ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1997
First Extraordinary Session, 1997
Second Extraordinary Session, 1996

Volume II
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AN ACT to amend and reenact section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the priority of legislative business for members and designated employees over actions and matters pending before tribunals of the executive and judicial branches.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILE OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-17. Priority of legislative business for members and designated employees.

(a) In accordance with the constitutional separation of powers and principles of comity, it is the purpose of this section to provide that members of the Legislature and certain designated legislative employees are not required to attend to matters pending before tribunals of the executive and judicial branches of government when the timing of those matters may present conflicts with the discharge of the public duties and responsibilities that are incumbent upon members or employees of the Legislature. During legislative sessions or meetings and for reasonable time periods before and after, the judicial and executive branches should refrain from requiring the personal pres-
ence and attention of a legislator or designated employee who is engaged in conducting the business of the Legislature.

(b) For the purposes of this section, the words or terms defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Applicable time period" means and includes the following:

(A) The ten-day time period immediately before any regular or extraordinary session of the Legislature;

(B) The time period during any regular or extraordinary session of the Legislature;

(C) The thirty-day time period immediately following the adjournment sine die of any regular or extraordinary session of the Legislature;

(D) The four-day time period before any interim meetings of any committee of the Legislature or before any party caucus;

(E) The time period during any interim meetings of the Legislature or any party caucus; or

(F) The four-day time period following the conclusion of any interim meetings of any committee of the Legislature or party caucus.

(2) "Designated employee" means any legislative employee designated in writing by the speaker of the West Virginia House of Delegates to the clerk of the House of Delegates or by the president of the West Virginia Senate to the clerk of the West Virginia Senate to be necessary to the operation of the Legislature, such that the legislative employee will be afforded the protections of this section.

(3) "Member" means a member of the West Virginia House of Delegates or the West Virginia Senate.

(4) "Tribunal" means a judicial or quasi-judicial entity of the judicial or executive branch of government,
or any legislative, judicial or quasi-judicial entity of a political subdivision, created or authorized under the constitution or laws of this state.

(c) A notice filed with a tribunal pursuant to subsection (e) of this section operates as an automatic stay of a judicial or administrative action or proceeding commenced before or after the notice was filed. The automatic stay is in force for the applicable time period or periods described in the notice, unless it is otherwise waived in accordance with the provisions of subsection (f) of this section. In the event a session or meeting of the Legislature is extended, the notice may be amended to reflect a longer applicable time period. The filing of the notice and the automatic stay do not prohibit the commencement of an action or proceeding, the issuance or employment of process, or other preliminary procedures that do not require the presence or personal attention of the member or designated employee.

(d) During any applicable time period, a member or designated employee who does not otherwise consent to a waiver of the stay is not required to do any of the following:

(1) Appear in any tribunal, whether as an attorney, party, witness or juror;

(2) Respond in any tribunal to any complaint, petition, pleading, notice or motion that would require a personal appearance or the filing of a responsive pleading;

(3) File in any tribunal any brief, memorandum or motion;

(4) Respond to any motion for depositions upon oral examination or written questions;

(5) Respond to any written interrogatories, request for production of documents or things, request for admissions or any other discovery procedure, whether or not denominated as such; or

(6) Appear or respond to any other act or thing in the nature of those described in subdivisions (1), (2), (3), (4)
or (5) of this subsection; or

(7) Make any other appearance before a tribunal or attend to any other matter pending in a tribunal that in the discretion of the member or designated employee would inhibit the member or designated employee in the exercise of the legislative duties and responsibilities owed to the public.

(e) A member or designated employee who desires to exercise the protections afforded by this section shall not be required to appear in any tribunal to assert the protections. In all cases, it shall be sufficient if the member or designated employee notifies the tribunal in question orally or in writing, stating that he or she is invoking the protections of this section, describing the action, proceeding or act to be stayed, and further identifying the applicable period or periods for which the notice will operate as a stay. An oral communication with the tribunal shall be followed by a written notice or facsimile transmission to the tribunal mailed or transmitted no later than two business days after the oral communication. From the time of the oral communication or the mailing or transmission of the written notice, whichever is earlier, the notice operates as a stay of all proceedings in the pending matter until the applicable time periods have passed and expired.

(f) Notwithstanding the filing of a notice that operates as a stay, a member or designated employee may later consent to waive the stay and make an appearance or attend to a matter that would otherwise be stayed. However, a waiver as to a particular appearance or act does not terminate, annul, modify or condition the stay for any other purpose.

(g) The deference afforded by this section to members and designated employees who are serving a client in a representative capacity is also fully and completely extended to their clients, so that no person whose representative before a tribunal is a member or designated employee may be required, during any applicable time period, to do anything that his or her representative is not required to do under subsection (d) above.
(h) Unless the member or designated employee consents thereto, no co-counsel, partner, associate, spouse or employee of the member or designated employee may be required to make any appearance or do any act during any applicable time period in the place and stead of the member or designated employee.

(i) Any sentence, judgment, order, decree, finding, decision, recommendation or award made contrary to the provisions of this section in any action or proceeding in any tribunal, without the consent of the member or designated employee, is void.

CHAPTER 125
(S. B. 537—Originating in the Committee on Education)

[Passed April 10, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting the salary of the secretary of the West Virginia library commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.


The officers of the commission shall be a chairman, elected from the members of the commission, for a term of one year, and a secretary, who shall be a person trained in modern library methods, not a member of the commission. The secretary shall be appointed by the commission and shall serve at the will of the commission. Notwith-
standing any other provision of the code to the contrary,
the salary of the secretary shall be sixty-two thousand five
hundred dollars per year. The commission may establish
headquarters or maintain its office at such point in the
state as it may determine.

The secretary shall keep a record of the proceedings
of the commission, have charge of its work in organizing
new libraries and improving those already established,
supervise the work of the traveling libraries, and in general
perform such duties as may from time to time be assigned
to him or her by the commission.

CHAPTER 126

(Com. Sub. for S. B. 332—By Senators Oliverio, Buckalew, Craigo, Ball, Sprouse,
Fanning, Bowman, Plymale, Ross, Sharpe and Anderson)

[Passed April 3, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections ten and sixteen, article
twenty-two, chapter twenty-nine of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all relating
to lottery sales agents; providing for an increase in lottery sales agent commissions; and providing for payment of the increased commissions from unclaimed prize funds.

Be it enacted by the Legislature of West Virginia:

That sections ten and sixteen, article twenty-two, chapter twenty-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 22. STATE LOTTERY ACT.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

(1) The commission shall issue its annual license to the lottery sales agents for each lottery outlet and for such fee as is established by the commission to cover its costs thereof, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms to be prescribed and furnished by the director.

(2) No licensee may engage in business exclusively as a lottery sales agent.

(3) The commission shall ensure geographic distribution of lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales.

(5) No person under the age of twenty-one may be licensed as an agent. No licensed agent may employ any person under the age of eighteen for sales or dispensing of lottery tickets or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when
(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director, or shall provide such other security, in an amount, form and manner determined by the director, as will ensure the performance of the agent's duties and responsibilities as a licensed lottery agent or the indemnification of the commission.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations; parks and recreation commissions or similar authorities; senior citizen centers, state-owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages; political subdivisions or their agencies or departments, state agencies, commission-operated agencies; persons licensed under the provisions of article twenty-three, chapter nineteen of this code, and religious, charitable or seasonal businesses.

(11) Licensed lottery sales agents shall receive six and one quarter percent of gross sales as commission for the performance of their duties: Provided, That a portion of the commission not to exceed one and one quarter percent of gross sales may be paid from unclaimed prize moneys accumulated under section sixteen of this article. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof may receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than
five percent of the licenses issued throughout this state:
Provided, That the limitations of twenty-five percent and
five percent in this subdivision do not apply if it is deter-
mined by the commission that there are not a sufficient
number of qualified applicants for licenses to comply with
these requirements.

(b) The commission shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code, specifying the terms
and conditions for contracting with lottery retailers for
sale of preprinted instant type lottery tickets and may
provide for the dispensing of such tickets through ma-
chines and devices. Tickets may be sold or dispensed in
any public or private store, operation or organization,
without limitation. The commission may establish an
annual fee not to exceed fifty dollars for such persons, per
location or site, and shall issue a certificate of authority to
act as a lottery retailer to such persons. The commission
shall establish procedures to ensure the security, honesty
and integrity of the lottery and distribution system. The
commission shall establish the method of payment, com-
misson structure, methods of payment of winners, includ-
ing payment in merchandise and tickets, and may require
prepayment by lottery retailers, require bond or security
for payment and require deposit of receipts in accounts
established therefor. Retailers shall prominently display
the certificate of authority issued by the commission on
the premises where lottery sales are made.


Unclaimed prize money for the prize on a winning
ticket shall be retained by the director for the person enti-
tled thereto for one hundred eighty days after the drawing
in which the prize was won or for one hundred eighty
days after the announced end of a game. If no claim is
made for said money within one hundred eighty days, the
prize money reverts to the state lottery fund for the pur-
poses of paying a portion of the sales commission to lot-
tery sales agents pursuant to section ten of this article or
for awarding additional prizes. The commission shall
promulgate rules for the awarding of additional prizes.
AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrate courts; and providing an additional magistrate for Nicholas County.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) On or before the thirty-first day of January, one thousand nine hundred ninety-six, and on or before the first day of January in every fourth year thereafter, the supreme court of appeals shall certify to the board of ballot commissioners of each county the number of magistrates to be elected in that county for the term of office commencing on the first day of January of the succeeding year. The number of magistrates so certified shall be determined in accordance with the following:

1 (1) The court may not provide:

(A) For the total number of magistrates in the state to exceed one hundred fifty-six in number: Provided, That, effective the first day of July, one thousand nine hundred ninety-seven, the total number of magistrates in the state
may not exceed one hundred fifty-seven in number. An appointment shall be made on the effective date of this subsection to fill the additional magistrate position created herein;

(B) For the number of magistrates in any one county to exceed ten in number; or

(C) For the number of magistrates in any one county to be less than two in number.

(2) The court shall determine the number of magistrates that would be apportioned for each county by the application of an equal proportions formula, as follows:

(A) Two magistrates shall be allocated to each county;

(B) The population of the county shall be divided by a mathematical factor, as established by the equal proportion method, to establish each county’s priority claim to additional magistrates above the two magistrates provided for by paragraph (A) of this subdivision; and

(C) Additional numbers of magistrates shall be allocated to the several counties in order of priority claims, beginning with the largest claim, until magistrates have been assigned within the limits of this section.

For purposes of this article, a determination made in accordance with the provisions of this subdivision is the "equal proportion number".

(3) The court shall determine the number of magistrates elected in each county at the last general election in which magistrates were regularly elected next prior to the preceding census taken under the authority of the United States government. For purposes of this article, that number shall be referred to as the "election number".

(4) The court shall determine the number of case filings per magistrate in each magistrate court for the most recent fiscal year preceding the date of certification, and shall rank the magistrate courts from one through fifty-five, in the order of their case filings per magistrate,
with the court having the most filings per magistrate being ranked number one, and the court with the least filings per magistrate being ranked number fifty-five.

(5) If the court determines that the equal proportion number for a county is the same as the election number for that county, the court shall certify that number as the number of magistrates to be elected in that county at the next election.

(6) If the court determines that the equal proportion number for a county is different from the election number for that county, the court shall apply the ranking established by subdivision (4) of this subsection and determine the number of magistrates for the county, as follows:

(A) If the equal proportion number exceeds the election number, the number of magistrates to be elected in that county at the next election shall be the election number: Provided, That, if the county is ranked as one through ten, inclusive, in accordance with subdivision (4) of this subsection, the court shall certify the equal proportion number as the number of magistrates to be elected in that county at the next election;

(B) If the equal proportion number is less than the election number, the number of magistrates to be elected in that county at the next election shall be the equal proportion number: Provided, That if the county is ranked as one through ten, inclusive, in accordance with subdivision (4) of this subsection, the court shall certify the election number as the number of magistrates to be elected in that county at the next election.

(c) Any magistrate in office at the time of the effective date of this section shall continue as a magistrate, unless sooner removed or retired as provided by law, until the first day of January, one thousand nine hundred ninety-three.
AN ACT to amend and reenact section six, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two of said chapter; to amend and reenact section two-a, article three of said chapter; to amend and reenact sections two and seven, article four of said chapter; to amend and reenact section nine, article five of said chapter; to amend and reenact section five, article one, chapter sixty-two of said code; and to amend and reenact section five, article one-c of said chapter, all relating to magistrate courts generally; to vacancies in the office of magistrate; to venue and change of venue in magistrate court criminal cases; enforcement of payment of costs, fines, fees, forfeitures, restitution or penalties imposed by magistrates in criminal cases; payment by credit card; circumstances under which payment may be made in installments; suspension of privilege to drive a motor vehicle if payment in full is not timely made; procedure for obtaining a license to drive for employment purposes; suspension of privilege to hunt if payment in full of amount imposed for hunting violation is not timely made; suspension of privilege to fish if payment in full of amount imposed for fishing violation is not timely made; enforcement of requirement to appear or respond in criminal cases; suspension of privilege to drive motor vehicle if defendant in criminal case fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to hunt if defendant charged with hunting violation fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to fish if defendant charged with fishing violation
fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; authority of magistrate to order restitution in criminal cases; duties of magistrate clerk to issue and deliver abstracts of unpaid judgments and releases of judgments; duties of prosecuting attorney to file abstracts and releases of judgments; duties of county clerk to record and index abstracts and releases of judgments; commencement of criminal prosecutions; procedures to be followed when disqualification of magistrate asserted; time requirement to render a finding of guilty or not guilty and impose a sentence in a magistrate criminal case; procedure for delivery of prisoner before magistrate; complaint for person arrested without warrant; and return of recognizance and disposition of deposits.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article two of said chapter be amended and reenacted; that section two-a, article three of said chapter be amended and reenacted; that sections two and seven, article four of said chapter be amended and reenacted; that section nine, article five of said chapter be amended and reenacted; that section five, article one, chapter sixty-two of said code be amended and reenacted; and that section five, article one-c of said chapter be amended and reenacted, all to read as follows:

Chapter

50. Magistrate Courts.


CHAPTER 50. MAGISTRATE COURTS.

