date on which the gift is completed under state law;

(4) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(5) 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;

(6) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization;
(7) 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;

(8) 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;

(9) The acquisition of major medical equipment;

(10) 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; or

(11) An expansion of the service area for hospice or home health service, regardless of the time period in which the expansion is contemplated or made.

§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 func-
tions 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 patients with alzheimer's disease if: (1) The unit is located in an existing facility which was formerly owned and operated by the state of West Virginia and is presently owned by a county of the state of West Virginia; (2) the facility has provided health care services, including personal care services, within one year prior to the effective date of this section; (3) the facility demonstrates that awarding the certificate of need and operating the facility will be cost effective for the state; and (4) that any applicable lease, lease-purchase or contract for operating the facility was awarded through a process of competitive bidding consistent with state purchasing practices and procedures: Provided further, That an application for said demonstration project shall be filed with the state agency on or before the twenty-first day of October, one thousand nine hundred ninety-three.

(h) No additional intermediate care facility for the mentally retarded (ICF/MR) beds shall be granted a certificate of need, except that prohibition does not apply to ICF/MR beds approved under the Kanawha County circuit court order of the third day of August, one thousand nine hundred eighty-nine, civil action number MISC-81-585 issued in the case of E. H. v. Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

(i) Notwithstanding the provisions of subsection (g), section five of this article and, further notwithstanding the provisions of subsection (d), section three of this article, an existing acute care hospital may apply to the health care cost review authority for a certificate of need to convert acute care beds to skilled nursing beds: Provided, That the proposed skilled nursing beds are medicare certified only: Provided, however, That any hospital which converts acute care beds to medicare certified only skilled nursing beds is prohibited from billing for any medicaid reimbursement
for any beds so converted. In converting beds, the hospital
must convert a minimum of one acute care bed into one
medicare certified only skilled nursing bed. The health
care cost review authority may require a hospital to con­
vert up to and including three acute care beds for each
medicare certified only skilled nursing bed: Provided
further, That a hospital designated or provisionally desig­
nated by the state agency as a rural primary care hospital
may convert up to thirty beds to a distinct-part nursing
facility, including skilled nursing beds and intermediate
care beds, on a one-for-one basis if said rural primary care
hospital is located in a county without a certified
free-standing nursing facility and the hospital may bill for
medicaid reimbursement for the converted beds: And
provided further, that if the hospital rejects the designation
as a rural primary care hospital then the hospital may not
bill for medicaid reimbursement. The health care cost
review authority shall adopt rules to implement this sub­
section 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 sub­
stantial change to the bed capacity of the hospital notwith­
standing the definition of that term found in subsection
(ee), section two of this article.

(2) The hospital shall meet all federal and state licens­
ing 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 pro­
ject.

(4) The hospital must use existing space for the medi­
care certified only skilled nursing beds. Under no circum­
stances shall the hospital construct, lease or acquire addi­
tional space for purposes of this section.
(5) The hospital must notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence.

Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(j) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care cost review authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are Medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are Medicare certified only may be developed pursuant to this subsection. The state health plan shall not be applicable to projects submitted under this subsection. The health care cost review authority shall adopt rules to implement this subsection which shall include:

1. A requirement that the one hundred eighty beds are to be distributed on a statewide basis;
2. There shall be a minimum of twenty beds and a maximum of sixty beds in each approved unit;
3. The unit developed by the retirement life care center shall meet all federal and state licensing certification and operational requirements applicable to nursing homes;
4. The retirement center must demonstrate a need for the project;
5. The retirement center must offer personal care, home health services and other lower levels of care to its residents; and
6. The retirement center must demonstrate both short and long-term financial feasibility.
Nothing in this subsection shall negatively affect the rights of inspection and certification which are otherwise required by federal law or regulations or by this code of duly adopted regulations of an authorized state entity.

(k) The provisions of this article are severable and if any provision, section or part thereby shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any other remaining provisions contained herein.

(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.

(n) The state agency may exempt from or expedite rate review, certificate of need, and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the office of community and rural health services determine are collaborating with other providers in the service area to provide cost effective health care services.

ARTICLE 5F. HEALTH CARE FINANCIAL DISCLOSURE.

§16-5F-2. Definitions.

As used in this article:

(1) "Annual report" means an annual financial report for the covered facility's or related organization's fiscal year prepared by an accountant or the covered facility's or related organization's auditor.

(2) "Board" means the West Virginia health care cost review authority.

(3) "Covered facility" means any hospital, skilled nursing facility, kidney disease treatment center, including a free-standing hemodialysis unit; intermediate care facility; ambulatory health care facility; ambulatory surgical facility; home health agency; hospice agency; rehabilitation facility; health maintenance organization; or community mental health or mental retardation facility, whether under public or private ownership or as a profit or nonprofit
organization and whether or not licensed or required to be
licensed in whole or in part by the state: Provided, That
nonprofit, community-based primary care centers provid-
ing primary care services without regard to ability to pay
which provide the board with a year-end audited financial
statement prepared in accordance with generally accepted
auditing standards and with governmental auditing stan-
dards issued by the comptroller general of the United
States shall be deemed to have complied with the disclo-
sure requirements of this section.

(4) "Related organization" means an organization,
whether publicly owned, nonprofit, tax-exempt or for
profit, related to a covered facility through common mem-
bership, governing bodies, trustees, officers, stock owner-
ship, family members, partners or limited partners, includ-
ing, but not limited to, subsidiaries, foundations, related
corporations and joint ventures. For the purposes of this
subdivision "family members" shall mean brothers and
sisters whether by the whole or half blood, spouse, ances-
tors and lineal descendants.

(5) "Rates" means all rates, fees or charges imposed by
any covered facility for health care services.

(6) "Records" includes accounts, books, charts, con-
tracts, documents, files, maps, papers, profiles, reports,
annual and otherwise, schedules and any other fiscal data,
however recorded or stored.

CHAPTER 133

(Com. Sub. for S. B. 262—By Senator Tomblin, Mr. President)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four-c, chapter sixteen of
the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by
adding thereto a new section, designated section six-a, all
relating to establishing emergency medical services agencies;
defining new terms and amending certain definitions; deleting references to the director; placing the office of emergency medical services within the bureau of public health; amending the composition of the advisory council, defining the length of members terms, terminating the existing council and appointing a new council on a date certain, staggering terms of newly appointed members; authorizing licensure of emergency medical services agencies, authorizing promulgation of legislative rules to determine licensure fees; deleting obsolete references to past-time requirements; establishing criminal penalties for violations of licensure; authorizing legislative rules for determining the services that may be provided by each class of personnel; and creating criminal penalties for obstructing, interfering with or causing bodily injury and specifying criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-1. Short title.
§16-4C-2. Purposes of article.
§16-4C-3. Definitions.
§16-4C-4. Office of emergency medical services created; staffing.
§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.
§16-4C-6. Powers and duties of commissioner.
§16-4C-6a. Emergency medical services agency licensure.
§16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.
§16-4C-8. Standards for emergency medical service personnel.
§16-4C-9. Suspension or revocation of certificate or temporary certificate or license.
§16-4C-10. Notice of refusal, suspension or revocation of certificate or license; appeals to commissioner; judicial review.
§16-4C-11. Liability for cost of emergency medical service.
§16-4C-12. Violations; criminal penalties.
§16-4C-13. Actions to enjoin violations; injunctive relief.
§16-4C-14. Services that may be performed by emergency medical service personnel.

§16-4C-15. Powers of emergency medical service attendants, emergency medical technicians-basic and emergency medical technicians-paramedic during emergency communications failures and disasters.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

§16-4C-17. Limitation of liability for failure to obtain consent.

§16-4C-18. Authority of emergency medical service personnel in charge of emergency medical services.

§16-4C-19. Obstructing emergency medical service personnel; criminal penalties.

§16-4C-20. Service reciprocity agreements for mutual aid.

§16-4C-21. Restriction for provision of emergency medical services by out-of-state emergency medical service personnel or providers of emergency medical services.

§16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.

§16-4C-23. Authority of the commissioner to make rules.

§16-4C-1. Short title.

1 This article shall be known as the "Emergency Medical Services Act of 1996".

§16-4C-2. Purposes of article.

1 The Legislature finds and declares: (1) That the safe and efficient operation of life-saving and life-preserving emergency medical service to meet the needs of citizens of this state is a matter of general public interest and concern; (2) to ensure the provision of adequate emergency medical services within this state for the protection of the public health, safety and welfare, it is imperative that minimum standards for emergency medical service personnel be established and enforced by the state; (3) that emergency medical service personnel should meet minimum training standards promulgated by the commissioner; (4) that it is the public policy of this state to enact legislation to carry out these purposes and comply with minimum standards for emergency medical service personnel as specified herein; (5) that any patient who receives emergency medical service and who is unable to consent thereto should be liable for the reasonable cost of such service; and (6) that
it is the public policy of this state to encourage emergency medical service providers to do those things necessary to carry out the powers conferred in this article unless otherwise forbidden by law.

§16-4C-3. Definitions.

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

(a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients;

(b) "Commissioner" means the commissioner of the bureau of public health;

(c) "Council" means the emergency medical service advisory council created pursuant to section five of this article;

(d) "Emergency medical services" means all services which are set forth in Public Law 93-154 "The Emergency Medical Services Act of 1973" and those included in and made a part of the emergency medical services plan of the department of health and human resources inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

(e) "Emergency medical service agency" means any agency licensed under section six-a of this article to provide emergency medical services;

(f) "Emergency medical service attendant" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render the services authorized pursuant to the provisions of section fourteen of this article;

(g) "Emergency medical service personnel" means any person certified by the commissioner to provide emergency medical services authorized in section eight of this article and includes, but is not limited to, emergency medi-
(h) "Emergency medical service provider" means any authority, person, corporation, partnership or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical service in this state;

(i) "Emergency medical technician-basic" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render the services authorized pursuant to the provisions of section fourteen of this article;

(j) "Emergency medical technician-paramedic" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render services as authorized pursuant to the provisions of section fourteen of this article;

(k) "Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code;

(l) "Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care;

(m) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care;

(n) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code;

(o) "Patient" means any person who is a recipient of the services provided by emergency medical services;

(p) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render those services by a neighboring state; and
(q) "Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel.

§16-4C-4. Office of emergency medical services created; staffing.

There is hereby created within state government under the commissioner of the bureau of public health an office to be known as the office of emergency medical services.

The commissioner may employ any technical, clerical, stenographic and other personnel as may be necessary to carry out the purposes of this article. The personnel may be paid from funds appropriated therefor or from other funds as may be made available for carrying out the purposes of this article.

The office of emergency medical services as created by former section four, article four-d of this chapter, shall continue in existence as the office of emergency medical services established by this section.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

The emergency medical services advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the office of emergency medical services and the commissioner with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of fifteen members appointed by the governor by and with the advice and
consent of the Senate. The mountain state emergency medical services association shall submit to the governor a list of six names of representatives from their association and a list of three names shall be submitted to the governor of representatives of their respective organizations by the county commissioners' association of West Virginia, the West Virginia state firemen's association, the West Virginia hospital association, the West Virginia chapter of the American college of emergency physicians, the West Virginia emergency medical services administrators association, the West Virginia emergency medical services coalition, the ambulance association of West Virginia, the county commissioner's association and the state department of education. The governor shall appoint from the respective lists submitted, two persons who represent the mountain state emergency medical services association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician-basic, and one person from the county commissioners' association of West Virginia, the West Virginia state firemen's association, the West Virginia hospital association, the West Virginia chapter of the American college of emergency physicians, the West Virginia emergency medical services administrators association, the West Virginia emergency medical services coalition, the ambulance association of West Virginia and the state department of education. In addition the governor shall appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and three persons to represent the general public. Not more than six of the members may be appointed from any one congressional district.