Article

1. Courts and Officers.
2. Jurisdiction and Authority.
4. Procedure Before Trial.
5. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment.

At a general election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. If the vacancy occurs before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five, chapter three of this code. Otherwise, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five, chapter three of this code, as in the case of filling vacancies in nominations, and the names of the persons so nominated and certified to the clerk of the circuit court of such county shall be placed upon the ballot to be voted at such next general election.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-2. Venue; change of venue.

(a) The provisions of article one, chapter fifty-six of this code, relating to venue of actions in circuit courts, shall apply to venue of actions in magistrate courts as if the same were set forth fully herein.

(b) The circuit court may, on the petition of the accused and for good cause shown, order the venue of the trial of a criminal case in magistrate court to be removed to some other county. Upon the filing of the petition, the proceedings in magistrate court shall be stayed until
disposition by the circuit court. When the venue is so changed, the court making the order shall determine the county to which the case is to be removed and order the defendant to appear on some certain day before the court to which the case is removed. Where the defendant is in custody, the court may, if appropriate, order the defendant confined in a jail convenient to the court to which the case is removed. Upon receipt of the order changing venue, the magistrate court shall certify copies of its file of the case to the court to which the case is removed, and such court shall proceed with the case as if the prosecution had been originally therein, and for that purpose the certified copies aforesaid shall be sufficient.

ARTICLE 3. COSTS, FINES AND RECORDS.

*§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.

(a) A magistrate court may accept credit cards in payment of all costs, fines, fees, forfeitures, restitution or penalties in accordance with rules promulgated by the supreme court of appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture or penalty.

(b) Unless otherwise required by law, a magistrate court may collect a portion of any costs, fines, fees, forfeitures, restitution or penalties at the time the amount is imposed by the court so long as the court requires the balance to be paid in accordance with a payment plan which specifies: (1) The number of payments to be made; (2) the dates on which such payments are due; and (3) the amounts due for each payment.

(c) (1) If any costs, fines, fees, forfeitures, restitution or penalties imposed by the magistrate court in a criminal case are not paid within three months from the date of

*Clerk’s Note: This section was also amended by S. B. 563 (Chapter 95), which passed prior to this act.
judgment and the expiration of any stay of execution, the magistrate court clerk or, upon judgment rendered on appeal, the circuit clerk shall notify the commissioner of the division of motor vehicles of the failure to pay. Upon such notice, the division of motor vehicles shall suspend any privilege the person defaulting on payment may have to operate a motor vehicle in this state, including any driver’s license issued to the person by the division of motor vehicles, until such time that all the costs, fines, fees, forfeitures, restitution or penalties are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code: Provided, That any person who has had his or her license to operate a motor vehicle in this state suspended pursuant to this subsection and his or her failure to pay is based upon inability to pay may, if he or she is employed on a full or part-time basis, petition to the circuit court for an order authorizing him or her to operate a motor vehicle solely for employment purposes. Upon a showing satisfactory to the court of inability to pay, employment and compliance with other applicable motor vehicle laws, the court shall issue such an order.

(2) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter twenty of this code are not paid within three months from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the director of the division of natural resources of such failure to pay. Upon such notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the division of natural resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if any costs, fines, fees, forfeitures, restitution or penalties imposed or ordered by the
magistrate court for a fishing violation described in chapter twenty of this code are not paid within three months from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the director of the division of natural resources of such failure to pay. Upon such notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the division of natural resources, until all the costs, fines, fees, forfeitures, restitution or penalties are paid in full.

(d) (1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the commissioner of the division of motor vehicles thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the division of motor vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the division of motor vehicles, until final judgment in the case and, if a judgment of guilty, until such time that all the costs, fines, fees, forfeitures, restitution or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of section six, article three, chapter seventeen-b of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in chapter twenty of this code fails to appear or otherwise respond in court, the magistrate court shall notify the director of the division of natural resources of such failure thereof within fifteen days of the scheduled date to appear, unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon such notice, the director of the division of natural resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in
this state, including any hunting license issued to the
person by the division of natural resources, until final
judgment in the case and, if a judgment of guilty, until
such time that all the costs, fines, fees, forfeitures,
restitution or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of
this subsection, if a person charged with any fishing
violation described in chapter twenty of this code fails to
appear or otherwise respond in court, the magistrate court
shall notify the director of the division of natural
resources of such failure thereof within fifteen days of the
scheduled date to appear, unless the person sooner appears
or otherwise responds in court to the satisfaction of the
magistrate. Upon such notice, the director of the division
of natural resources shall suspend any privilege the person
failing to appear or otherwise respond may have to fish in
this state, including any fishing license issued to the
person by the division of natural resources, until final
judgment in the case and, if a judgment of guilty, until
such time that all the costs, fines, fees, forfeitures,
restitution or penalties imposed are paid in full.

(e) In every criminal case which involves a
misdemeanor violation, a magistrate may order restitution
where appropriate when rendering judgment.

(f) (1) If all costs, fines, fees, forfeitures, restitution or
penalties imposed by a magistrate court and ordered to be
paid are not paid within three months from the date of
judgment and the expiration of any stay of execution, the
clerk of the magistrate court shall notify the prosecuting
attorney of the county of such nonpayment and provide
the prosecuting attorney with an abstract of judgment.
The prosecuting attorney shall file the abstract of
judgment in the office of the clerk of the county
commission in the county where the defendant was
convicted and in any county wherein the defendant resides
or owns property. The clerks of the county commissions
shall record and index the abstracts of judgment without
charge or fee to the prosecuting attorney, and when so
recorded, the amount stated to be owing in the abstract
shall constitute a lien against all property of the defendant.
(2) When all the costs, fines, fees, forfeitures, restitution or penalties described in subdivision (1) of this subsection for which an abstract of judgment has been recorded are paid in full, the clerk of the magistrate court shall notify the prosecuting attorney of the county of such payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of section one, article twelve, chapter thirty-eight of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerks of the county commissions shall record and index the release of judgment without charge or fee to the prosecuting attorney.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-2. Commencement of criminal prosecutions.

§50-4-7. Disqualification of magistrate.

§50-4-2. Commencement of criminal prosecutions.

1 Except where the provisions of this code or rule of the supreme court of appeals permit the commencement of a criminal prosecution through the issuance of a citation, a criminal prosecution shall be commenced by the filing of a complaint in accordance with the requirements of rules of the supreme court of appeals.

§50-4-7. Disqualification of magistrate.

A motion for the disqualification of a magistrate in a magistrate court proceeding shall be filed in accordance with the requirements of the rules of the supreme court of appeals.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.


(a) In every criminal case in which the defendant is in custody, a magistrate shall render a finding of guilty or not guilty immediately upon the conclusion of the trial or
hearing. In all other proceedings, a magistrate shall render a finding of guilty or not guilty no later than the next succeeding day after the conclusion of the trial or hearing, excluding Saturdays, Sundays and legal holidays.

(b) (1) Sentence shall be imposed in open court within sixty days from the date of the finding of guilt except where sentence is required to be imposed within a lesser period under the provisions of subdivision (2) of this subsection.

(2) Sentence shall be imposed in open court upon a defendant in custody on or before the date of the expiration of the time equivalent to the maximum sentence that may be imposed for the offense. In determining the date, the magistrate shall include in the computation any credit to which the defendant is entitled for the time of confinement spent by the defendant in jail awaiting trial and sentencing.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
  1. Preliminary Procedure.
  1C. Bail.

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-5. Same — Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.

(a) (1) An officer making an arrest under a warrant issued upon a complaint, or any person making an arrest without a warrant for an offense committed in his presence or as otherwise authorized by law, shall take the arrested person without unnecessary delay before a magistrate of the county where the arrest is made.

(2) If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith in accordance with the requirements of rules of the supreme court of appeals.
(3) An officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought.

(b) (1) Notwithstanding any other provision of this code to the contrary, if a person arrested without a warrant is brought before a magistrate prior to the filing of a complaint, a complaint shall be filed forthwith in accordance with the requirements of rules of the supreme court of appeals, and the issuance of a warrant or a summons to appear is not required.

(2) When a person appears initially before a magistrate either in response to a summons or pursuant to an arrest with or without a warrant, the magistrate shall proceed in accordance with the requirements of the applicable provisions of the rules of the supreme court of appeals.

ARTICLE 1C. BAIL.

§62-1C-5. Recognizance and deposits subject to order of court or magistrate.

The recognizance shall be returnable to and all deposits shall be held by the court before whom the defendant is to appear or does appear, and upon the transfer of the case to any other court the recognizance shall be returnable to and transmitted together with any deposits to such other court.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-10. Default judgment; confession of judgment.

(a) If a defendant in a civil action fails to appear or otherwise notify the magistrate court within the time limits prescribed by section five of this article that he wishes to contest the action, the magistrate may render judgment as justice may require as follows:

(1) The magistrate shall render judgment by default only upon affidavit or sworn testimony reflecting the nature of the claim, whether or not it is for a sum certain or for a sum which can by computation be made certain, the defendant’s failure to appear or otherwise notify the court within the time limits prescribed by section five of this article that he wishes to contest the action and supporting the relief sought. In the event the plaintiff’s claim is not for a sum certain or for a sum which can by computation be made certain, the court shall require such further proof by affidavit or sworn testimony as is necessary to determine the propriety of the relief sought.

(2)(A) No judgment by default shall be rendered against a person who is an infant, incompetent person or incarcerated convict unless such person is represented in the action by a guardian ad litem, guardian, committee, curator or other like fiduciary.

(B) No judgment by default may be rendered against a person in active military service of the United States who has not made an appearance unless the provisions of 50 App. U.S.C. §520 have been followed, including the appointment of an attorney upon motion of a plaintiff.

(b) Upon motion made by the defendant within twenty days after the date of such judgment, or, in the case of a person in the military service, within the time provided by 50 App. U.S.C. §520, the magistrate may, for good cause shown, set aside the judgment and set the matter for trial.
(c) If a defendant offers to confess judgment at any time, the magistrate shall take the same in writing and render judgment for the amount confessed plus costs. In the event the amount claimed by the plaintiff exceeds the amount confessed by the defendant the plaintiff may request that the matter be set for trial. If the plaintiff's recovery therein does not exceed the amount confessed, costs shall be assessed against the plaintiff.

CHAPTER 130
(H. B. 2828—By Delegate Smirl)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing the university of West Virginia board of trustees on behalf of Marshall university to sell and convey a parcel of land located on the north side of U. S. Route 60 at University Heights in Huntington, Cabell County; and providing that the proceeds from the sale be deposited in a special revenue account for the development of parking on the downtown campus at Marshall university in Huntington.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS.

§18B-14-6. Marshall university authorization to sell property; use of net proceeds.

(a) Subject to the provisions of section five of this article, relating to the authority of governing boards to sell
any surplus real property and deposit the net proceeds
into a special revenue account in the state treasury to be
appropriated by the Legislature for the purchase of addi-
tional real property or technology, or for capital improve-
ments at the institution that sold the surplus real property,
the board of trustees is hereby authorized and empowered
to sell those parcels of land situate along U. S. Route 60,
being a subdivision of a 2.75 acre tract into eight separate
lots situate on the waters of the Guyandotte River in
Guyandotte District, Cabell County, West Virginia, bound-
ed and described as follows:

Beginning at a 5/8" rebar with cap set on the north
side of U. S. Route 60 at a common corner to the property
of the university of West Virginia board of trustees and
Lambert Construction; thence N. 43° 51' E. a distance of
167.99 feet to a 5/8" rebar with cap set in the boundary of
Lot 1 of the subdivision; thence N. 85° 52' E. a distance of
103.16 feet to 5/8" rebar with cap set in the common
corner to Lot 1 and Lot 2 of the subdivision; thence N.
85° 52' E. a distance of 129.37 feet to a 5/8" rebar with
cap set in the common corner to Lot 2 and Lot 3 of the
subdivision; thence N. 82° 52' E. a distance of 98.91 feet
to a 5/8" rebar with cap set in the common corner to Lot 3
and Lot 4 of the subdivision; thence N. 82° 52' E. a dis-
tance of 98.95 feet to a 5/8" rebar with cap set in the com-
mon corner to Lot 4 and Lot 5 of the subdivision; thence
N. 82° 52' E. a distance of 105.88 feet to a 5/8" rebar with
cap set in the common corner to Lot 5 and Lot 6 of the
subdivision; thence N. 82° 52' E. a distance of 105.96
feet to a 5/8" rebar with cap set in the common corner to
Lot 6 and Lot 7 of the subdivision; thence N. 82° 52' E. a
distance of 106.06 feet to a 5/8" rebar with cap set in the
common corner to Lot 7 and Lot 8 of the subdivision;
thence N. 82° 52' E. a distance of 162.16 feet to a 5/8"
rebar with cap set in the common corner to Lot 8 of the
subdivision and the Crans property; thence S. 09° 49' E. a
distance of 103.75 feet to a 5/8" rebar with cap set in the
line separating Lot 8 and the Crans property to a 5/8"
rebar with cap set in that line; thence S 09° 49' a distance
of 25.00 feet to 5/8" rebar with cap set in the southeastern
corner of Lot 8; thence S. 82° 02' W. a distance of 166.00
feet and running with the chord of U. S. Route 60 to a
5/8" rebar with cap set in that line, which is a common
corner to Lot 8 and Lot 7 of the subdivision; thence S. 82°
44' W. a distance of 107.00 feet and running with the
chord of U. S. Route 60 to a 5/8" rebar with cap set in that
line, which is a common corner to Lot 7 and Lot 6 of the
subdivision; thence S. 83° 16' W. a distance of 107.00 feet
and running with the chord of U. S. Route 60 to a 5/8"
rebar with cap set in that line, which is a common corner
to Lot 6 and Lot 5 of the subdivision; thence S. 83° 45'
W. a distance of 89.06 feet and running with the chord of
U. S. Route 60 to a rebar with cap stamped "WV DOH";
thence N. 06° 01' W. a distance of 20.00 feet to a rebar
with cap stamped "WV DOH"; thence S. 84° 06' W. a
distance of 17.91.00 feet to a 5/8' rebar with cap set, which
is a common corner to Lot 5 and Lot 4 of the subdivision;
thence S. 84° 06' W. a distance of 31.79 feet to a rebar
with cap stamped "WV DOH"; thence S. 05° 46' E. a
distance of 20.00 feet to a rebar with cap stamped "WV
DOH"; thence S. 84° 24' W. a distance of 68.21 feet and
running with the chord of U. S. Route 60 to a 5/8" rebar
with cap set in that line, which is a common corner to Lot
4 and Lot 3 of the subdivision; thence S. 84° 39' W. a
distance of 31.35 feet to a rebar with cap stamped "WV
DOH"; thence N. 05° 16' W. a distance of 8.00 feet to a
rebar with cap stamped "WV DOH"; thence S. 84° 57' W.
a distance of 68.65 feet running parallel to U. S. Route 60
to a 5/8" rebar with cap set in that line, which is a common
corner to Lot 3 and Lot 2 of the subdivision; thence S. 84°
57' W. a distance of 20.89 feet to a rebar with cap stamped
"WV DOH"; thence S. 04° 57' W. a distance of 8.00 feet
to a rebar with cap stamped "WV DOH"; thence S. 85°
27' W. a distance of 110.00 feet and running with the
chord of U. S. Route 60 to a 5/8" rebar with cap set in that
line, which is a common corner to Lot 2 and Lot 1 of the
subdivision; thence S. 84° 54' W. a distance of 64.24 feet
and running with the chord of U. S. Route 60 to a 5/8"
rebar with cap set in that line; thence N. 03° 57' W. a dis-
tance of 10.00 feet to 5/8" rebar with cap set; thence S. 86°
16' W. running parallel to U. S. Route 60 a distance of
84.55 feet to 5/8" rebar with cap set; thence N. 03° 31' W.
a distance of 10.00 feet to a 5/8" rebar with cap set; thence
S. 86· 59' W. running parallel to U. S. Route 60 a distance of 79.66 feet to the place of beginning, containing 2.75 acres as described in a deed to the university of West Virginia board of trustees recorded in the county clerk's office in Cabell County in deed book 116 at page 304; and being the same property shown on a map of the subdivision of the 2.75 acre tract entitled "Plat of Survey Showing Subdivision Of A 2.75 Acre Tract described in deed book 116 at page 304 for university of West Virginia board of trustees located along U. S. Route 60 situate on the waters of the Guyandotte River in Guyandotte District, Cabell County, West Virginia" dated March 13, 1997, as surveyed by Mark C. Shamblin land surveyor, the subdivision being eight lots from this real property.

(b) Prior to the sale, the board of trustees shall cause the property to be appraised by two independent licensed appraisers and may not sell the property for less than the average of the two appraisals.

(c) The proceeds from the sale of the property referred to shall be deposited in a special revenue account from which the board of trustees is hereby authorized to expend funds for development of parking on the downtown campus at Marshall university in Huntington.

CHAPTER 131

(S. B. 121—By Senators Oliverio, Prezioso, McKenzie, Snyder, Scott, Ross, Anderson, Deem, Buckalew, Sharpe, Bell and Dugan)

[Passed March 24, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, nine, eleven and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing all subcontractors and those providing labor or materials to contractors or subcontractors seventy-five days within which to claim their mechanics' liens.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS’ LIENS.

§38-2-7. Necessity and period for perfecting lien.


§38-2-11. Notice and recordation of lien for supplies furnished to contractor or subcontractor.

§38-2-13. Notice and recordation of lien of mechanic or laborer working for contractor or subcontractor.

§38-2-7. Necessity and period for perfecting lien.

But the lien created and authorized by section one of this article shall be discharged from and after ninety days from the completion of the contract, and the lien created and authorized by section two of this article shall be discharged from and after seventy-five days from the completion of the subcontract, and the lien created and authorized by section three of this article shall be discharged from and after ninety days from the furnishing of the last of the materials, machinery or other supplies and equipment, and the lien created and authorized by section four of this article shall be discharged from and after seventy-five days from the date of the furnishing of the last of the materials, machinery or other equipment or supplies, and the lien created and authorized by section five of this article shall be discharged from and after ninety days from the date of the performing of the last of the work and labor, and the lien created and authorized by section six of this article shall be discharged from and after seventy-five days from the date of the performing of the last of the work and labor, unless within the respective periods, the claimant of any such lien shall have perfected and preserved the same, as hereinafter provided in this article.


For the purpose of perfecting and preserving his or her lien, every subcontractor mentioned in section two of this article shall, within seventy-five days after the comple-
tion of his or her subcontract, give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal notice or summons, a notice of lien, which notice shall be sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To:.....................

You will please take notice that the undersigned was and is subcontractor with who was and is general contractor for the furnishing of materials and doing of the work and labor, necessary to the completion of (here describe the nature of the subcontract) on that certain building (or other structure or improvement as the case may be), owned by you and situate on lot number of block number as shown on the official map of (or other definite and ascertainable description of the real estate) and that the contract price and value of said work and materials is $. You are further notified that the undersigned has not been paid therefor (or has been paid only $.) and that he claims and will claim a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the said sum.

State of West Virginia,

County of , being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien are true, as he verily believes.

Taken, subscribed and sworn to before me this day of , 19...

My commission expires

(Official Capacity)

But the lien shall be discharged and avoided, unless within ninety days after the completion of his or her subcontract as aforesaid the subcontractor shall cause to be recorded in the office of the clerk of the county
commission of the county wherein the property is situate a
notice of the lien, which notice shall be sufficient if in
form and effect as that provided in section eight of this
article.
§38-2-11. Notice and recordation of lien for supplies furnished
to contractor or subcontractor.

For the purpose of perfecting and preserving his or
her lien, every materialman or furnisher of machinery or
other necessary equipment, who shall have furnished
material, machinery or equipment under a contract with
any contractor or with any subcontractor, as set forth in
section four of this article, within seventy-five days after
he or she shall have ceased to furnish such material or
machinery or other equipment, shall give to the owner, or
his or her authorized agent, by any of the methods
provided by law for the service of a legal notice or
summons, a notice of such lien, which notice shall be
sufficient if in form and effect as follows:

Notice of Mechanic's Lien.

To..................

You will please take notice that the undersigned
has furnished and delivered to ............... who
was contractor with you (or subcontractor with ..............,
who was contractor with you, as the case may be) for use
in the erection and construction (or repair, removal,

improvement, as the case may be) of (here list the build-
ings or other structure or improvement to be charged) on
the real estate known as (here insert an adequate and
ascertainable description of the real estate to be charged)
and the said materials were of the nature and were fur-
nished on the dates and in the quantities and at the price as
shown in the following account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not
been paid the sum of $ ..... (or that there is still due and
owing to the undersigned thereon the sum of $ ..... ) and
that he claims a lien upon your interest in the said lot (or
tract) of land and upon the buildings, structures and
improvements thereon, to secure the payment of the said
sum.
State of West Virginia,

County of ..................., being first duly sworn, upon
his oath says that the statements in the foregoing notice of
lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this .......... day of .............., 19....

My commission expires ..................

(Official Capacity)

But the lien shall be discharged and avoided, unless,
within ninety days after such materialman or other
furnisher of machinery or other necessary equipment shall
have ceased to furnish such materials or machinery or
other equipment, he or she shall cause to be recorded in
the office of the clerk of the county commission of the
county wherein such property is situate a notice of such
lien, which notice shall be sufficient if in form and effect
as that provided in section eight of this article, and which
recorded notice need not include such itemized account.

§38-2-13. Notice and recordation of lien of mechanic or
laborer working for contractor or subcontractor.

For the purpose of perfecting and preserving his or
her lien, every workman, artisan, mechanic, laborer or
other person who shall have performed any work or labor
upon the building or improvement thereto, under a
contract with any general contractor or with any subcon-
tractor, as set forth in section six of this article, shall cause
to be given to the owner, or his or her authorized agent, by
any of the methods provided by law for the service of a
legal notice or summons, within seventy-five days after he
or she shall have ceased to perform any such work or
labor, a notice of the lien, which notice shall be sufficient,
if in form and effect as follows:

Notice of Mechanic's Lien.

To.................
You will please take notice that the undersigned has performed work and labor under a contract with .............. who was general contractor with you (or who was subcontractor with .............., who was general contractor with you) in the erection and construction (or removal, repair, improvement or otherwise, as the case may be) of a certain building (or other structure or improvement) on real estate known as (here insert an adequate and ascertainable description of the real estate to be charged) and that the work and labor was of the kind, was performed on the dates, for the purposes and at the prices, as shown in the following itemized account thereof:

(Here insert itemized account.)

You are further notified that the undersigned has not been paid the sum of $........ (or that there is still due and owing to the undersigned thereon the sum of $........) and that he claims a lien upon your interest in the said lot (or tract) of land and upon the buildings, structures and improvements thereon to secure the payment of the sum.

.................................................................

State of West Virginia,

County of ....................., being first duly sworn, upon his oath says that the statements in the foregoing notice of mechanic's lien contained are true, as he verily believes.

Taken, subscribed and sworn to before me this .........., 19.....

My commission expires ............

.................................................................

(Official Capacity)

But the lien shall be discharged, unless such workman, artisan, mechanic, laborer or other person shall cause to be recorded in the office of the clerk of the county commis- sion wherein such property is situate, within ninety days after he or she shall have ceased to do work or perform labor upon the building or improvement thereto, a notice of the lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article and which recorded notice need not include such itemized account.
AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-k, relating to public participation in the decision to locate commercial infectious medical waste management facilities; defining terms; and setting forth procedure for public participation in decision to locate commercial infectious medical waste management facilities.

Be it enacted by the Legislature of West Virginia:

That chapter twenty 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-k, to read as follows:

ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.

§20-5K-1. Legislative purpose.

The purpose of this article is to provide the opportunity for public participation in the decision to locate commercial infectious medical waste management facilities.


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

(a) "Commercial infectious medical waste facility" means any infectious medical waste management facility at which thirty-five percent or more by weight of the total
infectious medical waste stored, treated or disposed of by the facility in any calendar year is generated off-site.

(b) "Infectious medical waste" means medical waste identified as capable of producing an infectious disease. Medical waste shall be considered capable of producing an infectious disease if it has been, or is likely to have been, contaminated by an organism likely to be pathogenic to healthy humans, if such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. For the purposes of this article, infectious medical waste includes the following:

1. Cultures and stocks of microorganisms and biologicals;
2. Blood and blood products;
3. Pathological wastes;
4. Sharps;
5. Animal carcasses, body parts, bedding and related wastes;
6. Isolation wastes;
7. Any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious medical waste; and
8. Any waste contaminated by or mixed with infectious medical waste.

"Off-site" means a facility or area for the collection, storage, transfer, processing, treatment or disposal of infectious medical waste that is not on the generator's site, or a facility or area that received infectious medical waste for storage or treatment that has not been generated on-site.

"Secretary" means the secretary of the department of health and human resources or his or her designee.

(a) From and after the effective date of this article, in order to obtain approval to locate a commercial infectious medical waste facility, currently not under permit to operate, an applicant shall:

(1) File a pre-siting notice with the county commission and local solid waste authority of the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the secretary;

(2) File a pre-siting notice with the secretary; and

(3) File a pre-siting notice with the division of environmental protection.

(b) If a pre-siting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the commercial infectious medical waste facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general or other county-wide election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial infectious medical waste management facility be located in the county. Any election at which such question of locating a commercial infectious medical waste management facility
is voted upon shall be held at the voting precincts estab-
lished for holding primary or general elections. All of the
provisions of the general election laws, when not in
conflict with the provisions of this article, apply to voting
and elections hereunder, insofar as practicable. The
secretary of state shall prescribe the form of the petition
which shall include the printed name, address and date of
birth of each person whose signature appears on the
petition.