The current advisory council members' terms shall end on the thirtieth day of June, one thousand nine hundred ninety-six, and, pursuant to the provisions of this section, the governor shall appoint an advisory council on the first day of July, one thousand nine hundred ninety-six. Of those first appointed, one-third shall serve for one year, one-third shall serve for two years and one-third shall serve for three years. Each subsequent term is to be for
three years and no member may serve more than four consecutive terms.

The council shall choose its own chairman and meet at the call of the commissioner at least twice a year.

The members of the council may be reimbursed for any and all reasonable and necessary expenses actually incurred in the performance of their duties.

The Legislature hereby finds and declares that the emergency medical services advisory council should be continued and reestablished. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, the emergency medical services advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for monitoring of compliance with recommendations contained in the preliminary performance review through the joint committee on government operations.

§16-4C-6. Powers and duties of commissioner.

The commissioner shall have the following powers and duties:

(a) In accordance with chapter twenty-nine-a of this code, to propose rules regarding the age, training, retraining, testing, certification and recertification of emergency medical service personnel: Provided, That the commissioner may not propose any rule required by the provisions of this article until it has been submitted for review to the emergency medical services advisory council and this council has had at least thirty days to review such proposed rule. The council may take no action unless a quorum is present;

(b) To apply for, receive and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article;

(c) To design, develop and annually review a statewide emergency medical services implementation plan. The
plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county and community officials and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state;

d) To provide professional and technical assistance and to make information available to regional emergency medical services boards of directors and other potential applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services;

e) To assist local government agencies, regional emergency medical services boards of directors and other public or private entities in obtaining federal, state or other available funds and services;

f) To cooperate and work with federal, state and local governmental agencies, private organizations and other entities as may be necessary to carry out the purposes of this article;

g) To acquire in the name of the state by grant, purchase, gift, devise or any other methods appropriate real and personal property as may be reasonable and necessary to carry out the purposes of this article;

h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article;

i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state;
(j) To develop a program to inform the public concerning emergency medical services;

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services;

(l) To prepare and submit to the governor and Legislature recommendations for legislation in the area of emergency medical services;

(m) To review, make recommendations for and assist in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the office of emergency medical services. A review and approval shall be required for all emergency medical services projects, programs or services for which application is made to receive state or federal funds for their operation after the effective date of this act; and

(n) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state.

Nothing in this article may be construed to allow the commissioner to dissolve, invalidate or eliminate any existing emergency medical service program or ambulance providers in service at the time of adoption of the amendment to this article in the regular session of the Legislature in the year one thousand nine hundred eighty-four, or to deny them fair access to federal and state funding, medical facilities and training programs.

§16-4C-6a. Emergency medical services agency licensure.

Any person who proposes to establish or maintain an emergency medical services agency shall file an application with the commissioner. The application is to include the identity of the applicant, any parent or affiliated entity, the proposed level of service and the number of emergency medical service response vehicles of the agency or proposed agency. The commissioner may require that additional information be included on each application.
Upon receipt and review of the application the commissioner shall issue a license if he or she finds that the applicant meets the requirements and quality standards, to be established by the commissioner, for an emergency medical services agency license, and if the applicant has certified under penalty of perjury that he or she is current with all lawful obligations owed the state of West Virginia, excluding obligations owed in the current quarter, including, but not limited to, payment of taxes and workers' compensation premiums: Provided, That the certification set forth in this paragraph shall be required for the original application and subsequent renewal thereof.

Upon review and consultation with the advisory council the commissioner may, pursuant to the provisions of article three, chapter twenty-nine-a of this code, establish reasonable fee schedules for application and licensure.

§16-4C-7. Vehicles, aircraft and persons aboard them exempted from requirements of article.

The following vehicles and aircraft are exempted from the provisions of this article and rules promulgated pursuant to it and persons aboard them are not required to comply with the provisions of section eight of this article:

(a) Privately-owned vehicles and aircraft not ordinarily used in the business or service of transporting patients;

(b) Vehicles and aircraft used as ambulances in case of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service personnel based in the locality of the catastrophe or emergency are insufficient to render the service required;

(c) Ambulances based outside this state, except that emergency medical service personnel aboard any such ambulance receiving a patient within this state for transportation to a location within this state shall comply with the provisions of this article and the rules promulgated pursuant to it except in the event of a catastrophe or emergency when the ambulances normally staffed by certified emergency medical service personnel based in the locality
of the catastrophe or emergency are insufficient to render
the services required;

(d) Ambulances owned by or operated under the di-
rect control of a governmental agency of the United
States; and

(e) Vehicles and aircraft designed primarily for rescue
operations which do not ordinarily transport patients.

§16-4C-8. Standards for emergency medical service person-

(a) Every ambulance operated by an emergency medi-
cal service agency shall carry at least two personnel. At
least one person shall be certified in cardiopulmonary
resuscitation or first aid and the person in the
patient-compartment shall be minimally certified as an
emergency medical technician-basic.

(b) As a minimum the training for each class of emer-
gency medical service personnel shall include:

(1) Emergency medical service attendant: Shall have
erned and possess valid certificates from the department
or by authorities recognized and approved by the com-
missioner;

(2) Emergency medical technician-basic: Shall have
successfully completed the course for certification as an
emergency medical technician-basic as established by the
commissioner or authorities recognized and approved by
the commissioner; and

(3) Emergency medical technician-paramedic: Shall
have successfully completed the course for certification as
an emergency medical technician-paramedic established
by the commissioner or authorities recognized and ap-
proved by the commissioner.

The foregoing may not be considered to limit the
power of the commissioner to prescribe training, certifica-
tion and recertification standards.

(c) Any person desiring emergency medical service
personnel certification shall apply to the commissioner
using forms and procedures prescribed by the commissioner. Upon receipt of the application, the commissioner shall determine whether the applicant meets the certification requirements and may examine the applicant, if necessary to make that determination. If it is determined that the applicant meets all of the requirements, the commissioner shall issue an appropriate emergency medical service personnel certificate which shall be valid for a period as determined by the commissioner.

State and county continuing education and recertification programs for all levels of emergency medical service providers shall be available to emergency medical service providers at a convenient site within one hundred miles of the provider's primary place of operation at sites determined by the regional emergency medical services offices. The continuing education program shall be provided at a cost specified in a fee schedule to be promulgated by legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code by the department of health to all nonprofit emergency medical service personnel.

(d) The commissioner may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and may not be renewed unless the commissioner finds the renewal to be in the public interest. The expiration date of a temporary certificate shall be extended until the holder is afforded at least one opportunity to take an emergency medical service personnel training course within the general area where he or she serves as an emergency medical service personnel, but the expiration date may not be extended for any longer period of time or for any other reason.

§16-4C-9. Suspension or revocation of certificate or temporary certificate or license.

(a) The commissioner may at any time upon his or her own motion, and shall, upon the verified written complaint
of any person, cause an investigation to be conducted to
determine whether there are any grounds for the suspensi-
on or revocation of a certificate, temporary certificate or
license issued under the provisions of this article.

(b) The commissioner shall suspend or revoke any
certificate, temporary certificate or license when he or she
finds the holder thereof has:

(1) Obtained a certificate, temporary certificate or
license by means of fraud or deceit; or

(2) Been grossly incompetent, and/or grossly negligent
as defined by the commissioner in accordance with rules
or by prevailing standards of emergency medical services
care; or

(3) Failed or refused to comply with the provisions of
this article or any reasonable rule promulgated by the
commissioner hereunder or any order or final decision of
the commissioner.

(c) The commissioner shall suspend or revoke any
certificate or temporary certificate if he or she finds the
existence of any grounds which would justify the denial of
an application for the certificate, temporary permit or
license if application were then being made for it.

§16-4C-10. Notice of refusal, suspension or revocation of cer-
tificate or license; appeals to commissioner;
judicial review.

An application for an original, renewal or temporary
emergency medical service personnel certificate or emer-
gency medical services agency license, shall be acted upon
by the commissioner and the certificate delivered or
mailed, or a copy of any order of the commissioner deny-
ing any such application delivered or mailed to the appli-
cant, within fifteen days after the date upon which the
application including test scores, if applicable, was re-
ceived by the commissioner.

Whenever the commissioner refuses to issue an emer-
gency medical service personnel certificate or a temporary
emergency medical service personnel certificate or emer-
13 gency medical services agency license, or suspends or
14 revokes an emergency medical service personnel certifi-
15 cate, or a temporary emergency medical service personnel
16 certificate, he or she shall make and enter an order to that
17 effect, which shall specify the reasons for the denial, sus-
18 pension or revocation, and shall cause a copy of the order
19 to be served in person or by certified mail, return receipt
20 requested, on the applicant or certificate or license holder,
21 as the case may be.

22 Whenever a certificate or license is suspended or re-
23 voked, the commissioner shall in the order of suspension
24 or revocation direct the holder thereof to return his or her
25 certificate to the commissioner. It shall be the duty of the
26 certificate or license holder to comply with any such order
27 following expiration of the period provided for an appeal
28 to the commissioner.

29 Any applicant or certificate or license holder, adversely
30 affected by an order made and entered by the commis-
31 sioner may appeal to the commissioner for an order vacat-
32 ing or modifying the order or for such order as the com-
33 missioner should have entered. The person so appealing
34 shall be known as the appellant. An appeal shall be per-
35 fected by filing a notice of appeal with the commissioner
36 within ten days after the date upon which the appellant
37 received the copy of the order. The notice of appeal shall
38 be in a form and contain the information prescribed by
39 the commissioner, but in all cases shall contain a descrip-
40 tion of any order appealed from and the grounds for the
41 appeal. The filing of the notice of appeal shall operate to
42 stay or suspend execution of any order which is the sub-
43 ject matter of the appeal. All of the pertinent provisions
44 of article five, chapter twenty-nine-a of this code apply to
45 and govern the hearing on appeal and the administrative
46 procedures in connection with and following the hearing,
47 with like effect as if the provisions of said article were set
48 forth in extenso herein.

49 The commissioner shall set a hearing date which shall
50 be not less than ten days after he or she received the notice
51 of appeal unless there is a postponement or continuance.
52 The commissioner may postpone or continue any hearing
on his or her own motion, or for good cause shown upon
the application of the appellant. The appellant shall be
given notice of the hearing in person or by certified mail,
return receipt requested. Any such hearing shall be held
in Charleston, Kanawha County, West Virginia, unless
another place is specified by the commissioner.