(2) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substantially
the following depending upon the type of facility to be
located within the county:

Shall a commercial infectious medical waste manage-
ment facility be located within ________________
County.

[ ] For the facility

[ ] Against the facility

(Place a cross mark in the square opposite your
choice.)

(3) If a majority of the legal votes cast upon the
question is against the facility, then the county commis-
sion shall notify the local solid waste authority, the
division of environmental protection and the secretary of
the department of health and human resources of the
result and the commercial infectious medical waste
management facility may not proceed any further with the
application. If a majority of the legal votes cast upon the
question is for the facility, then the application process as
set forth in article five-j of this chapter may proceed:
Provided, That such vote is not binding on nor does it
require the secretary to issue the permit. If the majority of
the legal votes cast is against the question, the question
may be submitted to a vote at any subsequent election in
the manner herein specified: Provided, however, That the
question may not be resubmitted to a vote until two years
after the date of the previous referendum.
AN ACT to amend and reenact sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface coal mining reclamation; adding definitions; allowing for a compliance conference; establishing procedures for reinstatement of revoked permits; allowing coal removal of existing abandoned coal process waste piles under reclamation contract; creating provisions for no cost reclamation contracts, coal extraction under a government financed reclamation contract and coal extraction incidental to land development; and modifying certain bonding requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-3. Definitions.
§22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.
§22-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
§22-3-18. Approval, denial, revision and prohibition of permit.
§22-3-28. Special permits authorization for reclamation of existing abandoned coal processing waste piles; coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for
§22-3-3. Definitions.

1 As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which such water is released.

(b) "Affected area" means, when used in the context of surface-mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface-mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1) By surface operations or facilities incident to underground mining activities; or (2) by underground operations.

(c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface-mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact.

(d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the disturbed areas so that the reclaimed area,
including any terracing or access roads, closely resembles
the general surface configuration of the land prior to
mining and blends into and complements the drainage
pattern of the surrounding terrain, with all highwalls and
spoil piles eliminated: Provided, That water impound-
ments may be permitted pursuant to subdivision (8),
subsection (b), section thirteen of this article: Provided,
however, That minor deviations may be permitted in order
to minimize erosion and sedimentation, retain moisture to
assist revegetation, or to direct surface runoff.

(f) “Assessment officer” means an employee of the
division, other than a surface-mining reclamation supervi-
sor, inspector or inspector-in-training, appointed by the
director to issue proposed penalty assessments and to
conduct informal conferences to review notices, orders
and proposed penalty assessments.

(g) “Breakthrough” means the release of water which
has been trapped or impounded, or the release of air into
any underground cavity, pocket or area as a result of
surface-mining operations.

(h) “Coal processing wastes” means earth materials
which are or have been combustible, physically unstable
or acid-forming or toxic-forming, which are wasted or
otherwise separated from product coal, and slurried or
otherwise transported from coal processing plants after
physical or chemical processing, cleaning or concentrating
of coal.

(i) “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
sections six or eight, article one of this chapter.

(j) “Disturbed area” means an area where vegetation,
topsoil or overburden has been removed or placed by
surface-mining operations, and reclamation is incomplete.

(k) “Division” means the division of environmental
protection.

(l) “Imminent danger to the health or safety of the
public” means the existence of such condition or practice,
or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person to the danger during the time necessary for the abatement.

(m) "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(n) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article and any rule promulgated hereunder and includes any person who engages in surface-mining or surface-mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface-Mining Control and Reclamation Act of 1977, as amended.

(p) "Permit" means a permit to conduct surface-mining operations pursuant to this article.

(q) "Permit area" means the area of land indicated on the approved proposal map submitted by the operator as part of the operator's application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued under this article.

(s) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.
(t) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes and as published in the federal register.

(u) "Surface mine", "surface-mining" or "surface-mining operations" means:

1. Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge therefrom. Such activities include: Excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

2. The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed
sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article. Surface-mining may not include any of the following:

(i) Coal extraction authorized pursuant to a government-financed reclamation contract;

(ii) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial, or civic use; or

(iii) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

(v) "Underground mine" means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(w) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the abatement time set by the director. An environmental harm is significant if that harm is appreciable and not immediately repairable.

(x) "Unanticipated event or condition" as used in section eighteen of this article means an event or condition in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(y) "Lands eligible for remining" means those lands that would be eligible for expenditures under section four,
article two of this chapter. Surface-mining operations on
lands eligible for remining may not affect the eligibility of
such lands for reclamation and restoration under article
two of this chapter. In event the bond or deposit for lands
eligible for remining is forfeited, funds available under
article two of this chapter may be used to provide for
adequate reclamation or abatement. However, if condi­
tions constitute an emergency as provided in section 410
of the federal Surface-Mining Control and Reclamation
Act of 1977, as amended, then those federal provisions
shall apply.

(z) "Replacement of water supply" means with
respect to water supplies contaminated, diminished, or
interrupted, provision of water supply on both a tempo­
rary and permanent basis of equivalent quality and
quantity. Replacement includes provision of an equivalent
water delivery system and payment of operation and
maintenance cost in excess of customary and reasonable
delivery cost for the replaced water supplies.

Upon agreement by the permittee and the water
supply owner, the obligation to pay such costs may be
satisfied by a one-time payment in an amount which
covers the present annual operation and maintenance costs
for a period agreed to by the permittee and the water
supply owner.

§22-3-13. General environmental protection performance
standards for surface-mining; variances.

(a) Any permit issued by the director pursuant to this
article to conduct surface-mining operations shall require
that the surface-mining operations will meet all applicable
performance standards of this article and other require­
ments as the director promulgates.

(b) The following general performance standards are
applicable to all surface mines and require the operation,
at a minimum to:

(1) Maximize the utilization and conservation of the
solid fuel resource being recovered to minimize
reaffecting the land in the future through surface-mining;
(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour. Provided, That in surface-mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface-mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and
compact, where advisable, the excess overburden and other
spoil and waste materials to attain the lowest grade, but not
more than the angle of repose, and to cover all acid-
forming and other toxic materials, in order to achieve an
ecologically sound land use compatible with the surround-
ing region and, the overburden or spoil shall be shaped
and graded in such a way as to prevent slides, erosion and
water pollution and is revegetated in accordance with the
requirements of this article: Provided further, That the
director shall promulgate rules governing variances to the
requirements for return to approximate original contour
or highwall elimination and where adequate material is not
available from surface-mining operations permitted after
the effective date of this article for: (A) Underground
mining operations existing prior to the third day of
August, one thousand nine hundred seventy-seven; or (B)
for areas upon which surface-mining prior to the first day
of July, one thousand nine hundred seventy-seven, created
highwalls;

(4) Stabilize and protect all surface areas, including
spoil piles, affected by the surface-mining operation to
effectively control erosion and attendant air and water
pollution;

(5) Remove the topsoil from the land in a separate
layer, replace it on the backfill area, or if not utilized
immediately, segregate it in a separate pile from other
spoil and, when the topsoil is not replaced on a backfill
area within a time short enough to avoid deterioration of
the topsoil, maintain a successful vegetative cover by quick
growing plants or by other similar means in order to
protect topsoil from wind and water erosion and keep it
free of any contamination by other acid or toxic material:
Provided, That if topsoil is of insufficient quantity or of
poor quality for sustaining vegetation, or if other strata
can be shown to be more suitable for vegetation require-
ments, then the operator shall remove, segregate and
preserve in a like manner such other strata which is best
able to support vegetation;

(6) Restore the topsoil or the best available subsoil
which is best able to support vegetation;
(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at a minimum, shall be required to: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in subparagraph (B) above with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in subparagraph (A) above;

(8) Create, if authorized in the approved surface-mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of water in such auger holes may create a hazard to the environment or the public welfare and safety: Provided, That the director may prohibit augering if necessary to
maximize the utilization, recoverability or conservation of
the mineral resources or to protect against adverse water
quality impacts;

(10) Minimize the disturbances to the prevailing
hydrologic balance at the mine site and in associated off-
site areas and to the quality and quantity of water in
surface and groundwater systems both during and after
surface-mining operations and during reclamation by:
(A) Avoiding acid or other toxic mine drainage by such
measures as, but not limited to: (i) Preventing or remov-
ing water from contact with toxic producing deposits; (ii)
treating drainage to reduce toxic content which adversely
affects downstream water upon being released to water
courses; and (iii) casing, sealing or otherwise managing
boreholes, shafts and wells and keep acid or other toxic
drainage from entering ground and surface waters; (B)
conducting surface-mining operations so as to prevent to
the extent possible, using the best technology currently
available, additional contributions of suspended solids to
streamflow or runoff outside the permit area, but in no
event shall contributions be in excess of requirements set
by applicable state or federal law; (C) constructing an
approved drainage system pursuant to subparagraph (B)
of this subdivision prior to commencement of surface-
mining operations, such system to be certified by a person
approved by the director to be constructed as designed
and as approved in the reclamation plan; (D) avoiding
channel deepening or enlargement in operations requiring
the discharge of water from mines; (E) unless otherwise
authorized by the director, cleaning out and removing
temporary or large settling ponds or other siltation
structures after disturbed areas are revegetated and
stabilized, and depositing the silt and debris at a site and in
a manner approved by the director; (F) restoring recharge
capacity of the mined area to approximate premining
conditions; and (G) such other actions as the director may
prescribe;

(11) With respect to surface disposal of mine wastes,
tailings, coal processing wastes and other wastes in areas
other than the mine working excavations, stabilize all waste
piles in designated areas through construction in collact-
ed layers, including the use of noncombustible and
impervious materials if necessary, and assure the final
contour of the waste pile will be compatible with natural
surroundings and that the site will be stabilized and
revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain,
enlarge, modify and remove or abandon, in accordance
with standards and criteria developed pursuant to subsec­
tion (f) of this section, all existing and new coal mine
waste piles consisting of mine wastes, tailings, coal process­
ing wastes or other liquid and solid wastes, and used either
temporarily or permanently as dams or embankments;

(13) Refrain from surface-mining within five hundred
feet of any active and abandoned underground mines in
order to prevent breakthroughs and to protect health or
safety of miners: Provided, That the director shall permit
an operator to mine near, through or partially through an
abandoned underground mine or closer to an active
underground mine if: (A) The nature, timing and se­
quencing of the approximate coincidence of specific
surface mine activities with specific underground mine
activities are coordinated jointly by the operators involved
and approved by the director; and (B) such operations will
result in improved resource recovery, abatement of water
pollution or elimination of hazards to the health and
safety of the public: Provided, however, That any break­
through which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials,
toxic materials or materials constituting a fire hazard are
treated or buried and compacted, or otherwise disposed of
in a manner designed to prevent contamination of ground
or surface waters, and that contingency plans are devel­
oped to prevent sustained combustion: Provided, That the
operator shall remove or bury all metal, lumber, equip­
ment and other debris resulting from the operation before
grading release;

(15) Ensure that explosives are used only in accor­
dance with existing state and federal law and the rules
promulgated by the director, which shall include provi­
sions to: (A) Provide adequate advance written notice to
local governments and residents who might be affected by
the use of the explosives by publication of the planned
blasting schedule in a newspaper of general circulation in
the locality and by mailing a copy of the proposed
blasting schedule to every resident living within one-half
mile of the proposed blasting site: Provided, That this
notice shall suffice as daily notice to residents or occu-
pants of the areas; (B) maintain for a period of at least
three years and make available for public inspection, upon
written request, a log detailing the location of the blasts,
the pattern and depth of the drill holes, the amount of
explosives used per hole and the order and length of delay
in the blasts; (C) limit the type of explosives and detonat-
ing equipment, the size, the timing and frequency of blasts
based upon the physical conditions of the site so as to
prevent: (i) Injury to persons; (ii) damage to public and
private property outside the permit area; (iii) adverse
impacts on any underground mine; and (iv) change in the
course, channel or availability of ground or surface water
outside the permit area; (D) require that all blasting
operations be conducted by persons certified by the
director; and (E) provide that upon written request of a
resident or owner of a man-made dwelling or structure
within one-half mile of any portion of the permit area, the
applicant or permittee shall conduct a preblasting survey
or other appropriate investigation of the structures and
submit the results to the director and a copy to the resident
or owner making the request. The area of the survey shall
be determined by the director in accordance with rules
promulgated by him or her;

(16) Ensure that all reclamation efforts proceed in an
environmentally sound manner and as contemporaneously
as practicable with the surface-mining operations. Time
limits shall be established by the director requiring
backfilling, grading and planting to be kept current:
Provided, That where surface-mining operations and
underground mining operations are proposed on the same
area, which operations must be conducted under separate
permits, the director may grant a variance from the
requirement that reclamation efforts proceed as contem-
poraneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as the director deems necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and
(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with.

(17) Ensure that the construction, maintenance and postmining conditions of access and haulroads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the director issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the director may grant exception to the provi-
sions of subdivision (19) of this subsection: Provided, however, That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for such agricultural postmining land use;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection.

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the director after a finding that environmental benefits will result from such;

(22) Place all excess spoil material resulting from surface-mining activities in such a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a
downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the director may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That such approval may not be unreasonably withheld if the site is suitable;

(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be
composed of impervious material with controlled discharge points.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface-mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential, public or fish and wildlife habitat and recreation lands use is proposed for the postmining use of the affected land, the director may grant a permit for a surface-mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed postmining land use is deemed to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) supported by commitments from public agencies where appropriate; (iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary
for the intended use of the site; (C) the proposed use
would be compatible with adjacent land uses, and existing
state and local land use plans and programs; (D) the
director provides the county commission of the county in
which the land is located and any state or federal agency
which the director, in his or her discretion, determines to
have an interest in the proposed use, an opportunity of not
more than sixty days to review and comment on the
proposed use; and (E) all other requirements of this article
will be met.

(4) In granting any permit pursuant to this subsection,
the director shall require that: (A) A natural barrier be
retained to inhibit slides and erosion on permit areas
where outcrop barriers are required: Provided, That
constructed barriers may be allowed where: (i) Natural
barriers do not provide adequate stability; (ii) natural
barriers would result in potential future water quality
deterioration; and (iii) natural barriers would conflict with
the goal of maximum utilization of the mineral resource:
Provided, however, That, at a minimum, the constructed
barrier must be sufficient width and height to provide
adequate stability and the stability factor must equal or
exceed that of the natural outcrop barrier: Provided
further, That where water quality is paramount, the con-
structed barrier must be composed of impervious material
with controlled discharge points; (B) the reclaimed area is
stable; (C) the resulting plateau or rolling contour drains
inward from the outslopes except at specific points; (D) no
damage will be done to natural watercourses; (E) spoil will
be placed on the mountaintop bench as is necessary to
achieve the planned postmining land use: And provided
further, That all excess spoil material not retained on the
mountaintop shall be placed in accordance with the
provisions of subdivision (22), subsection (b) of this
section; and (F) ensure stability of the spoil retained on
the mountaintop and meet the other requirements of this
article.

(5) All permits granted under the provisions of this
subsection shall be reviewed not more than three years
from the date of issuance of the permit; unless the appli-
cant affirmatively demonstrates that the proposed deve...
(d) In addition to those general performance standards required by this section, when surface-mining occurs on slopes of twenty degrees or greater, or on such lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: \textit{Provided}, That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The director may promulgate rules that permit variances from the approximate original contour requirements of this section: \textit{Provided}, That the watershed control of the area is improved: \textit{Provided, however}, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The director shall promulgate rules for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: \textit{Provided}, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtain-
ing the permission of any person prior or present who
operated or operates a pile or the landowners involved,
enter upon the premises where any such coal processing
waste pile exists and may take or order to be taken such
remedial action as may be necessary or expedient to
secure the coal processing waste pile and to abate the
conditions which cause the danger to human life: Provi-
ded, however, That the cost reasonably incurred in any
remedial action taken by the director under this subsection
may be paid for initially by funds appropriated to the
division for these purposes, and the sums so expended
shall be recovered from any responsible operator or
landowner, individually or jointly, by suit initiated by the
attorney general at the request of the director. For
purposes of this subsection “operates” or “operated”
means to enter upon a coal processing waste pile, or part
thereof, for the purpose of disposing, depositing, dumping
coal processing wastes thereon or removing coal process-
ing waste therefrom, or to employ a coal processing waste
pile for retarding the flow of or for the impoundment of
water.

§22-3-15. Inspections; monitoring; right of entry; inspection of
records; identification signs; progress maps.

(a) The director shall cause to be made inspections of
surface-mining operations as are necessary to effectively
enforce the requirements of this article and for such
purposes the director or his or her authorized representa-
tive shall without advance notice and upon presentation of
appropriate credentials: (A) Have the right of entry to,
upon or through surface-mining operations or any
premises in which any records required to be maintained
under subdivision (1), subsection (b) of this section are
located; and (B) at reasonable times and without delay,
have access to and copy any records and inspect any
monitoring equipment or method of operation required
under this article.

(b) For the purpose of enforcement under this article,
in the administration and enforcement of any permit
under this article, or for determining whether any person
is in violation of any requirement of this article:
(1) The director shall, at a minimum, require any operator to: (A) Establish and maintain appropriate records; (B) make monthly reports to the division; (C) install, use and maintain any necessary monitoring equipment or methods consistent with subdivision (11), subsection (a), section nine of this article; (D) evaluate results in accordance with such methods, at such locations, intervals and in such manner as the director prescribes; and (E) provide any other information relative to surface-mining operations as the director finds reasonable and necessary; and

(2) For those surface-mining operations which remove or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the director shall require that: (A) Monitoring sites be established to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of groundwater and aquifers potentially affected by the surface-mining and also below the lowermost mineral seam to be mined; (C) records or well logs and borehole data be maintained; and (D) monitoring sites be established to record precipitation. The monitoring, data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the director in order to assure their reliability and validity.

(c) All surface-mining operations shall be inspected at least once every thirty days. The inspections shall be made on an irregular basis without prior notice to the operator or the operator’s agents or employees, except for necessary on-site meetings with the operator. The inspections shall include the filing of inspection reports adequate to enforce the requirements, terms and purposes of this article.

(d) Each permittee shall maintain at the entrances to the surface-mining operations a clearly visible monument which sets forth the name, business address and telephone
number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the director shall be made immediately available to the public at central and sufficient locations in the county, multicounty or state area of mining so that they are conveniently available to residents in the areas of mining unless specifically exempted by this article.

(f) Within thirty days after service of a copy of an order of the director upon an operator by registered or certified mail, the operator shall furnish to the director five copies of a progress map prepared by or under the supervision of a person approved by the director showing the disturbed area to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps required by this article, and shall show in detail completed reclamation work as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of that fact.

(g) Whenever on the basis of available information, including reliable information from any person, the director has cause to believe that any person is in violation of this article, any permit condition or any rule promulgated under this article, the director shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior state inspection. The director shall notify any person who supplied such reliable information when the state inspection will be carried out. Such person may accompany the inspector during the inspection.

(h) When requested by the permittee, the director may provide for a compliance conference with his or her authorized representative to review the compliance status
97 of any coal exploration or surface-coal mining and
98 reclamation operation. Any such conference may not
99 constitute an inspection as defined in this section.

§22-3-17. Notice of violation; procedure and actions; enforce-
1 ment; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the
2 board; prosecution; injunctive relief.

(a) If any of the requirements of this article, rules
2 promulgated pursuant thereto or permit conditions have
3 not been complied with, the director shall cause a notice of
4 violation to be served upon the operator or the operator’s
5 duly authorized agent. A copy of the notice shall be
6 handed to the operator or the operator’s duly authorized
7 agent in person or served by certified mail addressed to
8 the operator at the permanent address shown on the
9 application for a permit. The notice shall specify in what
10 respects the operator has failed to comply with this article,
11 rules or permit conditions and shall specify a reasonable
12 time for abatement of the violation not to exceed thirty
13 days. If the operator has not abated the violation within
14 the time specified in the notice, or any reasonable exten-
15 sion thereof, not to exceed sixty days, the director shall
16 order the cessation of the operation or the portion thereof
17 causing the violation, unless the operator affirmatively
18 demonstrates that compliance is unattainable due to
19 conditions totally beyond the control of the operator. If a
20 violation is not abated within the time specified or any
21 extension thereof, or any cessation order is issued, a
22 mandatory civil penalty of not less than seven hundred
23 fifty dollars per day per violation shall be assessed. A
24 cessation order remains in effect until the director deter-
25 mines that the violation has been abated or until modified,
26 vacated or terminated by the director or by a court. In
27 any cessation order issued under this subsection, the
28 director shall determine the steps necessary to abate the
29 violation in the most expeditious manner possible and
30 shall include the necessary measures in the order.

(b) If the director determines that a pattern of viola-
32 tions of any requirement of this article or any permit
33 condition exists or has existed, as a result of the operator’s
lack of reasonable care and diligence, or that the violations
are willfully caused by the operator, the director shall
immediately issue an order directing the operator to show
cause why the permit should not be suspended or revoked
and giving the operator thirty days in which to request a
public hearing. If a hearing is requested, the director shall
inform all interested parties of the time and place of the
hearing. Any hearing under this section shall be recorded
and is subject to the provisions of chapter twenty-nine-a of
this code. Within sixty days following the public hearing,
the director shall issue and furnish to the permittee and all
other parties to the hearing a written decision, and the
reasons therefor, concerning suspension or revocation of
the permit. Upon the operator’s failure to show cause
why the permit should not be suspended or revoked, the
director shall immediately suspend or revoke the opera-
tor’s permit. If the permit is revoked, the director shall
initiate procedures in accordance with rules promulgated
by the director to forfeit the entire amount of the opera-
tor’s bond, or other security posted pursuant to section
eleven or twelve of this article, and give notice to the
attorney general, who shall collect the forfeiture without
delay: Provided, That the entire proceeds of such forfei-
ture shall be deposited with the treasurer of the state of
West Virginia to the credit of the special reclamation fund.
All forfeitures collected shall be deposited in the special
reclamation fund and shall be expended back upon the
areas for which the bond was posted: Provided, however,
That any excess therefrom shall remain in the special
reclamation fund.

Within one year following the notice of permit
revocation, subject to the discretion of the director and
based upon a petition for reinstatement, the revoked
permit may be reinstated. The reinstated permit may be
assigned to any person who meets the permit eligibility
requirements of this article.

(c) Any person engaged in surface-mining operations
who violates any permit condition or who violates any
other provision of this article or rules promulgated
pursuant thereto may also be assessed a civil penalty. The
penalty may not exceed five thousand dollars. Each day
of continuing violation may be deemed a separate viola-
tion for purposes of penalty assessments. In determining
the amount of the penalty, consideration shall be given to
the operator’s history of previous violations at the particu-
lar surface-mining operation, the seriousness of the
violation, including any irreparable harm to the environ-
ment and any hazard to the health or safety of the public,
whether the operator was negligent, and the demonstrated
good faith of the operator charged in attempting to
achieve rapid compliance after notification of the viola-
tion.

(d) (1) Upon the issuance of a notice or order pursu-
ant to this section, the assessment officer shall, within thirty
days, set a proposed penalty assessment and notify the
operator in writing of such proposed penalty assessment.
The proposed penalty assessment must be paid in full
within thirty days of receipt or, if the operator wishes to
contest either the amount of the penalty or the fact of
violation, an informal conference with the assessment
officer may be requested within fifteen days or a formal
hearing before the surface mine board may be requested
within thirty days. The notice of proposed penalty
assessment shall advise the operator of the right to an
informal conference and a formal hearing pursuant to this
section. When an informal conference is requested, the
operator has fifteen days from receipt of the assessment
officer’s decision to request a formal hearing before the
board.

(A) When an informal conference is held, the assess-
ment officer has authority to affirm, modify or vacate the
notice, order or proposed penalty assessment.

(B) When a formal hearing is requested, the amount of
the proposed penalty assessment shall be forwarded to the
director for placement in an escrow account. Formal
hearings shall be of record and subject to the provisions of
article five, chapter twenty-nine-a of this code. Following
the hearing the board shall affirm, modify or vacate the
notice, order or proposed penalty assessment and, when
appropriate, incorporate an assessment order requiring
that the assessment be paid.
(2) Civil penalties owed under this section may be recovered by the director in the circuit court of Kanawha County. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section eleven of this article. If, through the administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days is a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Any person having an interest which is or may be adversely affected by any order of the director or the surface mine board may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the order.

(f) The filing of an appeal or a request for an informal conference or formal hearing provided for in this section does not stay execution of the order appealed from. Pending completion of the investigation and conference or hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests relief from an order for cessation of surface-mining and reclamation operations, the decision on the request shall be issued within five days of its receipt. The director may grant such relief, under such conditions as he or she may prescribe if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
(2) The person requesting the relief shows that there is a substantial likelihood that they will prevail on the merits in the final determination of the proceedings;

(3) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(4) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(g) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article or rules promulgated pursuant thereto, or fails or refuses to comply with any order issued under said article and rules or any order incorporated in a final decision issued by the director, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(h) Whenever a corporate operator violates a condition of a permit issued pursuant to this article, rules promulgated pursuant thereto, or any order incorporated in a final decision issued by the director, any director, officer or agent of the corporation who willfully and knowingly authorized, ordered or carried out the failure or refusal, is subject to the same civil penalties, fines and imprisonment that may be imposed upon a person under subsections (c) and (g) of this section.

(i) Any person who knowingly makes any false statement, representation or certification, or knowingly fails to make any statement, representation or certification in any application, petition, record, report, plan or other document filed or required to be maintained pursuant to this article or rules promulgated pursuant thereto, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.
(j) Whenever any person: (A) Violates or fails or refuses to comply with any order or decision issued by the director under this article; or (B) interferes with, hinders or delays the director in carrying out the provisions of this article; or (C) refuses to admit the director to the mine; or (D) refuses to permit inspection of the mine by the director; or (E) refuses to furnish any reasonable information or report requested by the director in furtherance of the provisions of this article; or (F) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this article; or (G) violates any other provisions of this article, the rules promulgated pursuant thereto, or the terms and conditions of any permit, the director, the attorney general or the prosecuting attorney of the county in which the major portion of the permit area is located may institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other appropriate order, in the circuit court of Kanawha County or any court of competent jurisdiction to compel compliance with and enjoin such violations, failures or refusals. The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

(k) Any person who, except as permitted by law, willfully resists, prevents, impedes or interferes with the director or any of his or her agents in the performance of duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

§22-3-18. Approval, denial, revision and prohibition of permit.