After the hearing and consideration of all of the testi-
mony, evidence and record in the case, the commissioner
shall make and enter an order affirming, modifying or
vacating his or her initial order or shall make and enter
any new order. The order shall be accompanied by find-
ings of fact and conclusions of law as specified in section
three, article five, chapter twenty-nine-a of this code, and a
copy of the order and accompanying findings and con-
clusions shall be served upon the appellant, in person or
by certified mail, return receipt requested. The order of
the commissioner shall be final unless vacated or modified
upon judicial review thereof.

Any appellant adversely affected by a final order made
and entered by the commissioner 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 the review with like effect as if the
provisions of said section were set forth in extenso herein.
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 sec-
tion one, article six, chapter twenty-nine-a of this code.

§16-4C-11. Liability for cost of emergency medical service.

Any patient who receives an emergency medical ser-
vice and who is unable to give his or her consent to or
contract for the service, whether or not he or she has
agreed or consented to liability for the service, shall be
liable in implied contract to the entity providing the emer-
genous medical service for the cost thereof.

Any person who receives an emergency medical ser-
vice upon his or her request for the service shall be liable
for the cost thereof.
§16-4C-12. Violations; criminal penalties.

Any person who violates any condition of licensure or operates an ambulance with an insufficient number of emergency medical service personnel aboard when not lawfully permitted to do so, or who represents himself or herself as a certified emergency medical service personnel knowing the representation to be untrue, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars.

§16-4C-13. Actions to enjoin violations; injunctive relief.

Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article or any final order of the commissioner, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or any part thereof has occurred, is occurring or is about to occur, for an injunction against the person and any other persons who have been, are or are about to be, involved in, or in any way participating in, any practices, acts or omissions, so in violation, enjoining the person or persons from any such violation. The application may be made and prosecuted to conclusion whether or not any such violation has resulted or shall result in prosecution or conviction under the provisions of section twelve of this article.

Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article and all final orders of the commissioner.

The circuit court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.
§16-4C-14. Services that may be performed by emergency medical service personnel.

Notwithstanding any other provision of law, emergency medical service personnel, by each class, may provide the services as determined by the commissioner by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

§16-4C-15. Powers of emergency medical service attendants, emergency medical technicians-basic and emergency medical technicians-paramedic during emergency communications failures and disasters.

(a) In the event of a communications failure between the certified emergency medical services agency personnel, as defined in section three of this article, and the physician during an emergency situation, the certified personnel is authorized to deliver the services as authorized in section fourteen of this article.

(b) In the event of a disaster or other occurrence which renders the communication system ineffective for purposes of adequate individual direction between the physician and the certified emergency medical services agency personnel, the personnel may perform the services as authorized pursuant to the provisions of section fourteen and may release immediate control of the patient to any other emergency medical service personnel in order to provide immediate services to other patients affected by the disaster or other occurrence.

(c) In the event that services are provided under subsection (a) or (b) of this section, the emergency medical services personnel shall, within five days, provide a report to the commissioner, on the forms prescribed by him or her, of the services performed, the identity of the patient and the circumstances justifying the provision of the services. The commissioner may require any other information deemed necessary.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

(1) Every person, corporation, ambulance service, emergency medical service provider, emergency ambu-
lance authority, emergency ambulance service or other person which employs emergency medical service personnel with or without wages for ambulance service or provides ambulance service in any manner, shall obtain a policy of insurance insuring the person or entity and every employee, agent or servant thereof, against loss from the liability imposed by law for damages arising from any error or omission in the provision of emergency medical services as enumerated by this article, in an amount no less than one million dollars per incident: Provided, That each emergency medical services agency having less than this amount on the first day of January, one thousand nine hundred ninety-six, shall obtain the policy of insurance required in this section in the amount of one million dollars on or before the first day of March, one thousand nine hundred ninety-seven. New applicants shall obtain the insurance required in this section in the amount of one million dollars.

(2) No emergency medical service personnel or emergency medical service provider may be liable for civil damages or injuries in excess of the amounts for which the person or entity is actually insured, unless the damages or injuries are intentionally or maliciously inflicted.

(3) Every person or entity required to obtain a policy of insurance as contemplated by this section, shall furnish to the commissioner on or before the first day of January of each calendar year proof of the existence of the policy of insurance required by this section.

(4) In the event that any person or entity fails to secure a policy of insurance before the person or entity undertakes the provision of emergency medical services or emergency medical service agency, whichever occurs last, and keeps the policy of insurance in force thereafter, that person or entity is not entitled to the limited immunity created by subsection (2) of this section: Provided, That any physician, who gives instructions to emergency medical service personnel without being compensated therefor, or who treats any patient transported in an ambulance or treats any patient prior to the transport, without being compensated therefor, is entitled to the limited immunity provided in subsection (2) of this section.

§16-4C-17. Limitation of liability for failure to obtain consent.
No emergency medical service personnel may be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical services to any individual regardless of age where the patient is unable to give his or her consent for any reason, including minority, and where there is no other person reasonably available who is legally authorized to consent to the providing of such care or who is legally authorized to refuse to consent to the providing of such care.

Nothing in this article may be construed to require medical treatment or transportation for any adult in contravention of his or her stated objection thereto upon religious grounds or pursuant to any living will or do not resuscitate orders: Provided, That the emergency medical service provider is actually aware of the living will or do not resuscitate order.

§16-4C-18. Authority of emergency medical service personnel in charge of emergency medical services.

When any department, agency or entity which provides emergency medical services under the authority of this article is responding to, operating at or returning from an emergency medical service, any emergency medical service personnel serving in the capacity of an emergency medical service line officer in charge, shall control and direct the providing of emergency medical services. The emergency medical service personnel serving in the capacity of an emergency medical service line officer shall determine whether a patient shall be transported from the emergency scene, determine what care shall be rendered prior to the transport, determine the appropriate facility to which the patient shall be transported, and otherwise fully direct and control the providing of emergency medical services and patient care under the direction of medical command.

Nothing included in this section may be construed to restrict or interfere with the authority of a fire officer in charge to supervise or direct those fire department personnel under his or her command or to restrict any person from entering a hazardous area for which the fire officer has assumed the responsibility.
§16-4C-19. Obstructing or causing bodily injury to emergency medical service personnel; criminal penalties.

(a) It shall be unlawful for any person to intentionally obstruct or interfere with any emergency medical service agency personnel engaged in the act of delivering or administering emergency medical services. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period not more than one year, or both fined and confined.

(b) It shall be unlawful for any person to willfully cause bodily injury to any person designated to be an emergency medical personnel engaged in the act of delivering or administering emergency medical services. Any person violating the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than ten years or fined not more than five thousand dollars, or both fined and confined.

(c) Nothing in this section shall be construed to prevent law-enforcement officials from controlling traffic and otherwise maintaining order at the scene of an accident, injury or illness where an emergency medical service agency is rendering services.

§16-4C-20. Service reciprocity agreements for mutual aid.

Any persons or entities providing lawful emergency medical services under the provisions of this article are hereby authorized in their discretion to enter into and renew service reciprocity agreements, for any period as they may deem advisable, with the appropriate emergency medical service providers, county, municipal or other governmental units or in counties contiguous to the state of West Virginia, in the state of Ohio, the commonwealth of Pennsylvania, the state of Maryland, the commonwealth of Virginia or the commonwealth of Kentucky, in order to establish and carry into effect a plan to provide mutual aid across state lines, through the furnishing of properly certified personnel and equipment for the provision of emergency medical services in this state and the counties contiguous to this state upon written approval by the commissioner.
No person or entity may enter into any such agree-
ment unless the agreement provides that each of the par-
ties to the agreement shall waive any and all claims against
the other parties thereto, which may arise out of their ac-
tivities outside of their respective jurisdictions under the
agreement and shall indemnify and save harmless the
other parties to the agreement from all claims by third
parties for property damages or personal injuries which
may arise out of the activities of the other parties to the
agreement outside their respective jurisdictions under the
agreement.

The commissioner is hereby authorized to enter into
service reciprocity agreements with appropriate officials in
other states for the purpose of providing emergency med-
cal services to the citizens of this state by emergency med-
ical service personnel properly certified in their respective
state or states. A formal agreement between the commis-
sioner and an authorized official of another state shall be
in effect prior to the service being provided. Individual
certification of other state emergency medical service
personnel is not required for purposes of providing services to West Virginia citizens following the creation of the
agreement by the responsible officials.

§16-4C-21. Restriction for provision of emergency medical
services by out-of-state emergency medical
service personnel or providers of emergency
medical services.

The commissioner may issue an order on his or her
own motion upon written request of any emergency medi-
cal service provider or county commission in this state, to
restrict an out-of-state provider of emergency medical
services or an out-of-state emergency medical service
personnel to a particular geographic area of the state of
West Virginia or prohibit the provider or personnel from
providing emergency medical services within the borders
of this state when in the opinion of the commissioner the
services are not required or do not meet the standards set
forth herein or those established by rules as authorized by
this article.

§16-4C-22. Transportation of unconscious or otherwise un-
communicative patients.
(a) Emergency medical service personnel shall transport critically ill or injured, unconscious or otherwise uncommunicative patients to the medical facility designated by the medical command physician.

(b) No person may have the right to direct emergency medical service personnel to transport a patient to a specific medical facility unless the person is the legal guardian, parent of a minor or has power of attorney for the critically injured or ill patient.

§16-4C-23. Authority of the commissioner to make rules.

The commissioner shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this article.

CHAPTER 134

(Com. Sub. for H. B. 4103—By Delegates Douglas, Compton and Gallagher)

[Passed February 26, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-i, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative rules for hospice services; transferring the authority to promulgate rules for hospice services from the state board of health to the secretary of the department of health and human resources; and eliminating specific rule requirements regarding substituted consent for hospice services.

Be it enacted by the Legislature of West Virginia:

That section five, article five-i, 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 5I. HOSPICE LICENSURE ACT.

§16-5I-5. Secretary of health and human resources to establish rules.
The secretary of the department of health and human resources shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code for the licensure of hospice programs to ensure adequate care, treatment, health, safety, welfare and comfort of hospice patients. Such rules shall include, but not be limited to:

(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the secretary determines to be appropriate.

CHAPTER 135


[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-m, relating to public health; creating the "Osteoporosis Prevention Education Act"; providing a short title; providing for the establishment of an osteoporosis prevention and
treatment education program and the components thereof; requiring the bureau of public health to establish strategies to promote and maintain an osteoporosis prevention education program; establishing an interagency council on osteoporosis; appointing representatives; and establishing the duties of the council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5M. OSTEOPOROSIS PREVENTION EDUCATION ACT.

§16-5M-1. Short title.

§16-5M-2. Responsibilities of bureau of public health.

§16-5M-3. Interagency council on osteoporosis.

§16-5M-1. Short title.

This article may be known and cited as the "West Virginia Osteoporosis Prevention Education Act."

§16-5M-2. Responsibilities of bureau of public health.

(a) The bureau of public health shall establish strategies to promote and maintain an osteoporosis prevention education program in order to raise public awareness, to educate consumers and to educate and train health professionals, teachers and human service providers, to include the following components:

(1) The bureau shall develop strategies for raising public awareness of the causes and nature of osteoporosis, personal risk factors, the value of prevention and early detection and options for diagnosing and treating the disease that include, but are not limited to, the following:

(A) Community forums;

(B) Health information and risk factor assessment at public events;

(C) Targeting at-risk populations;
(D) Providing reliable information to policymakers;

and

(E) Distributing information through county health departments, schools, area agencies on aging, employer wellness programs, physicians, hospitals, health maintenance organizations, women's groups, nonprofit organizations, community-based organizations and departmental offices;

(2) The bureau shall develop strategies for educating consumers about risk factors, diet and exercise, diagnostic procedures and their indications for use, risks and benefits of drug therapies currently approved by the United States food and drug administration, environmental safety and injury prevention and the availability of self-help diagnostic, treatment and rehabilitation services;

(3) The bureau may develop strategies for educating physicians and health professionals and training community service providers on the most up-to-date, accurate scientific and medical information on osteoporosis prevention, diagnosis and treatment, therapeutic decision-making, including guidelines for detecting and treating the disease in special populations, risks and benefits of medications and research advances;

(4) The bureau may conduct a needs assessment to identify:

(A) Research being conducted within the state;

(B) Available up-to-date technical assistance and educational materials and programs nationwide;

(C) The level of public and professional awareness about osteoporosis;

(D) The needs of osteoporosis patients, their families and caregivers;

(E) The needs of health care providers, including physicians, nurses, managed care organizations and other health care providers;
(F) The services available to the osteoporosis patient;

(G) The existence of osteoporosis treatment programs;

(H) The existence of osteoporosis support groups;

(I) The existence of rehabilitation services; and

(J) The number and location of bone density testing equipment; and

(5) The bureau may replicate and use successful osteoporosis programs and enter into contracts and purchase materials or services from organizations with appropriate expertise and knowledge of osteoporosis.

(b) Based on the needs assessment conducted pursuant to this section, the bureau may develop and maintain a resource guide to include osteoporosis related services. This guide shall include a description of diagnostic testing procedures, appropriate indications for their use, drug therapies currently approved by the United States food and drug administration, and a cautionary statement about the current status of osteoporosis research, prevention and treatment. The statement shall also indicate that the bureau does not license, certify, or in any way approve osteoporosis programs or centers in the state.

(c) The bureau may promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

(d) Nothing in this article may be construed or interpreted to mean that osteoporosis treatment or osteoporosis education are required to be provided by the bureau or the council created in section three of this article. Nothing contained in this article may be construed to mandate funding for osteoporosis education or any of the programs contained in this article or to require any appropriation by the Legislature.

§16-5M-3. Interagency council on osteoporosis.
(a) There is hereby established the interagency council on osteoporosis. The director of public health shall chair the council. The council shall have representatives from appropriate state departments and agencies including, but not limited to, the entities with responsibility for aging, health care reform implementation, education, public welfare and women's programs.

(b) The council shall:

1. Coordinate osteoporosis programs conducted by or through the bureau of public health;

2. Establish a mechanism for sharing information on osteoporosis among all officials and employees involved in carrying out osteoporosis-related programs;

3. Review and coordinate the most promising areas of education, prevention and treatment concerning osteoporosis;

4. Assist the bureau of public health and other offices in developing and coordinating plans for education and health promotion on osteoporosis;

5. Establish mechanisms to use the results of research concerning osteoporosis in the development of relevant policies and programs; and

6. Prepare a report that describes educational initiatives on osteoporosis and transmit the report to the Legislature and the governor and make the report available to the public.

(c) The council shall establish and coordinate the advisory panel on osteoporosis which will provide nongovernmental input regarding the program. Membership shall include, but is not limited to, persons with osteoporosis, public health educators, osteoporosis experts, providers of osteoporosis health care, persons knowledgeable in health promotion and education and representatives of national osteoporosis organizations or their state and regional affiliates.
CHAPTER 136

(Com. Sub. for H. B. 4072—By Delegates Compton, Gallagher and Douglas)

[Passed March 5, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to the sale of items at flea markets or swap meets; setting forth legislative findings; defining terms; requiring transient vendors who sell babyfood, medical devices or nonprescription drugs at flea markets or swap meets to keep and maintain records of the source of such items; requiring the production of records; providing for confiscation of babyfood, nonprescription drugs or medical devices for which there is no required record; providing for criminal penalties; setting forth exceptions to applicability of the section; and authorizing the promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-8. Resale of certain food, drug, and medical devices prohibited; definitions; source documentation required; confiscation of food, drugs or medical devices; penalty and exceptions; rules.

1 (a) The Legislature finds that food manufactured and packaged for sale for consumption by a child under the age of two and nonprescription drugs sold by transient vendors at places such as flea markets and swap meets, where the sources of the food and nonprescription drugs are unknown, may be adulterated and thus constitute a hazard to the public's health and welfare. It further finds that these foods, nonprescription drugs or medical devices are likely to have been stolen. The Legislature determines that it is the policy of this state to prohibit the sale of these
(b) For the purposes of this section:

(1) The term "babyfood" or "food" means any food manufactured and packaged for sale for consumption by a child under the age of two;

(2) The term "nonprescription drugs" does not include natural or herbal nonprescription drugs;

(3) The term "medical device" means any apparatus or tool which is defined by federal law as a medical device and which has been specified by the secretary of the department of health and human resources through legislative rules as a device which may be marketed or sold by transient vendors.

(c) Any transient vendor who sells babyfood, nonprescription drugs or medical devices at any flea market or swap meet in this state shall keep and make available records of the sources of such babyfood, nonprescription drugs or medical devices offered for sale or sold. The records may be receipts or invoices from the persons who sold the babyfood, nonprescription drugs or medical devices to the transient vendor or any other documentation that establishes the sources of the babyfood, nonprescription drugs or medical devices. The transient vendor shall keep those records with the babyfood, nonprescription drugs or medical devices being offered for sale so long as such goods are in his possession and shall maintain those records for a period of two years after the babyfood, nonprescription drugs or medical devices are sold.

(d) Upon the request of a law-enforcement agent or a representative of the state department of health, a transient vendor shall produce records of the sources of babyfood, nonprescription drugs or medical devices offered for sale or sold. If the transient vendor fails to immediately produce the requested records for goods offered for sale, the law-enforcement agent or representative for the state department of health may confiscate the babyfood,
50 nonprescription drugs or medical devices then in possession of the vendor. If the transient vendor fails to produce
51 the requested records for goods previously sold within a
52 reasonable time, the law-enforcement agent or representative for the state department of health may confiscate any
53 babyfood, nonprescription drugs or medical devices then
54 in the possession of the vendor.
55
56 (e) Any person who violates the provisions of this section
57 is guilty of a misdemeanor and, upon conviction thereof,
58 shall be fined not more than two hundred dollars for each
59 babyfood item, nonprescription drug or medical device
60 offered for sale or sold.
61
62 (f) The provisions of this section do not apply to a merchant who is licensed by the state department of tax and
63 revenue; who sells food or nonprescription drugs or medical devices by sample, catalog or brochure for future delivery; or who sells at a residential premises pursuant to an
64 invitation issued by the owner or legal occupant of the
65 premises.
66
67 (g) The secretary of the department of health and human
68 resources shall promulgate rules in accordance with the
69 provisions of chapter twenty-nine-a of this code regarding
70 the designation and authorized sale of medical devices
71 sold by transient vendors pursuant to this subdivision.

CHAPTER 137

(Com. Sub. for H. B. 2261—By Delegate Prunty)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-seven-a, relating to public health; establishing a ban on the construction of nuclear power plants; legislative findings and purposes; a limited ban on construction of nuclear power plants;
application to the public service commission for construction or initiation.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 27A. BAN ON CONSTRUCTION OF NUCLEAR POWER PLANTS.**

§16-27A-1. Legislative findings and purposes.

§16-27A-2 Limited ban on construction of nuclear power plants; application to the public service commission for construction or initiation.

§16-27A-1. Legislative findings and purposes.

1 The Legislature finds and declares that the use of nuclear fuels and nuclear power poses an undue hazard to the health, safety and welfare of the people of the state of West Virginia, especially until there is an effective method to safely and permanently dispose of the radioactive wastes generated thereby. Therefore, it is the intent of the Legislature and the purpose of this article to ban the construction of any nuclear power plant, nuclear factory or nuclear electric power generating plant until such time as the proponents of any such facility can adequately demonstrate that a functional and effective national facility, which safely, successfully and permanently disposes of radioactive wastes, has been developed; that the construction of any nuclear facility in this state will be economically feasible for West Virginia rate payers; and that such facility shall comply with all applicable environmental protection laws, rules and requirements. For the purposes of this article, "nuclear power" means energy produced in any nuclear power plant, nuclear factory or nuclear electric power generating plant capable of a thermal output greater than one megawatt but shall not include electricity carried over interstate transmission lines.
§16-27A-2. Limited ban on construction of nuclear power plants; application to the public service commission for construction or initiation.

(a) No nuclear power plant, nuclear factory or nuclear electric power generating plant may be constructed or initiated until the public service commission has approved the application for the same in accordance with the provisions of chapter twenty-four, article two of this code.

(b) Any person or organization seeking to construct or initiate any nuclear power plant, nuclear factory or nuclear electric power generating plant in this state shall, prior to any construction or initiation, submit to the public service commission an application for approval, together with the documentation required by this section.

(c) An application for the construction or initiation of any nuclear power plant, nuclear factory or nuclear electric power generating plant shall not be considered for approval unless it contains documented reports or certification that:

(1) A functional and effective national facility which safely, successfully and permanently disposes of any and all radioactive wastes associated with operating any such nuclear power plant, nuclear factory or nuclear electric power generating plant has been developed and that such facility has been proven safe, functional and effective by a minimum of twenty-four months' operation or experience; and

(2) The construction of any nuclear facility in this state will be economically feasible for West Virginia rate payers; and

(3) The proposed nuclear facility shall comply with all applicable environmental protection laws, rules and requirements.
AN ACT to amend and reenact section twenty, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hospital rate setting; requiring approvals and expedited reviews for certain hospitals filing rate applications sixty days in advance of the hospital's fiscal year; and requiring retrospective application of the rates if not timely set.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-nine-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 29B. HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

2 (1) The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

3 (2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or rules and regulations conflict with this requirement. On and after the effective date of this section, a summary of every proposed contract for the payment of patient care services between a purchaser or third-party payor and a hospital shall be filed by the hospital with its rate application for review by the board. No contract for the payment of patient care services between a purchaser or third-party
payor and a hospital which establishes discounts to the
purchaser or third-party payor shall take effect until it is
approved by the board. The board shall approve or deny
the proposed contract within the overall rate review period
established in section twenty-one of this article. No dis-
count shall be approved by the board which constitutes an
amount below the actual cost to the hospital.

The hospital shall demonstrate to the board that the
cost of any discount contained in the contract will not be
shifted to any other purchaser or third-party payor. The
hospital shall further demonstrate that the discount will not
result in a decrease in its proportion of medicare, medicaid
or uncompensated care patients. In addition, the hospital
shall demonstrate to the board that the discount is based
upon criteria which constitutes a quantifiable economic
benefit to the hospital. All information submitted to the
board shall be certified by the hospital administrator as to
its accuracy and truthfulness;

(3) The rates of payment for medicaid are reasonable
and adequate to meet the costs which must be incurred by
efficiently and economically operated hospitals subject to
the provisions of this article. The rates shall take into
account the situation of hospitals which serve dispropor-
tionate numbers of low income patients and assure that
individuals eligible for medicaid have reasonable access,
taking into account geographic location and reasonable
travel time, to inpatient hospital services of adequate qual-
ity;

(4) The rates are equitable in comparison to prevailing
rates for similar services in similar hospitals as determined
by the board; and

(5) In no event shall a hospital's receipt of emergency
disaster funds from the federal government be included in
the hospital's gross revenues for either rate-setting or as-
se ssment purposes.