(a) Upon the receipt of a complete surface-mining application or significant revision or renewal thereof, including public notification and an opportunity for a public hearing, the director shall grant, require revision of, or deny the application for a permit within sixty days and notify the applicant in writing of the decision. The
applicant for a permit, or revision of a permit, has the burden of establishing that the application is in compliance with all the requirements of this article and the rules promulgated hereunder.

(b) No permit or significant revision of a permit may be approved unless the applicant affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which shall be documented in the approval and made available to the applicant that:

(1) The permit application is accurate and complete and that all the requirements of this article and rules thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, as specified in section nine of this article, has been made by the director and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface-mining pursuant to section twenty-two of this article or is not within an area under administrative study by the director for such designation; and

(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface-mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface-mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface-mining, the surface subsurface legal relationship shall be determined in accordance with applicable law.

Provided, That nothing in this article shall be construed to
authorize the director to adjudicate property rights disputes.

(c) Where information available to the division indicates that any surface-mining operation owned or controlled by the applicant is currently in violation of this article or other environmental laws or rules, the permit may not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article or of other state or federal programs implementing the federal Surface-Mining Control and Reclamation Act of 1977, as amended, of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article or the federal Surface-Mining Control and Reclamation Act of 1977, as amended: Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he or she may not issue a permit to the applicant: Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any applicant if: (1) After the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited has paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area; (2) the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment; and (3) the director is satisfied that the petitioner will comply with this article.
(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland, the director may, pursuant to rules promulgated hereunder, grant a permit to mine on prime farmland if the operator affirmatively demonstrates that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and can meet the soil reconstruction standards in subdivision (7), subsection (b), section thirteen of this article. Except for compliance with subsection (b) of this section, the requirements of this subdivision apply to all permits issued after the third day of August, one thousand nine hundred seventy-seven.

(2) Nothing in this subsection applies to any permit issued prior to the third day of August, one thousand nine hundred seventy-seven, or to any revisions or renewals thereof, or to any existing surface-mining operations for which a permit was issued prior to said date.

(e) If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds; (2) landslides; or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

(f) The prohibition of subsection (c) of this section may not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mine eligible for remining under a permit held by the applicant.

§22-3-28. Special permits authorization for reclamation of existing abandoned coal processing waste piles;
coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use; no cost reclamation contract.

(a) Except where exempted by section twenty-six of this article, it is unlawful for any person to engage in surface-mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the director a permit therefor as provided in section eight of this article, unless a special authorization therefor has been first obtained from the director as provided in this section.

Application for a special authorization to engage in surface-mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan, prepared and certified by or under the supervision of a person approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof; and such other information as prescribed by the director;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal that would be mined as a result of the proposed
development of said land: *Provided,* That in no event may
such number of acres to be mined, excluding roadways,

36 exceed five acres; and

36 (6) Such other information as the director may require
to satisfy and assure the director that the surface-mining
under special authorization is incidental or secondary to
the proposed commercial, residential, industrial or civic
use of said land.

(b) There shall be attached to the application for the
special authorization a certificate of insurance certifying
that the applicant has in force a public liability insurance
policy issued by an insurance company authorized to do
business in this state affording personal injury protection
in accordance with subsection (d), section nine of this
article.

The application for the special authorization shall also
be accompanied by a bond, or cash or collateral securities
or certificates of the same type, in the form as prescribed
by the director and in the minimum amount of two

52 thousand dollars per acre, for a maximum disturbance of

53 five acres.

The bond shall be payable to the state of West Virginia
and conditioned that the applicant complete the site

56 preparation for the proposed commercial, residential,
industrial or civic use of said land. At the conclusion of

58 the site preparation, in accordance with the site preparation
plan submitted with the application, the bond conditions
are satisfied and the bond and any cash, securities or
certificates furnished with said bond may be released and
returned to the applicant. The filing fee for the special

63 authorization is five hundred dollars. The special authori-

64 zation is valid for two years.

(c) The purpose of this section is to vest jurisdiction in
the director, where the surface-mining is incidental or

67 secondary to the preparation of land for commercial,
residential, industrial or civic use and where, as an incident
to such preparation of land, minerals must be removed,
including, but not limited to, the building and construction
of railroads, shopping malls, factory and industrial sites, residential and building sites and recreational areas. Anyone who has been issued a special authorization may not be issued an additional special authorization on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that such authorization is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article are not applicable to the operator holding a special authorization: Provided, That the director shall promulgate rules establishing applicable performance standards for operations permitted under this section.

(d) The director may, in the exercise of his or her sound discretion, when not in conflict with the purposes and findings of this article and to bring about a more desirable land use or to protect the public and the environment, issue a reclamation contract solely for the removal of existing abandoned coal processing waste piles: Provided, That a bond and a reclamation plan is required for such operations.

(e) No person may engage in coal extraction pursuant to a government-financed reclamation contract without a valid surface-mining permit issued pursuant to this article unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary coal extraction. The director shall determine eligibility before entering into a government-financed reclamation contract authorizing incidental and necessary coal extraction. The director may provide the special authorization as part of the government-financed reclamation contract: Provided, That the contract contains and does not violate the requirements of this section. The director may not be required to grant a special authorization to any eligible person. The director may, however, in his or her discretion, grant a special authorization allowing incidental and necessary coal extraction pursuant to a government-
Only eligible persons may secure special authorization to engage in incidental and necessary coal extraction pursuant to a government-financed reclamation contract. Any eligible person who proposes to engage in coal extraction pursuant to a government-financed reclamation contract may request and secure special authorization from the director to conduct such activities under this section. A special authorization can only be obtained if a clause is inserted in a government-financed reclamation contract authorizing such extraction and the person requesting such authorization has affirmatively demonstrated to the director's satisfaction that he or she has satisfied the provisions of this section. A special authorization shall only be granted by the director prior to the commencement of coal extraction on a project area. In order to be considered for a special authorization by the director, an eligible person must meet the permit eligibility requirements of this article and demonstrate at a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned or forfeited mine lands;

(2) The extraction of coal will be incidental and necessary to accomplish the reclamation of abandoned or forfeited mine lands pursuant to a government-financed reclamation contract;

(3) Incidental and necessary coal extraction will be confined to the project area being reclaimed; or

(4) All coal extraction and reclamation activity undertaken pursuant to a government-financed reclamation project will be accomplished pursuant to the applicable environmental protection performance standards and conditions included in the government-financed reclamation contract.
Prior to commencing coal extraction pursuant to a government-financed reclamation project, the contractor shall file with the director a performance bond conditioned upon the contractor's performance of all the requirements of the government-financed reclamation contract pursuant to this article. For a no cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the director: Provided, That the director may establish a lesser bond amount for long term, no cost reclamation projects in which the reclamation schedule extends beyond two years. In these contracts, the director may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a specified period. The performance bond which is provided by the contractor under a federally financed or state financed reclamation contract shall be deemed to satisfy the requirements of this section: Provided, however, That the amount of such bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection.

(f) Any person engaging in coal extraction pursuant to this section is subject to the following:

(1) Payment of all applicable taxes and fees related to coal extraction;

(2) Replacement or restoration of the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by coal extraction;

(3) Extraction pursuant to this section cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal.
AN ACT to amend and reenact section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; modifying the prohibition on underground equipment powered by internal combustion engines; authorizing the use of diesel-powered equipment; stating purpose and intent; defining certain terms; creating the West Virginia diesel equipment commission; establishing the qualifications and eligibility of members of the commission; prescribing terms of office for members; providing for nomination and appointment of members; providing for removal of members; providing for compensation and reimbursement for expenses; defining a quorum of the commission and the necessary affirmative vote required for adoption of a measure; providing for the promulgation of rules by the commission; establishing an arbitration process to be followed in the event the commission fails to adopt rules before the first day of April, one thousand nine hundred ninety-eight; describing the duties of the commission after the adoption of initial rules; directing the promulgation of rules requiring the monitoring and control of exhaust emissions and establishing standards for allowable concentrations of exhaust emissions; providing for approval of diesel power package or diesel engine; providing for approval of exhaust emissions control and conditioning systems and establishing requirements and standards for exhaust emissions control and conditioning systems; requiring monitoring and controlling of emissions; requiring monitoring and controlling of exhaust gases; requiring values for minimum quantities of ventilating air; requiring approval of diesel-powered equipment and the attachment of an approval plate; establishing standards for fuel and fuel storage facili-
ties; requiring rules governing the refueling of diesel-po­we­red equipment; providing for rules to govern where refuel­ing may take place; requiring rules governing fire suppres­sion systems for diesel powered equipment, fuel transporta­tion units and permanent underground diesel fuel storage facilities; regulating or prohibiting certain starting aids; pro­vid­ing for fire and safety training; providing for service and maintenance of diesel-powered equipment; requiring train­ing and qualification of persons working on diesel-powered equipment; requiring on-shift examination of equipment by the operator; providing for scheduled maintenance; requir­ing on-board performance and maintenance diagnostics systems; requiring periodic examination and testing of die­sel-powered equipment; providing for record-keeping as to all tests, examinations, maintenance or repair; providing for rules to establish programs for training, a certification pro­cess and refresher training.

Be it enacted by the Legislature of West Virginia:

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

Article


2A. Use of Diesel-Powered Equipment in Underground Coal Mines.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

(a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, in­stalled and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclu­sively by rail, track shall be maintained to within five hun­dred feet of the nearest working face, except that when any section is fully developed and being prepared for retreating, then the distance of such maintenance can be extended to eight hundred feet if a rubber tired vehicle is readily available.
(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or “tight” side, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries. Such shelter holes shall be spaced not more than one hundred feet apart, except when variances are authorized by the director with unanimous agreement of the mine safety and technical review committee. Shelter holes shall be on the side of the entry opposite the trolley wire except that shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director.

(j) Shelter holes shall be at least five feet in depth, not more than four feet in width, and as high as the traveling space, unless the director with unanimous agreement of
the mine safety and technical review committee grants a waiver. Room necks and crosscuts may be used as shelter holes even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other obstructions.

(l) Shelter holes shall be provided at switch throws and manually operated permanent doors.

(m) No steam locomotive shall be used in mines where miners are actually employed in the extraction of coal, but this shall not prevent operation of a steam locomotive through any tunnel haulway or part of a mine that is not in actual operation and producing coal.

(n) Underground equipment powered by internal combustion engines using petroleum products, alcohol, or any other compound shall not be used in a coal mine, unless the equipment is diesel-powered equipment approved, operated and maintained as provided in article two-a of this chapter.

(o) Locomotives, personnel carriers, mine cars, supply cars, shuttle cars, and all other haulage equipment shall be maintained in a safe operating condition. Each locomotive, personnel carrier, barrier tractor and other related equipment shall be equipped with a suitable lifting jack and handle. An audible warning device and headlights shall be provided on each locomotive and each shuttle car. All other mobile equipment, using the face areas of the mine, shall be provided with a conspicuous light or other approved device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip or car shall ride on any loaded car or on the outside of any car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him in his duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and
trip riders shall use care in handling locomotives and cars.
It shall be their duty to see that there is a conspicuous light
on the front and rear of each trip or train of cars when in
motion: Provided, however, That trip lights need not be
used on cars being shifted to and from loading machines,
or on cars being handled at loading heads during gather-
ing operations at working faces. No person except the
operator or his assistant shall ride on locomotives or load-
ed cars. An empty car or cars shall be used to provide a
safe distance between the locomotive and the material car
when rail, pipe or long timbers are being hauled. A safe
clearance shall be maintained between the end car or trips
placed on side tracks and moving traffic. On haulage
roads the clearance point shall be marked with an ap-
proved device.

(r) No motorman, trip rider or brakeman shall get on
or off cars, trips or locomotives while they are in motion,
except that a trip rider or brakeman may get on or off the
rear end of a slowly moving trip or the stirrup of a slowly
moving locomotive to throw a switch, align a derail or
open or close a door.

(s) Flying or running switches and riding on the front
bumper of a car or locomotive are prohibited. Back pol-
ing shall be prohibited except with precaution to the near-
est turning point (not over eighty feet), or when going up
extremely steep grades and then only at slow speed. The
operator of a shuttle car shall face in the direction of travel
except during the loading operation when he shall face the
loading machine.

(t) (1) A system of signals, methods or devices shall be
used to provide protection for trips, locomotives and
other equipment coming out onto tracks used by other
equipment.

(2) In any coal mine where more than three hundred
fifty tons of coal are produced on any shift in each twen-
ty-four hour period, a dispatcher shall be on duty when
there are movements of track equipment underground,
including time when there is no production of coal. Such
traffic shall move only at the direction of the dispatcher.
(3) The dispatcher's only duty shall be to direct traffic: Provided, That the dispatcher's duties may also include those of the responsible person required by section forty-two of this article: Provided, however, That the dispatcher may perform other duties which do not interfere with his dispatching responsibilities and do not require him to leave the dispatcher's station except as approved by the mine safety and technical review committee.

(4) Any dispatcher's station shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stop blocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes and surface inclines. Positive-acting stop blocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator.

(y) Mining equipment shall not be parked within fifteen feet of a check curtain or fly curtain.