(b) In the interest of promoting efficient and appro-
priate utilization of hospital services, the board shall review
and make findings on the appropriateness of projected
gross revenues for a hospital as the revenues relate to
The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth in subsections (a) and (b) of this section, the board shall consider all relevant factors, including, but not limited to, the following: The economic factors in the hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from related organizations and restricted funds whether or not associated with patient care.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article are not subject to review unless the board first determines that the wages, salaries and benefits may be unreasonably or uncustomarily high or low. This exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. The term "nonsupervisory personnel", for the purposes of this section, means, but is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if the costs were incurred subsequent to the eighth day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved: (i) By the state health planning and development agency prior to the first day of July, one thousand nine hundred eighty-four; or (ii) there-
after, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest or mandate changes in buildings or operations of hospitals shall give notice to the board together with any findings.

(g) A hospital shall file a complete rate application with the board on an annual basis a minimum of sixty days prior to the beginning of its fiscal year. If the application is filed and determined to be complete by the board sixty days prior to the beginning of the hospital's fiscal year, and no hearing is requested on the application, the board shall set the rates in advance of the year during which they apply and shall not adjust the rates for costs actually incurred: Provided, That if the board does not establish rates by the beginning of the hospital's fiscal year, and a hearing has not been requested, the board shall establish rates retroactively to the beginning of the hospital's fiscal year: Provided, however, That if the board does not establish rates by the beginning of the hospital's fiscal year, and a hearing has been requested, the board may establish rates retroactively to the beginning of the fiscal year. This subsection shall not apply to the procedure set forth in subsection (c), section twenty-one of this article.

(h) All determinations, orders and decisions of the board with respect to rates and revenues shall be prospective in nature, except as provided in subsection (g) of this section, when rates are not timely set.

(i) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

(j) Notwithstanding any other provision of this article, the board shall approve all requests for rate increases by hospitals which are licensed for one hundred beds or less and which are not located in a standard metropolitan statistical area where the rate of increase is equal to or less
137 than the lowest rate of inflation as established by a recog-
138 nized inflation index for either the national or regional
139 hospital industry. The board may, by rule, impose report-
140 ing requirements to ensure that a hospital does not exceed
141 the rate of increases permitted in this section.

142 (k) Notwithstanding any other provision of this arti-
143 cle, the board shall develop an expedited review process
144 applicable to all hospitals licensed for more than one hun-
145 dred beds or that are located in a standard metropolitan
146 statistical area for rate increase requests which may be
147 based upon a recognized inflation index for the national
148 or regional hospital industry.

CHAPTER 139

(Com. Sub. for H. B. 4181—By Delegates Mezzatesta, Michael, Ryan,
J. Martin, Burke, Douglas and Leach)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirty-three,
chapter sixteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to further amend
said article by adding thereto six new sections, designated
sections seven, eight, nine, ten, eleven and twelve, all relating
to creating the breast and cervical cancer diagnostic and
treatment fund; defining terms; setting forth the composition
of the fund; providing for the appropriation of moneys;
providing that nothing in the article will require an appropi-
ration by the Legislature; providing for the administration of
the fund; setting forth the advisory committee duties; requir-
ing the committee to study the possibility of establishing a
similar fund for patients in need of diagnostic and treatment
services for prostate and colon cancer; setting forth the man-
ner of establishing covered services; authorizing the promul-
gation of rules; establishing financial and medical eligibility;
providing an application process; and providing for dis-
bursement of funds.

Be it enacted by the Legislature of West Virginia:
That section two, article thirty-three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto six new sections, designated sections seven, eight, nine, ten, eleven and twelve, all to read as follows:

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-2. Definitions.
§16-33-7. Establishment of breast and cervical cancer diagnostic and treatment fund.
§16-33-8. Responsibilities of advisory committee; establishment of covered services, limitation of services and procedures; authorization for payment; promulgation of rules; annual reports.
§16-33-10. Medical eligibility.
§16-33-11. Application forms and process.
§16-33-12. Reimbursement process.

§16-33-2. Definitions.

1 As used in this article:
2 (a) "Advisory committee" means the medical advisory committee to the breast and cervical cancer detection and education program coalition established pursuant to the provisions of section five of this article.
3 (b) "Approved organization" means an organization approved by the director to provide medical services under section four of this article.
4 (c) "Bureau" means the state bureau of public health established pursuant to the provisions of article one of this chapter.
5 (d) "Department" means the department of health and human resources.
6 (e) "Director" means the director of the division of health.
7 (f) "Unserved or underserved populations" means persons having inadequate access and financial resources
to obtain breast and cervical cancer screening and detection services, including persons who lack health insurance or whose health insurance coverage does not cover these services.

(g) "Fund" means the breast and cervical cancer diagnostic and treatment fund.

(h) "Qualified applicant" means a person who meets the financial and medical eligibility guidelines of this article.

(i) "Provider" means a physician, hospital or medical provider currently licensed, operating or practicing in this state.

§16-33-7. Establishment of breast and cervical cancer diagnostic and treatment fund.

(a) There is hereby established the breast and cervical cancer diagnostic and treatment fund which shall provide financial assistance for the medical care of indigent patients for diagnostic and treatment services for breast and cervical cancer.

(b) The fund may be comprised of moneys appropriated to the fund by the Legislature, allocated to the fund by the federal government and all other sums designated for deposit in the fund from any source, public or private.

(c) The fund shall be administered by the office of maternal and child health within the bureau of public health. The bureau shall file an annual report with the joint committee on government and finance describing the operation and status of the fund, acts, policies, practices or procedures of the bureau in implementing the provisions of this article, and the bureau’s recommendations as to changes in law or policy which it deems necessary or appropriate.

(d) Nothing in this article may be construed or interpreted to mean that covered diagnostic and treatment services are required to be provided by the bureau or the department. Nothing in this article shall be construed to mandate funding for the breast and cervical diagnostic
and treatment fund or to require any appropriation by the Legislature to the fund.

§16-33-8. Responsibilities of advisory committee; establishment of covered services, limitation of services and procedures; authorization for payment; promulgation of rules; annual reports.

(a) The advisory committee shall establish procedures and requirements regarding participation in the fund, including, but not limited to, the following:

(1) Establishing a list of covered services approved for payment through the fund, including (A) diagnostic and treatment services for breast or cervical cancer or a condition suggestive of cancer, and (B) ancillary diagnostic studies which may be authorized only when it is determined by the bureau to be directly related to the confirmation of a diagnosis of cancer or is necessary for treatment planning;

(2) Establishing procedures for emergency admissions or immediate patient entry into the health care system upon a determination that covered services are necessary so as to ensure prompt testing, diagnosis or treatment of breast or cervical cancer.

(3) Setting a limitation on days of service covered by the fund, and authorizing that the number of days for reimbursement be based on the medical condition of the patient and the procedure to be performed;

(4) Reviewing requests and providing authorization for payment of diagnostic or treatment services covered by the fund;

(5) Promulgating rules, in conjunction with the bureau, in accordance with the provisions of chapter twenty-nine-a of this code regarding the administration of the fund; and

(6) Submitting annual reports to the state bureau of public health regarding the operation and progress of the fund, the number of patients treated through the fund, and other statistical data as may be required by the bureau.
(b) The advisory committee shall study the possibility of and the cost associated with establishing a fund to provided financial assistance to qualified applicants for diagnostic and treatment services for prostate and colon cancer. The committee shall provide a report to the joint committee on government and finance on or before the first day of January, one thousand nine hundred ninety-seven.


To be eligible for services under the fund, a patient's income must be at or below two hundred percent of the federal poverty level in accordance with the prevailing national poverty income guidelines and be medically eligible for participation pursuant to the provisions of section ten of this article. No patient who is covered by medical insurance, medicaid or medicare may be financially eligible for participation in the fund.

§16-33-10. Medical eligibility.

(a) In addition to the requirements contained in section nine of this article, in order to be eligible for services under the fund, a patient shall have a condition strongly suspicious of cancer which requires diagnostic services to confirm the preliminary diagnosis to be medically eligible for diagnostic authorization. The bureau may authorize only those services determined by the advisory committee to be medically necessary to confirm a preliminary diagnosis.

(b) A positive pathology report is required before treatment services may be authorized by the fund.

§16-33-11. Application forms and process.

(a) The bureau shall develop authorization request forms and make the forms available to the provider upon request.

(b) An application for inpatient diagnostic services shall be accompanied by a written, signed statement from the attending physician which includes the medical basis for requested inpatient services and explains why the services may not be performed on an outpatient basis.
§16-33-12. Reimbursement process.

(a) The fund is the payor of last resort. Payment for procedures shall be made at the prevailing rate established by medicare.

(b) A claim for authorized services rendered shall be processed in accordance with rules promulgated by the bureau.

CHAPTER 140

(Com. Sub. for S. B. 529—Senators Wooton, Bailey, Walker and Macnaughtan)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to standard and emergency commitment proceedings for persons with communicable tuberculosis; authorizing the bureau of public health or its designee to make application for involuntary commitment in emergency situations; setting forth the procedures for involuntary commitment of persons suffering from tuberculosis; requiring information related to persons' uncooperative behavior; authorizing magistrate to accept application in certain circumstances; permitting immediate detention for specified period of time; permitting postponement of hearing for specified period of time; requiring immediate commitment upon finding of probable cause that the person is likely to cause serious harm to him or herself or others; and eliminating or updating obsolete references.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:
ARTICLE 5A. TUBERCULOSIS CONTROL.

§26-5A-2. Forms for committing patients; other records.

The state bureau of public health or its designee is authorized to prepare, prescribe and have printed forms to be used in committing patients to any state tuberculosis institution.

§26-5A-5. Procedure when patient is health menace to others.

(a) If any practicing physician, public health officer, or chief medical officer having under observation or care any person who is suffering from tuberculosis in a communicable stage is of the opinion that the environmental conditions of that person are not suitable for proper isolation or control by any type of local quarantine as prescribed by the state bureau of public health of the department of health and human resources or an authorized designee thereof, and that the person is unable or unwilling to conduct himself or herself and to live in such a manner as not to expose members of his or her family or household or other persons with whom he or she may be associated to danger of infection, he or she shall report the facts to the bureau of public health or its designee which shall forthwith investigate or have investigated the circumstances alleged.

(b) If the bureau of public health or its designee finds that any person's physical condition is a health menace to others, the bureau of public health or its designee shall petition the circuit court of the county in which the person resides, or the judge thereof in vacation, alleging that the person is afflicted with communicable tuberculosis and that the person's physical condition is a health menace to others, and requesting an order of the court committing the person to one of the state institutions for the treatment of tuberculosis: Provided, That if the bureau of public health or its designee determines than an emergency situation exists which warrants the immediate detention and
commitment of a person suffering from tuberculosis, an
application for immediate involuntary commitment may
be filed pursuant to section seven of this article.

(c) Upon receiving the petition, the court shall fix a
date for hearing thereof and notice of the petition and the
time and place for hearing shall be served personally, at
least seven days before the hearing, upon the person who
is afflicted with tuberculosis and alleged to be dangerous
to the health of others.

(d) If, upon hearing, it appears that the complaint of
the bureau of public health or its designee is well founded,
that the person is afflicted with communicable tuberculo-
is, and that the person is a source of danger to others, the
court shall commit the individual to an institution main-
tained for the care and treatment of persons afflicted with
tuberculosis. The person shall be deemed to be commit-
ted until discharged in the manner authorized in this sec-
tion.

(e) The chief medical officer of the institution to
which any person afflicted with tuberculosis has been
committed may discharge that person when, in his or her
judgment, the person may be discharged without danger
to the health or life of others. The chief medical officer
shall report immediately to the bureau of public health or
its designee each discharge of a person afflicted with tu-
berculosis.

(f) Every person committed under the provisions of
this section shall observe all the rules of the institution.
Any patient so committed may, by direction of the chief
medical officer of the institution, be placed apart from the
others and restrained from leaving the institution so long
as he or she continues to be afflicted with tuberculosis and
remains a health menace.

(g) Nothing in this section may be construed to pro-
hibit any person committed to any institution under the
provisions of this section from applying to the supreme
court of appeals for a review of the evidence on which the
commitment was made. Nothing in this section may be
construed or operate to empower or authorize the bureau
68 of public health, the department of health and human
69 resources or an authorized designee thereof or the chief
70 medical officer of the institution, or their representatives,
71 to restrict in any manner the individual's right to select any
72 method of tuberculosis treatment offered by the institu-
73 tion.

§26-5A-7. Procedures for immediate involuntary commit-
ment.

(a) An application for immediate involuntary commit-
ment of a person suffering from tuberculosis may be filed
by the commissioner of the bureau of public health, or his
or her designee, in the circuit court of the county in which
the person resides. The application shall be filed under
oath, and shall present information and facts which estab-
lish that the person suffering from tuberculosis in a com-
municable stage has been uncooperative or irresponsible
with regard to quarantine or safety measures, presents a
health menace to others, and is in need of immediate hos-
pitalization until his or her communicable tuberculosis
becomes noninfectious.

(b) Upon receipt of the application, the circuit court
may thereupon enter an order for the individual named in
the action to be detained and taken into custody for the
purpose of holding a probable cause hearing. The order
shall specify that the hearing be forthwith and shall
appoint counsel for the individual: Provided, That in the
event immediate detention is believed to be necessary for
the protection of the individual or others at a time when
no circuit court judge is available for immediate presenta-
tion of the application, a magistrate may accept the appli-
cation and, upon a finding that immediate detention is
necessary pending presentation of the application to the
circuit court, may order the individual to be temporarily
committed until the earliest reasonable time that the appli-
cation can be presented to the circuit court, which tempo-
rary period of detention shall not exceed twenty-four
hours, except as provided for in subsection (c) of this
section.

(c) A probable cause hearing shall be held before a
magistrate or circuit judge of the county of which the
individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

(d) The individual shall be present at the probable cause hearing and shall have the right to present evidence, confront all witnesses and other evidence against him or her, and to examine testimony offered, including testimony by the bureau of public health or its designees.

(e) At the conclusion of the hearing the magistrate or circuit court shall find and enter an order stating whether there is probable cause to believe that the individual is likely to cause serious harm to himself, herself or others as a result of his or her disease and actions. If probable cause is found, the individual shall be immediately committed to an institution maintained for the care and treatment of persons afflicted with tuberculosis. The person shall remain so committed until discharged in the manner authorized pursuant to section five of this article.

(f) The bureau of public health shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article, including, but not limited to, rules relating to the transport and temporary involuntary commitment of patients.

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CHAPTER 141

(S. B. 98—By Senators Love, Miller and Buckalew)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter seventeen 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 authorizing the highways commissioner to establish cost principles for engineering and design contracts; and providing for legislative rule.
Be it enacted by the Legislature of West Virginia:

That article two-a, chapter seventeen 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 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-22. Administration of engineering and design related service contracts.

1 In order to promote engineering and design quality and to ensure maximum competition by professional companies of all sizes providing engineering and design services, the commissioner of highways may establish cost principles for determining the reasonableness and allowability of various costs. These cost principles will govern the overhead ceilings, salary limits, expense reimbursement and any other cost the commissioner may deem necessary to regulate. The commissioner of highways shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code regarding standard cost principles for determining the reasonableness and allowability of various costs. The legislative rule may include provisions for deviations from the standard cost principles in special situations and circumstances.

CHAPTER 142

(Com. Sub. for S. B. 62—By Senators Whitlow, Scott, Yoder, Bowman, Chafin, Wagner, Blatnik, Boley, Minear, Ross, Love, Tomblin, Mr. President, Sharpe, Craigo, Jackson, Plymale, Bailey, Dittmar, Manchin, Buckalew, Deem, Kimble, Anderson, Oliverio, Dugan and Walker)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article nine, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homestead exemptions; providing that homesteads are exempt from attachment for debts for hospital or medical expenses incurred
from a catastrophic illness or injury; providing for exceptions; defining the term "catastrophic illness or injury" for purposes of section; and requiring the commission to promulgate legislative rules to establish procedures to effectuate such exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. HOMESTEAD EXEMPTIONS.

§38-9-3. Debts enforceable against homestead.

(a) As of the effective date of this article, a homestead shall be exempt up to the value of five thousand dollars from all debts and liabilities, except debts incurred for the purchase money thereof, or for the erection of permanent improvements thereon, and claims for taxes or county or district or municipal levies due thereon. The exemption herein granted by operation of law shall not render the homestead exempt from liens and all other debts and liabilities contracted and incurred prior to the effective date of this article: Provided, That with respect to a homestead exemption up to one thousand dollars perfected by execution and recordation of a written instrument as required under the former provisions of this article, such exemption shall for all purposes continue to be governed by such former provisions of this article.

(b) In addition to the exemption provided in subsection (a) of this section and subject to the provisions of section eleven-c, article five, chapter nine of this code, effective the first day of July, one thousand nine hundred ninety-six, a homestead shall be exempt up to the value of seven thousand five hundred dollars from all debts and liabilities for hospital or medical expenses incurred from a catastrophic illness or injury. For purposes of this section, "catastrophic illness or injury" means a medically verified illness or injury for which any insurance or other applicable benefits have been exhausted, and which incapacitates and creates a financial hardship upon the debtor, his or
her spouse or sibling or dependent of the debtor, who uses
the homestead as a principal home at the time the debt was
incurred. The exemption provided by this section shall
expire upon the date of the death of the debtor, the death
of the debtor's spouse or the death of a disabled depend-
ent of the debtor who uses the homestead as a principal
home, whichever is the later.

The exemption provided pursuant to this subsection
by operation of law shall not render the homestead ex-
empt from liens and all other debts and liabilities contract-
ed and incurred prior to the first day of July, one thou-
sand nine hundred ninety-six.

The tax commissioner shall propose for promulgation
legislative rules, not inconsistent with this section, in acord-
dance with the provisions of article three, chapter
twenty-nine-a of this code, to establish the procedures for
exempting homesteads from debts and liabilities incurred
from a catastrophic illness or injury.

CHAPTER 143
(S. B. 473—By Senator Walker)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, seven and
twenty-two, article sixteen, chapter five of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
all relating to the administration of the West Virginia public
employees insurance agency; definitions; salary of director;
chief financial officer; providing that for plans which include
maternity benefits that these plans not deny payment for
specified minimum time periods where deemed medically
necessary by the attending physician; optional life and acci-
dental death insurance; and employer contributions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, seven and twenty-two, article sixteen,
chapter five 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. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

§5-16-2. Definitions.
§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-22. Permissive participation; exemptions.

§5-16-2. Definitions.

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

1. "Advisory board" means the public employees insurance agency advisory board created by this article.

2. "Agency" means the public employees insurance agency created by this article.

3. "Director" means the director of the public employees insurance agency, created by this article.

4. "Employee" means any person, including elected officials, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including elected officials, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance
of a governmental function and whose jurisdiction is co-
22 extensive with one or more counties, cities or towns; any
23 comprehensive community mental health center or com-
24 prehensive mental retardation facility established, operated
25 or licensed by the secretary of health and human resour-
26 ces pursuant to section one, article two-a, chapter
27 twenty-seven of this code, and which is supported in part
28 by state, county or municipal funds; any person who
29 works regularly full time in the service of the university of
30 West Virginia board of trustees or the board of directors
31 of the state college system; and any person who works
32 regularly full time in the service of a combined
33 city-county health department created pursuant to article
34 two, chapter sixteen of this code. On and after the first
35 day of January, one thousand nine hundred ninety-four,
36 and upon election by a county board of education to
37 allow elected board members to participate in the public
38 employees insurance program pursuant to this article, any
39 person elected to a county board of education shall be
40 deemed to be an "employee" during the term of office of
41 the elected member: Provided, That the elected member
42 shall pay the entire cost of the premium if he or she elects
43 to be covered under this act. Any matters of doubt as to
44 who is an employee within the meaning of this article shall
45 be decided by the director.

(5) "Employer" means the state of West Virginia, its
47 boards, agencies, commissions, departments, institutions or
48 spending units; a county board of education; a county,
49 city or town in the state; any separate corporation or in-
50 strumentality established by one or more counties, cities or
51 towns, as permitted by law; any corporation or instrumen-
52 tality supported in most part by counties, cities or towns;
53 any public corporation charged by law with the perfor-
54 mance of a governmental function and whose jurisdiction
55 is coextensive with one or more counties, cities or towns;
56 any comprehensive community mental health center or
57 comprehensive mental retardation facility established,
58 operated or licensed by the secretary of health and human
59 resources pursuant to section one, article two-a, chapter
60 twenty-seven of this code, and which is supported in part
61 by state, county or municipal funds; and a combined
city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the national guard.

(6) "Finance board" means the public employees insurance agency finance board created by this article.

(7) "Plan" means the medical indemnity plan or a managed care plan option offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the university of West Virginia board of trustees or the board of directors of the state college system or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article and meet the minimum eligibility requirements for their respective state retirement system: Provided, That for the purposes of this article, the employees who are not covered by a state retirement system shall, in the case of education employees, meet the minimum eligibility requirements of the state teachers retirement system, and in all other cases, meet the minimum eligibility requirements of the public employees retirement system.