(z) All self-propelled track haulage equipment shall be equipped with an emergency stop switch, self centering valves, or other devices designed to de-energize the traction motor circuit in the event of an emergency. All track mounted trolley equipment shall be equipped with trolley pole swing limiters or other means approved by the mine safety and technical review committee to restrict movement of the trolley pole when it is disengaged from the trolley wire. Battery powered mobile equipment shall
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have the operating controls clearly marked to distinguish the forward and reverse positions.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

§22A-2A-205. Diesel fuel tank defined.
§22A-2A-207. Diesel engine defined.
§22A-2A-208. Diesel power package defined.
§22A-2A-209. Exhaust emission defined.
§22A-2A-211. MSHA defined.
§22A-2A-212. Permanent underground diesel fuel storage facility defined.
§22A-2A-213. Safety can defined.
§22A-2A-301. Creation of the West Virginia diesel equipment commission.
§22A-2A-302. Members of the commission; qualifications and eligibility.
§22A-2A-307. Quorum; majority vote required.
§22A-2A-308. Promulgation of initial rules by the commission.
§22A-2A-309. Failure to promulgate initial rules; arbitration.
§22A-2A-401. General provisions relating to requirements for exhaust emissions.
§22A-2A-402. Approval of diesel power package or diesel engine.
§22A-2A-403. Exhaust emissions control and conditioning systems.
§22A-2A-604. Location of fueling.
§22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation units.
§22A-2A-702. Fire suppression for storage areas.
§22A-2A-703. Use of certain starting aids regulated or prohibited.
§22A-2A-803. Examination of equipment by operator.
§22A-2A-806. Diagnostic testing.
§22A-2A-901. Training and general requirements.

PART I. GENERAL PROVISIONS

1 Diesel-powered equipment for use in underground coal mines may only be approved, operated, and maintained in accordance with rules, requirements and standards established pursuant to this article. Diesel-powered equipment shall not be used in underground coal mines until the West Virginia diesel equipment commission promulgates its initial rules, requirements and standards governing the operation of diesel equipment in underground coal mines.

1 The purpose of this article is to reduce or eliminate the inherent hazards of electric-powered equipment in underground coal mines while recognizing that the introduction of an internal combustion engine into that environment presents a different set of safety and health risks for miners. The provisions of this article are intended to provide an integrated approach to the control of diesel safety and health hazards in underground coal mines.

PART 2. DEFINITIONS.

1 (a) For the purposes of this article, the words or phrases defined in this part 2 have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.
(b) When used in this article, the words and phrases defined in section two, article one of this chapter have the meaning ascribed to them in that section. Those definitions are applicable to this article unless a different meaning clearly appears from the context in which the word or phrase is used in this article.


"Board" means the board of coal mine health and safety continued by section three, article six of this chapter.


"Certificate of approval" means a formal document issued by MSHA stating that a complete assembly has met the requirements of part 36, title thirty of the code of federal regulations, 30 C.F.R. § 36.1, et seq., for mobile diesel-powered transportation equipment and authorizing the use and attachment of an official approval plate so indicating.


"Commission" means the West Virginia diesel equipment commission created under the provisions of section three hundred one of this article.

§22A-2A-205. Diesel fuel tank defined.

"Diesel fuel tank" means a closed metal vessel specifically designed for the storage or transport of diesel fuel.


"Diesel fuel transportation unit" means a self-propelled or portable wheeled vehicle used to transport a diesel fuel tank.

§22A-2A-207. Diesel engine defined.

"Diesel engine" means any compression ignition internal combustion engine using the basic diesel cycle where combustion results from the spraying of fuel into air heated by compression.
§22A-2A-208. Diesel power package defined.

"Diesel power package" means a diesel engine with an intake system, exhaust system, and a safety shutdown system installed that meets the specific requirements for MSHA approval of diesel power packages intended for use in approved equipment in areas of underground coal mines where electric equipment is required to be permissible.

§22A-2A-209. Exhaust emission defined.

"Exhaust emission" means any substance emitted to the atmosphere from the exhaust port of the combustion chamber of a diesel engine.


"Exhaust emissions control and conditioning system" means a device or combination of devices that will collect and treat diesel exhaust emissions at the exhaust port of the engine, and will reduce the volume of, or eliminate emissions of, diesel particulate matter, carbon monoxide and oxides of nitrogen in accordance with the requirements and standards of the commission established in accordance with the provisions of section four hundred three of this article.

§22A-2A-211. MSHA defined.

"MSHA" means the mine safety and health administration of the United States department of labor.

§22A-2A-212. Permanent underground diesel fuel storage facility defined.

"Permanent underground diesel fuel storage facility" means a facility designed and constructed to remain at one location for the storage or dispensing of diesel fuel, which does not move as mining progresses.

§22A-2A-213. Safety can defined.

"Safety can" means a metal container intended for storage, transport or dispensing of diesel fuel, with a nomi-
nal capacity of five gallons, listed or approved by a na-
tionally recognized independent testing laboratory.


"Temporary underground diesel fuel storage area" means an area of a mine provided for the short-term storage of diesel fuel in a fuel transportation unit, which moves as mining progresses.

PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.

§22A-2A-301. Creation of the West Virginia diesel equipment commission.

The West Virginia diesel equipment commission, consisting of six members, is hereby created in the office of miners' health, safety and training of the bureau of commerce.

§22A-2A-302. Members of the commission; qualifications and eligibility.

(a) Each member of the commission shall be a citizen of the United States and a resident of the state of West Virginia.

(b) No member of the Legislature, or person holding any elective or full-time appointive office in the federal, state, or local government shall be eligible to serve as a member of the commission.


(a) The members of the commission shall be appointed to initial terms as follows:

(1) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven and ending on the thirtieth day of June, one thousand nine hundred ninety-nine;

(2) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-
seven and ending on the thirtieth day of June, two thousand;

(3) Two members shall serve for a term beginning on the first day of May, one thousand nine hundred ninety-seven and ending on the thirtieth day of June, two thousand one.

(b) Of the two members appointed under each of subdivisions (1), (2) and (3) of subsection (a), one shall be a person who can reasonably be expected to represent the viewpoint or interests of coal operators in this state, and one shall be a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state.

(c) The initial term of each of the six members first appointed shall be designated by the governor.

(d) After the initial appointments, all members shall be appointed for terms of four years. Members shall not serve more than two terms of four years each.


(a) Prior to the appointment of a person to the commission, the governor shall request the nomination of a candidate for the appointment. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of underground coal operators in this state, the governor shall request the nomination from the major trade association representing underground coal operators in this state. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state, the governor shall request the nomination from the highest ranking officer of the major employee organization representing coal miners in this state.

(b) The governor shall appoint a member to serve for the term for which the person was nominated, and until his or her successor has been nominated and appointed: Provided, That if a successor is not appointed within one hundred twenty days after the expiration of a member's term, a vacancy is deemed to exist. The governor may reject a nomination and decline to appoint a nominee only if the
person does not have the qualifications, integrity and re-
ponsibility necessary to enable the person to perform his
or her duties as a member of the commission.

(c) Appointments to fill vacancies on the commission
shall be for the unexpired term of the member to be re-
placed.


When a member fails to appear at three consecutive
meetings of the commission or at one half of the meetings
held during a one-year period, any member of the com-
mission may notify the member and the governor of such
fact. Such member shall be removed by the governor
unless good cause for absences is shown.

§22A-2A-306. Compensation of members; reimbursement for
expenses.

Each member of the commission shall be paid the
same compensation and expense reimbursement as is paid
to members of the Legislature for their interim duties as
recommended by the citizens legislative compensation
commission and authorized by law for each day or por-
tion thereof engaged in the discharge of official duties.
No reimbursement for expenses shall be made except
upon an itemized account, properly certified by the mem-
ers of the commission. All reimbursement for expenses
shall be paid out of the state treasury upon a requisition
on the state auditor.

§22A-2A-307. Quorum; majority vote required.

A quorum of the commission consists of not less than
two of the members who represent the viewpoint or inter-
est of coal operators and two of the members who repre-
sent the viewpoint or interests of working miners. A mea-
sure before the commission for its consideration is adopt-
ed on the affirmative vote of any four of the six members.

§22A-2A-308. Promulgation of initial rules by the commis-
sion.

(a) The West Virginia diesel equipment commission
shall prepare and adopt the initial rules for the operation
of diesel equipment in underground coal mines in this state. In preparing and adopting initial rules, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements, and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Authorization for the commission to establish the initial rules shall cease to exist after the thirty-first day of March, one thousand nine hundred ninety-eight, except that the commission shall, if necessary, promulgate initial rules following a decision made by the board of arbitrators pursuant to section three hundred nine of this article.

(b) In promulgating the initial rules pursuant to subsection (a) of this section, the commission shall follow the procedures set forth in article three, chapter twenty-nine-a of this code that are prescribed for an agency proposing a legislative rule, to the point where an agency would approve a rule for submission to the Legislature. At that point, the commission shall proceed to final adoption of the initial rules and file a notice of the final adoption in the state register and with the legislative rule-making review committee. Upon final adoption by the commission, the initial rules are thereby promulgated and have the effect of law without further action by the commission or the Legislature. The initial rules shall be published in the code of state rules and continue in effect until modified or superseded in accordance with the provisions of this article.

§22A-2A-309. Failure to promulgate initial rules; arbitration.

(a) If the commission fails to finally adopt its initial rules before the first day of April, one thousand nine hundred ninety-eight, the members who represent the viewpoint or interests of coal operators and the members who represent the viewpoint or interests of working miners shall each prepare a final draft of proposed initial rules, which drafts shall be considered the "last best offer" by each group of members. Thereafter, the matters in contro-
versy which the commission is unable to resolve shall be submitted to arbitration as soon as is practicable.

(b) The board of appeals established and continued pursuant to the provisions of article five of this chapter shall begin the selection of arbitrators by contacting the alternative dispute resolution department of the federal mediation and conciliation service to obtain a roster of the names of fifteen persons who are willing to serve as neutral members of a special subcommittee of the board of appeals that will function as a board of arbitration. The board of appeals shall request that the federal mediation and conciliation service, in compiling the roster, consider experience, training, affiliations, actual or potential conflicts of interest and other matters when selecting persons who may serve as neutral and independent arbitrators. From the roster of fifteen persons so compiled, the board of appeals shall draw five names by lot. The persons drawn shall comprise the board of arbitration, and they are empowered to resolve all outstanding issues that prevent final adoption of initial rules by the diesel equipment commission.

(c) In the event that an arbitrator shall die, or refuse to act or become incapable of acting as an arbitrator before the matters pending before the board of arbitration are concluded, then the remaining arbitrators shall appoint another person from the roster of available persons to be an arbitrator in place of the arbitrator who no longer continues to act.

(d) Each arbitrator shall be compensated at a per diem rate of two hundred twenty-five dollars per day for each day or portion thereof engaged in the discharge of official duties. Each member of the commission shall be paid the same expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. No reimbursement for expenses shall be made except upon an itemized account, properly certified by the arbitrators. All reimbursement for expenses shall be paid out of the state treasury upon a requisition on the state auditor.
(e) On the fifth day of January, one thousand nine hundred ninety-nine, the board of arbitrators shall resolve issues presented by the proposed drafts drawn up by the members of the commission. Only matters in controversy may be addressed by the board of arbitration. Arbitration is conditioned by limiting the range of outcomes to a choice between the positions submitted by each opposing group within the commission as their “last best offer.”

As to each issue raised by the proposed drafts, the board of arbitration shall adopt a position advanced by one of the member groups and shall have no authority to compromise the positions or substitute an alternative position. In making its decisions, the board of arbitrators shall consider the highest achievable measures of protection for miners’ health and safety through available technology, engineering controls and performance requirements, and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines.

When the board of arbitration reaches agreement on a proposed rule, at the conclusion of its work the board of arbitration shall transmit a report containing the proposed rule to the commission, the president of the Senate and the speaker of the House of Delegates. The board of arbitration may include in its report any other information, recommendations, or materials that the board of arbitration considers appropriate, including suggested legislation. Any arbitrator may include as an addendum to the report any additional information, recommendations, or materials.

(f) The board of coal mine health and safety shall provide appropriate administrative support to the board of arbitration, including technical assistance.

(g) Within twenty-eight days following the resolution of all issues by the board of arbitration, the commission shall adopt the initial rules, fully incorporating the decision of the board of arbitration. The commission shall file a notice of the final adoption in the state register and with the legislative rule-making review committee. The initial rules are thereby promulgated and have the effect of law.
without further action by the commission or the Legislature. The initial rules shall be published in the code of state rules and continue in effect until modified or superseded in accordance with the provisions of this article, or by act of the Legislature.


(a) After the promulgation of the initial rules, the commission shall have as its primary duties the implementation of this article and the evaluation and adoption of state of the art technology and methods, reflected in engines and engine components, emission control equipment, and procedures, that when applied to diesel-powered underground mining machinery shall reasonably reduce or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the commission shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements, and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state of the art technology or methods adopted by the commission shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the commission shall consider site-specific requests for use of alternative diesel-related health and safety technologies and methods. The commission's action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the commission shall conduct an investigation, which investigation shall include consultation with the mine operator and the authorized representatives of the miners at the mine. Authorized representatives of the miners shall include a mine health and safety committee elected by min-
ers at the mine, a person or persons employed by an em-
ployee organization representing miners at the mine, or a
person or persons authorized as the representative or rep-
resentatives of miners of the mine in accordance with
MSHA regulations at 30 C.F.R. Pt. 40 (relating to repre-
sentative of miners). Where there is no authorized repre-
sentative of the miners, the commission shall consult with a
reasonable number of miners at the mine.