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

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

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

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

(d) The public employees insurance agency shall terminate in the manner provided in article ten, chapter four of this code, on the first day of July, two thousand one, unless extended by legislation enacted before the termination date: Provided, That the public employees insurance agency advisory board, created in section six of this article, shall terminate in the manner provided in article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-six.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules for the administration of such plans, subject to the limitations contained in this article. Those plans shall include:

(1) Coverages and benefits for X-ray and laboratory services in connection with mammograms and pap smears when performed for cancer screening or diagnostic services; (2) Annual checkups for prostate cancer in men age fifty and over;

(3) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time
which the attending physician deems medically necessary
for the mother or her newly born child: Provided, That
no such plan may deny payment for a mother or her new
born child prior to forty-eight hours following a vaginal
delivery, or prior to ninety-six hours following a caesarean
section delivery, if the attending physician deems dis-
charge medically inappropriate; and

(4) For plans which provide coverages for
post-delivery care to a mother and her newly born child in
the home, coverage for inpatient care following childbirth
as provided in subdivision (3) of this subsection if such
inpatient care is determined to be medically necessary by
the attending physician. Those plans may also include,
among other things, medicines, medical equipment, pro-
thetic appliances, and such other inpatient and outpatient
services and expenses deemed appropriate and desirable
by the agency.

(b) The agency shall make available to each eligible
employee, at full cost to the employee, the opportunity to
purchase optional group life and accidental death insur-
ance as established under the rules of the agency. In addi-
tion, each employee is entitled to have his or her spouse
and dependents, as defined by the rules of the agency,
included in the optional coverage, at full cost to the em-
ployee, for each eligible dependent; and with full authori-
zation to the agency to make the optional coverage avail-
able and provide an opportunity of purchase to each em-
ployee.

(c) The finance board may cause to be separately
rated for claims experience purposes: (1) All employees
of the state of West Virginia; (2) all teaching and profes-
sional employees of the university of West Virginia board
of trustees or the board of directors of the state college
system and county boards of education; (3) all
nonteaching employees of the university of West Virginia
board of trustees or the board of directors of the state
college system and county boards of education; or (4) any
other categorization which would ensure the stability of
the overall program.

§5-16-22. Permissive participation; exemptions.
The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units or a county board of education, and nothing contained in this article shall be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code shall not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer shall not remain enrolled in both programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, are not applicable to the provisions of this article whenever the provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code are in conflict with or contrary to any provision set forth in this article or to any plan or plans established by the public employees insurance agency.

Employers, other than the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.
Any employer, whether the employer participates in the public employees insurance agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the public employees insurance agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: Provided, That after the thirtieth day of June, one thousand nine hundred ninety-six, an employer is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

CHAPTER 144
(S. B. 465—By Senator Walker)

[Passed March 7, 1996; in effect ninety days from passage. Approved by the Governor.]
to a new section, designated section eight-d; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-d, all relating to the West Virginia public employees insurance agency and other cooperative or private third-party payors of health services; defining emergency services for purposes of coverage within policies issued for accidents and sickness; requiring emergency services coverage to be included in policies issued for groups under the West Virginia public employees insurance agency; hospital, medical and dental corporations; health care corporations; and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That section eight, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article one, chapter thirty-three of said code be amended by adding thereto a new section, designated section twenty-one; that article sixteen of said chapter be amended by adding thereto a new section, designated section three-i; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-e; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-d; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-d, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works, Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

33. Insurance.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-8. Conditions of insurance program.
The insurance plans herein provided for shall be designed by the public employees insurance agency:

(1) To provide a reasonable relationship between the hospital, surgical, medical and prescription drug benefits to be included and the expected reasonable and customary hospital, surgical, medical and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse and his or her dependents. The establishment of reasonable and customary expenses by the public employees insurance agency pursuant to the preceding sentence is not subject to the state administrative procedures act in chapter twenty-nine-a of this code.

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs and preferred provider arrangements.

(3) To prevent unnecessary utilization of the various hospital, surgical, medical and prescription drug services available.

(4) To provide reasonable assurance of stability in future years for the plans.

(5) To provide major medical insurance for said employees.

(6) To provide certain group life and accidental death insurance for the employees covered under this article.

(7) To include provisions for the coordination of benefits payable by the terms of such plans with the benefits to which such employee, or his or her spouse or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance or any combination thereof.

(8) To provide a cash incentive plan for employees, spouses and dependents by the thirty-first day of December, one thousand nine hundred eighty-eight, to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers and generic drugs. Such plan shall be reviewed annually by the director and the advisory board.
(9) To provide "wellness" programs and activities which will include, but not be limited to, benefit plan incentives to discourage tobacco, alcohol and chemical abuse and an educational program to encourage proper diet and exercise. In establishing "wellness" programs, the division of vocational rehabilitation shall cooperate with the public employees insurance agency in establishing statewide wellness programs and with such division of vocational rehabilitation to contact county boards of education for the use of facilities, equipment or any service related to such purpose, at the request of the director, under the authority hereby granted to contract therefor. Boards of education shall be limited to charging only the cost of janitorial service and increased utilities for the use of the gymnasium and related equipment. The cost of the exercise program shall be paid by county boards of education, the public employees insurance agency, or participating employees, their spouses or dependents. All exercise programs shall be made available to all employees, their spouses or dependents and shall not be limited to employees of county boards of education.

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of one thousand dollars annually, to employees for discovery of health care provider or hospital overcharges when the affected employee brings such overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan.

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee.

(12) To provide coverage for emergency services under offered plans. For the purposes of this subsection, "emergency services" means services provided in or by a hospital emergency facility or the private office of a dentist to evaluate and treat a medical condition manifesting
Emergency services are those services provided in or by a hospital emergency facility or the private office of a dentist to evaluate and treat a medical condition manifesting itself by the sudden, and at the time, unexpected onset of symptoms that require immediate medical attention and that failure to provide medical attention would result in serious impairment to bodily function, serious dysfunction to any bodily organ or part, or would place the person's health in jeopardy.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3i. Coverage of emergency services.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on and after the first day of July, one thousand nine hundred ninety-six, provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.
§33-24-7e. Coverage of emergency services.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on and after the first day of July, one thousand nine hundred ninety-six, provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on and after the first day of July, one thousand nine hundred ninety-six, provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article shall, on and after the first day of July, one thousand nine hundred ninety-six, provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan or agreement may apply to emergency services the same deductibles, coinsurance and other limitations as apply to other covered services: Provided, That preauthorization or precertification shall not be required.
AN ACT to amend and reenact section fifteen-b, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; insurance commissioner; reinsurance agreements; and reduction of liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15b. Reinsurance agreements; reduction of liability; requirements.

(a) This section applies to all domestic life insurers, domestic accident and sickness insurers, and domestic property and casualty insurers with respect to their accident and sickness business. This section also applies to all other licensed life insurers, accident and sickness insurers, and property and casualty insurers with respect to their accident and sickness business who are not subject to a substantially similar law or regulation in their domiciliary state. This section does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain non-proportional reinsurance such as stop loss or catastrophic reinsurance.
(b) An insurer subject to this section shall not, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. The primary effect of the reinsurance agreement is to transfer deficiency reserves or excess interest reserves to the books of the reinsurer for a "risk charge" and the agreement does not provide for significant participation by the reinsurer in one or more of the following risks: Mortality, morbidity, investment or surrender benefit;

2. The reserve credit taken by the ceding insurer is not in compliance with this chapter, including actuarial interpretations or standards adopted by the commissioner;

3. The reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding company supporting the policy obligation transferred under the reinsurance agreement;

4. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement: Provided, That neither offsetting experience refunds against current and prior years' losses nor payment by the ceding insurer of an amount equal to current and prior years' losses upon voluntary termination of in-force reinsurance by that ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience;

5. The ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer: Provided, That termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

6. The ceding insurer shall, at specific points in time...
scheduled in the agreement, terminate or automatically
recapture all or part of the reinsurance ceded;

(7) No cash payment is due from the reinsurer,
throughout the lifetime of the reinsurance agreement, with
all settlements prior to the termination date of the agree-
ment made only in a "reinsurance account," and no funds
in such account are available for the payment of benefits;

(8) The reinsurance agreement involves the possible
payment by the ceding insurer to the reinsurer of amounts
other than from income reasonably expected from the
reinsured policies; or

(9) Any other conditions specified by rules promul-
gated by the commissioner pursuant to chapter
twenty-nine-a of this code.

(c) Notwithstanding the provisions of subsection (b)
of this section, an insurer subject to this article may, with
the prior approval of the commissioner, take such reserve
credit as the commissioner may deem consistent with this
chapter, including actuarial interpretations or standards
adopted by the commissioner.

(d) A reinsurance agreement or amendment to any
agreement shall not be used to reduce any liability or to
establish any asset in any financial statement filed with the
commissioner, unless the agreement, amendment or a
letter of intent has been duly executed by both parties no
later than the "as of date" of the financial statement.

(e) In the case of a letter of intent, a reinsurance
agreement or an amendment to a reinsurance agreement
shall be executed within a reasonable period of time, not
exceeding ninety days from the execution date of the
letter of intent, in order for credit to be granted for the
reinsurance ceded.

(f) Life insurers subject to this section may continue
to reduce liabilities or establish assets in financial state-
ments filed with the commissioner for reinsurance ceded
under types of reinsurance agreements described in sub-
section (b) of this section: Provided, That:

(1) The agreements were executed and in force prior
to the effective date of this section;

(2) No new business is ceded under the agreements
after the effective date of this section;

(3) The reduction of the liability or the asset estab-
lished for the reinsurance ceded is reduced to zero by the
thirty-first day of December, one thousand nine hundred
ninety-four, or such later date approved by the commis-
sioner as a result of an application made by the ceding
insurer prior to the thirty-first day of December, one thou-
sand nine hundred ninety-two;

(4) The reduction of the liability or the establishment
of the asset is otherwise permissible under all other appli-
cable provisions of this chapter, including actuarial inter-
pretations or standards adopted by the commissioner; and

(5) The commissioner is notified, within ninety days
after the effective date of this section, of the existence of
such reinsurance agreements and all corresponding credits
taken in the ceding insurer's annual statement for the year
one thousand nine hundred ninety-one.

(g) Accident and sickness insurers and property and
casualty insurers subject to this section shall be in compli-
ance with the requirements of this section, with respect to
their accident and sickness business, pursuant to such
terms and conditions as are contained in the legislative
rule to be promulgated by the commissioner.

(h) The commissioner shall promulgate a rule pursu-
ant to chapter twenty-nine-a of this code for the imple-
mentation and administration of this section on or before
the first day of July, one thousand nine hundred
ninety-six.
AN ACT to amend and reenact section ten, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to standard provisions in insurance policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-10. Standard provisions.

(a) Insurance contracts shall contain such standard provisions as are required by the applicable provisions of this chapter pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular standard provision in a particular insurance policy form, if he finds such provision unnecessary for the protection of the insured and inconsistent with the purposes of the policy, and the policy is otherwise approved by him.

(b) No policy shall contain any provision inconsistent with or contradictory to any standard provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the standard provisions or optional standard provisions, otherwise required. This section shall not apply to the standard fire insurance policy.
(c) On or after the first day of October, one thousand nine hundred ninety-six, the insurer shall provide to all prospective purchasers of individual life insurance policies with a face value of twenty-five thousand dollars or less a notice upon a form prescribed by the commissioner to such prospective policyholder that the total premiums paid by the purchaser at some point in the future may exceed the death benefit. For purposes of calculating whether or at what point premiums paid by the policyholder will exceed the death benefit, the insurer shall use the annual premium for the life insurance death benefit. All other costs, including, but not limited to, costs for benefits provided pursuant to a policy rider, and costs associated with the exercise of any option permitted by the policy, shall be excluded from the calculation. This notice shall be provided at the time of delivery of the policy. This subsection does not apply to mass market life insurance products as defined in section thirty-five of this article, to life insurance policies used exclusively to fund preneed burial contracts under article fourteen, chapter forty-seven of this code or to life insurance policies for which the total premiums paid by the purchaser will not at any time exceed the death benefit.

CHAPTER 147

(H. B. 4388—By Delegates Gallagher, Azinger, Hunt, Kominar, Hall, Nesbitt and Clements)

[Passed February 14, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, 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 five-a, relating to replacement of life insurance.

Be it enacted by the Legislature of West Virginia:
That article eleven, 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 five-a, to read as follows:

§33-11-5a. Replacement of life insurance.

(a) As used in this section:

(1) "Replacement" means any transaction in which new life insurance is to be purchased and by reason of such transaction existing life insurance has been or is to be:

(A) Lapsed, forfeited, surrendered or otherwise terminated;

(B) Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) Reissued with any reduction in cash value; or

(E) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy;

(2) "Existing insurer" means the insurance company whose existing life insurance policy is or will be terminated or otherwise affected in a replacement transaction;

(3) "Replacing insurer" means the insurance company, including the same insurer or an insurer in the same group of affiliated insurers, that issues new life insurance in a replacement transaction; and

(4) "Existing life insurance" means any life insurance in force including life insurance under a binding or conditional receipt or a life insurance policy that is within an unconditional refund period, but excluding life insurance
(b) No replacing insurer shall issue any life insurance in a replacement transaction to replace existing life insurance unless the replacing insurer shall agree in writing with the insured that:

1. The new life insurance issued by the replacing insurer will not be contestable by it in the event of such insured's death to any greater extent than the existing life insurance would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and

2. The new life insurance issued by the replacing insurer may be voluntarily surrendered by the insured at any time within thirty (30) days after its delivery to the insured in exchange for a full refund of premiums paid by the replacing insurer to the insured.

(c) Unless otherwise specifically included, subsection (b) of this section shall not apply to:

1. Annuities;

2. Individual credit life insurance;

3. Group life insurance, group credit life insurance and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this subsection, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;

4. Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account;

5. An application to the existing insurer that issued the existing life insurance and a contractual policy change or conversion privilege or a privilege of policy change granted by the insurer is being exercised;
(6) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or

(7) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

(d) For purposes of inducing or attempting to induce a policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise alter or dispose of any insurance policy or coverage, no person shall:

(1) Prepare, make or issue, or cause to be prepared, made or issued, any written or oral misrepresentation of a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage; or

(2) Omit information concerning a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage.

CHAPTER 148

(Com. Sub. for S. B. 312—By Senators Macnaughtan, Bowman, Blatnik, Grubb, Ross, Anderson, Scott, Wagner, Plymale, Sharpe and Manchin)

[Passed March 9, 1996; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen-c; that article sixteen of said chapter be amended by adding thereto a new section, designated section sixteen; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to requiring insurance companies to cover the complete treatment and man-
agement of diabetes for their insureds to the same extent that they provide coverage for the complete treatment of other diseases; and relating generally to health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

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

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

ARTICLE 15C. DIABETES INSURANCE.

§33-15C-1. Insurance for diabetics.

(a) Except as provided in section six, article fifteen of this chapter, any policy which provides major medical or similar comprehensive-type medical coverage shall include coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin dependent and noninsulin dependent persons with diabetes and those with gestational diabetes, if medically necessary and prescribed by a licensed physician: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, orthotics and any additional items as promulgated by rule, pursuant to the provisions of chapter twenty-nine-a of this code, by the insurance commissioner, with the advice of the commissioner of the bureau of public health.
(b) All policies affected by the provisions of this section shall also include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet and prescribed by a licensed physician shall be limited to: (1) Visits medically necessary upon the diagnosis of diabetes; (2) visits under circumstances whereby a physician identifies or diagnoses a significant change in the patient's symptoms or conditions that necessitates changes in a patient's self-management; and (3) where a new medication or therapeutic process relating to the person's treatment and/or management of diabetes has been identified as medically necessary by a licensed physician: Provided, That coverage for reeducation or refresher education shall be limited to one hundred dollars annually.

(c) The education may be provided by the physician as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies and medications prescribed by a licensed physician, or by a certified diabetes educator certified by a national diabetes educator certification program, or registered dietitian registered by a nationally recognized professional association of dietitians upon the referral of a physician: Provided, That such national diabetes education certification program or nationally recognized professional association of dieticians has been certified to the commissioner of insurance by the commissioner of the bureau of public health.

(d) Any deductible or coinsurance billed for any service as provided in this section shall apply on an equal basis with all other coverages provided by the insurer but not included in this section.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-16. Insurance for diabetics.
(a) Except as provided in section six, article fifteen of this chapter, any policy which provides major medical or similar comprehensive-type medical coverage shall include coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin dependent and noninsulin dependent persons with diabetes and those with gestational diabetes, if medically necessary and prescribed by a licensed physician: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, orthotics and any additional items as promulgated by rule, pursuant to the provisions of chapter twenty-nine-a of this code, by the insurance commissioner, with the advice of the commissioner of the bureau of public health.

(b) All policies affected by the provisions of this section shall also include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet and prescribed by a licensed physician shall be limited to: (1) Visits medically necessary upon the diagnosis of diabetes; (2) visits under circumstances whereby a physician identifies or diagnoses a significant change in the patient's symptoms or conditions that necessitates changes in a patient's self-management; and (3) where a new medication or therapeutic process relating to the person's treatment and/or management of diabetes has been identified as medically necessary by a licensed physician: Provided, That coverage for reeducation or refresher education shall be limited to one hundred dollars annually.

(c) The education may be provided by the physician as part of an office visit for diabetes diagnosis or treatment, or by a certified diabetes educator certified by a national diabetes educator certification program, or registered dietitian registered by a nationally recognized professional association of dietitians upon the referral of a physician: Provided, That such national diabetes education certification program or nationally recognized pro-
fessional association of dieticians has been certified to the commissioner of insurance by the commissioner of the bureau of public health.

(d) Any deductible or coinsurance billed for any service as provided in this section shall apply on an equal basis with all other coverages provided by the insurer but not included in this section.

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

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

Every corporation defined in section two of this article is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner), except that, under section nine of said article, examinations shall be conducted at least once every four years; article four (general provisions), except that section sixteen of said article shall not be applicable thereto; section thirty-four, article six (fee for form and rate filing); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eleven (unfair trade practices); article twelve (agents, brokers and solicitors), except that the agent's license fee shall be five dollars; section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-a (long-term care insurance); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-a, article sixteen (mental illness); section three-c, article sixteen (group accident and sickness insurance); section three-d, article sixteen (medicare supplement insurance);
section three-f, article sixteen (treatment of temporomandibu-
lar joint disorder and craniomandibular disorder); section eleven, article sixteen (coverage of children); section
thirteen, article sixteen (equal treatment of state agen-
cy); section fourteen, article sixteen (coordination of ben-
efits with medicaid); section sixteen, article sixteen (dia-
tes insurance); article sixteen-a (group health insurance
conversion); article sixteen-c (small employer group poli-
cies); article sixteen-d (marketing and rate practices for
small employers); article twenty-six-a (West Virginia life
and health insurance guaranty association act), after the
first day of October, one thousand nine hundred
ninety-one; article twenty-seven (insurance holding com-
pany systems); article twenty-eight (individual accident
and sickness insurance minimum standards); article thirty-
three (annual audited financial report); article thirty-four
(administrative supervision); article thirty-four-a (stan-
dards and commissioner's authority for companies
deemed to be in hazardous financial condition); article
thirty-five (criminal sanctions for failure to report impair-
ment); and article thirty-seven (managing general agents);
and no other provision of this chapter may apply to these
corporations unless specifically made applicable by the
provisions of this article. If, however, the corporation is
converted into a corporation organized for a pecuniary
profit or if it transacts business without having obtained a
license as required by section five of this article, it shall
thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by insurance commis-
sioner; exemption from insurance laws.

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


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

*Clerk's Note: This section was also amended by H. B. 4511 (Chapter 151), which passed subsequent to this act.
laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article. The provisions of this article shall not apply to an entity properly licensed by a reciprocal state to provide health care services to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrolled hold harmless requirements substantially similar to those set out in section seven-a of this article.

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

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

(d) The provisions of section fifteen, article four (general provisions); section seventeen, article six (noncomplying forms); article six-c (guaranteed loss ratio); article seven (assets and liabilities); article eight (investments); article nine (administration of deposits); article twelve (agents, brokers, solicitors and excess line); section fourteen, article fifteen (individual accident and sickness insurance); section sixteen, article fifteen (coverage of children); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with medicaid); article fifteen-b (uniform health care administration act); article fifteen-c (diabetes insurance); section three, article sixteen (required policy provisions); section three-f, article sixteen (treatment of temporomandibular joint disorder and craniomandibular disorder); section eleven, article sixteen (coverage of chil-
dren); section thirteen, article sixteen (equal treatment of
state agency); section fourteen, article sixteen (coordina-
tion of benefits with medicaid); section sixteen, article
sixteen (diabetes insurance); article sixteen-a (group
health insurance conversion); article sixteen-c (small em-
ployer group policies); article sixteen-d (marketing and
rate practices for small employers); article twenty-seven
(insurance holding company systems); article thirty-four-a
(standards and commissioner's authority for companies
deemed to be in hazardous financial condition); article
thirty-five (criminal sanctions for failure to report impair-
ment); article thirty-seven (managing general agents); and
article thirty-nine (disclosure of material transactions)
shall be applicable to any health maintenance organization
granted a certificate of authority under this article. In
circumstances where the code provisions made applicable
to health maintenance organizations by this section refer
to the "insurer", the "corporation" or words of similar im-
port, the language shall be construed to include health
maintenance organizations.

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

(f) A health maintenance organization granted a cer-
tificate of authority under this article shall be exempt from
paying municipal business and occupation taxes on gross
income it receives from its enrollees, or from their em-
ployers or others on their behalf, for health care items or
services provided directly or indirectly by the health main-
tenance organization. This exemption applies to all tax-
able years through the thirty-first day of December, one
thousand nine hundred ninety-six. The commissioner and
the tax department shall conduct a study of the appropri-
ateness of imposition of the municipal business and occu-
pation tax or other tax on health maintenance organiza-
tions, and shall report to the regular session of the Legisla-
ture, one thousand nine hundred ninety-seven, on their
findings, conclusions and recommendations, together with
drafts of any legislation necessary to effectuate their rec-
ommendations.
AN ACT to amend and reenact section eighteen, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to farmers' mutual fire insurance companies; and abolishing the requirement that the domestic mutual insurer be the surviving entity resulting from a merger between a farmers' mutual insurance company and a domestic mutual insurer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


1 (a) A farmers' mutual fire insurance company may not merge or consolidate with any stock insurer.

3 (b) A farmers' mutual fire insurance company may merge or consolidate with another farmers' mutual fire insurance company or merge with a domestic mutual insurer in the manner provided in section twenty-eight, article five of this chapter for the merger or consolidation of other types of domestic mutual insurers.