(1) Within one hundred eighty days of receipt of an
application for use of alternative technologies or methods,
the commission shall complete its investigation. The time
period may be extended with the consent of the applicant.

(2) The commission shall have thirty days in which to
render a final decision approving or rejecting the applica-
tion.

(3) The commission members shall not approve an
application made under this section if, at the conclusion of
the investigation, the commission members have made a
determination that the use of the alternative technology or
method will reduce or compromise the level of health and
safety protection of miners.

(4) The written approval of an application for the use
of alternative technologies or methods shall include the
results of the commission’s investigation and describe the
specific conditions of use for the alternative technology or
method.

(5) The written decision to reject an application for
the use of alternative technologies or methods shall in-
clude the results of the commission’s investigation and
shall outline in detail the basis for the rejection.

(c) The commission shall establish conditions for the
use of diesel-powered equipment in shaft and slope con-
struction operations at coal mines.

(d) In performing its functions, the commission shall
have access to the services of the board of coal mine
health and safety. The board shall make clerical support
and assistance available to enable the commission to carry
out its duties.
(e) Any action taken by the commission to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section, shall be final and binding and not subject to further review except where a decision by the commission may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

(f) The powers and duties of the commission shall be limited to the matters regarding the use of diesel-powered equipment in underground coal mines.

(g) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the general revenue fund.

PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

§22A-2A-401. General provisions relating to requirements for exhaust emissions.

This part 4 is intended to control the potential health hazards of diesel exhaust, by requiring that diesel-powered machines be equipped with clean-burning engines, that exhaust emissions control and conditioning systems may be required on diesel engines as specified by the commission, that exhaust emissions be monitored and controlled and that standards be established for the allowable concentrations of exhaust emissions in a mine environment.

§22A-2A-402. Approval of diesel power package or diesel engine.
Every diesel power package or diesel engine used in underground coal mining shall be approved by the West Virginia diesel equipment commission when it complies with applicable requirements, standards, and procedures established by rules of the commission, and be certified or approved, as applicable, by MSHA and maintained in accordance with MSHA certification or approval.

§22A-2A-403. Exhaust emissions control and conditioning systems.

(a) All exhaust emissions control and conditioning systems and their component devices shall be approved by the West Virginia diesel equipment commission. Such approval requires compliance with applicable standards and procedures established by rules of the commission for the use of the system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides of nitrogen.

The rules of the commission shall require all exhaust emissions control and conditioning systems to undergo an initial series of laboratory tests, using test equipment requirements and standard procedures approved by the commission for testing for gaseous and particulate emissions. The commission shall compile a list of acceptable third-party laboratories where testing is performed competently and reliable results are produced.

(b) Requirements and standards for exhaust emissions control and conditioning systems include, but are not limited to, the following:

(1) A minimum standard, stated as an average percentage, for the reduction of diesel particulate matter emissions by a diesel particulate matter filter or other comparably effective emissions control device;

(2) A minimum standard, stated in parts per million, for the reduction of emissions of undiluted carbon monoxide, using an oxidation catalyst or other gaseous emissions control device;

(3) A minimum standard, stated in parts per million, for the reduction of emissions of oxides of nitrogen, using
advanced control technology such as catalytic control technology or other comparably effective control methods;

(4) Any additional requirements established by the rules of the commission or MSHA regulations relating to requirements for permissible mobile diesel-powered transportation equipment set forth in part 36, title thirty of the code of federal regulations, 30 C.F.R. § 36.1, et seq.


Rules of the commission shall establish procedures for monitoring and controlling emissions from diesel-powered equipment. Such procedures shall include, but not be limited to, monitoring and controlling activities to be performed by a qualified person.


(a) For monitoring and controlling exhaust gases, the rules of the commission shall establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere. Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of these exhaust gases is to be measured, the frequency at which measurements are to be made, and requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

(b) Rules of the commission shall establish the concentration of exhaust gas, stated as a percentage of an exposure limit, that when present will require changes to be made in the use of diesel-powered equipment or the methods of mine ventilation, or will require other modifications in the mining process.

(c) Rules of the commission shall provide for the remedial action to be taken if the concentration of any of the gases listed in subsection (a) of this section exceeds the exposure limit.
(d) In addition to the other maintenance requirements required by this article, rules of the commission shall provide for service, maintenance and tests which are specific to an engine's fuel delivery system, timing or exhaust emissions control and conditioning system.

PART 5. VENTILATION.


(a) Rules of the commission shall establish values to be maintained for the minimum quantities of ventilating air where diesel-powered equipment is operated. The purpose of these rules is to ensure that necessary minimum ventilating air quantity is provided where diesel-powered equipment is operated.

(b) Rules of the commission shall require that each specific model of diesel-powered equipment shall be approved before it is taken underground. The rules shall provide that in addition to requiring that each diesel engine have an assigned MSHA approval number securely attached to the engine with the information required by 30 C.F.R. §§ 7.90 and 7.105, the approval plate shall also specify the minimum ventilating air quantity required by the commission for the specific piece of diesel-powered equipment. The rules shall provide that the minimum ventilating air quantity be determined based on the amount of air necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits established by the commission pursuant to section four hundred six of this article.

(c) Rules of the commission shall require that the minimum quantities of air in any split where any individual unit of diesel-powered equipment is being operated shall be at least that specified on the approval plate for that equipment. Air quantity measurements to determine compliance with this requirement shall be made at the individual unit of diesel-powered equipment.

(d) Rules of the commission shall establish the minimum quantities of air required in any split when multiple units are operated. Air quantity measurements to deter-
mine compliance with this requirement shall be made at
the most downwind unit of diesel-powered equipment that
is being operated in that air split.

(e) Rules of the commission shall provide that mini-
mum quantities of air in any split where any diesel-pow-
ered equipment is operated shall not be less than the mini-
mum air quantities established pursuant to subsections (a)
and (b) of this section and shall be specified in the mine
diesel ventilation plan.

PART 6. FUEL.


(a) The commission shall establish standards for fuel
to be used in diesel-powered equipment in underground
coal mines. A purpose of these standards is to require the
use of low volatile fuels that will lower diesel engine gas-
eous and particulate emissions and will reduce equipment
maintenance by limiting the amount of sulfur in the fuel.
Another purpose of the standards for fuel is to reduce the
risk of fire in underground mines by establishing a mini-
mum flash point for the diesel fuel used.

(b) Rules of the commission shall require each coal
mine using diesel equipment underground to establish a
quality control plan for assuring that the diesel fuel used
complies with the standards established pursuant to this
section. The rules shall also establish a procedure under
which each mine operator will provide evidence that the
diesel fuel used in diesel-powered equipment under-
ground meets the standards for fuel established by the
commission.


(a) The commission shall establish requirements for
the safe storage of diesel fuel underground so as to mini-
mize the risks associated with fire hazards in areas where
diesel fuel is stored.

(b) (1) Rules of the commission shall either provide:

(A) That all stationary underground diesel fuel tanks
are prohibited; or
(B) That a stationary underground diesel fuel tank may only be authorized through a petitioning process that permits a stationary underground diesel fuel tank to be located in a permanent underground diesel fuel storage facility, on a site-specific basis. Stationary underground diesel fuel tanks may not be located in temporary underground diesel fuel storage areas.

(c) Rules of the commission shall govern the transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

(d) Rules of the commission shall establish limits on the total amount of diesel fuel that may be stored in each permanent underground diesel fuel storage facility and in each temporary underground diesel fuel storage area.


Rules of the commission governing the refueling of diesel-powered equipment shall, at a minimum, comply with the provisions of part 75 of the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C.F.R. § 75.1905, effective the twenty-fifth day of April, one thousand nine hundred ninety seven.

§22A-2A-604. Location of fueling.

(a) Rules of the commission shall require that fueling of diesel-powered equipment is not to be conducted in the intake escapeways unless the mine design and entry configuration make it necessary. For those cases where fueling in the intake escapeways is necessary, the rules shall establish a procedure whereby the mine operator shall submit a plan for approval, outlining the special safety precautions that will be taken to insure the protection of miners. The plan shall specify a fixed location where fueling will be conducted in the intake escapeway and all other safety precautions that will be taken, which shall include an examination of the area for spillage or fire by a qualified person.

(b) Rules of the commission shall require that at least one person, specially trained in the cleanup and disposal of diesel fuel spills, shall be on duty at the mine when
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17  diesel-powered equipment or mobile fuel transportation
18  equipment is being used or when any fueling of diesel-
19  powered equipment is being conducted.

PART 7. FIRE SUPPRESSION.

§22A-2A-701. Fire suppression systems for diesel-powered
1  equipment and fuel transportation units.
2  Rules of the commission governing fire suppression
3  systems for diesel-powered equipment and fuel transporta-
4  tion units shall, at a minimum, comply with the provisions
5  of part 75 of the code of federal regulations dealing with
6  fire suppression systems for diesel-powered equipment
7  and fuel transportation units, set forth in 30 C.F.R.
8  §75.1911, effective the twenty-fifth day of April, one
9  thousand nine hundred ninety-seven.

§22A-2A-702. Fire suppression for storage areas.
1  Rules of the commission governing fire suppression
2  systems for permanent underground diesel fuel storage
3  facilities shall, at a minimum, comply with the provisions
4  of part 75 of the code of federal regulations dealing with
5  fire suppression systems for permanent underground
6  diesel fuel storage facilities, set forth in 30 C.F.R.
7  §75.1912, effective the twenty-fifth day of April, one
8  thousand nine hundred ninety-seven.

§22A-2A-703. Use of certain starting aids regulated or pro-
hibit ed.
1  Rules of the commission shall regulate or prohibit the
2  use of volatile or chemical starting aids.

1  (a) Rules of the commission shall provide for all un-
2  derground employees at the mine to receive special in-
3  struction related to fighting fires involving diesel fuel.
4  This training may be included in annual refresher training
5  under MSHA regulations set forth in 30 C.F.R. Pt. 48
6  (relating to training and retraining of miners), or included
7  in the fire drills required under MSHA regulations set
8  forth in 30 C.F.R. § 75.1101.23 (relating to program of
9  instruction; location and use of fire fighting equipment;
location of escapeways, exits, and routes of travel; evacuation procedures; fire drills).

(b) Rules of the commission shall provide for all miners to be trained in precautions for safe and healthful handling and disposal of diesel-powered equipment filters.

PART 8. MAINTENANCE.


(a) Rules of the commission shall require diesel-powered equipment to be maintained in an approved and safe condition or removed from service. Failure of the mine operator to comply with the maintenance requirements established by the board may result in revocation of the commission's approval of the diesel-powered equipment. The commission shall establish procedures for appropriate notification to be given to the mine operator, requiring the submission, evaluation and implementation of a plan to achieve and maintain compliance.

(b) Rules of the commission shall provide that service and maintenance of diesel-powered equipment shall be performed according to a specified routine maintenance schedule, on-board performance and maintenance diagnostics readings, emissions test results, and component manufacturer's recommendations.


(a) Rules of the commission shall require that all maintenance, repairs, examinations and tests on diesel-powered equipment shall be performed by a person who, at a minimum, is trained and qualified in accordance with the provisions of part 75 of the code of federal regulations dealing with the training and qualification of persons working on diesel powered equipment, as set forth in 30 C.F.R. § 75.1915, effective the twenty-fifth day of April, one thousand nine hundred ninety-seven.

(b) Rules of the commission shall require that the training and qualification program and record made available for inspection pursuant to the provisions of 30 C.F.R.
§ 75.1915(c) be made available to the commission or its authorized representative.

§22A-2A-803. Examination of equipment by operator.

Rules of the commission shall require that mobile diesel-powered equipment that is to be used during a shift be visually examined by the equipment operator before being placed in operation, and that equipment defects affecting safety be reported promptly to the mine operator. Rules of the commission shall specify the inspection procedures to be followed and the operating conditions under which the examination is to be made. Rules of the commission shall establish record-keeping requirements for such visual examinations.


Rules of the commission shall establish the intervals at which a qualified person will evaluate and interpret the results of tests and examinations, perform maintenance and make all necessary adjustments or repairs or remove the diesel-powered equipment from service. The commission shall establish record-keeping requirements for persons performing maintenance.


Rules of the commission shall require that on-board engine performance and maintenance diagnostics systems shall be capable of continuously monitoring and giving read-outs. The diagnostics system shall identify levels that exceed the engine or component manufacturer's recommendation, standards established by the commission or the applicable MSHA requirements.

§22A-2A-806. Diagnostic testing.

(a) The commission shall require periodic examination and testing of all diesel-powered equipment by a person trained and qualified as required by rules of the commission.
(b) Rules of the commission shall prescribe the scope of the examination and testing and the procedures to be followed, and the rules requiring testing of undiluted exhaust emissions may exceed the written standard operating procedures for such testing and evaluation required by part 75 of the code of federal regulations, set forth in 30 C.F.R. § 75.1915(g).


(a) Rules of the commission shall provide:

(1) That a record be made of all tests, examinations and maintenance and repairs of diesel-powered equipment;

(2) That the person performing the test, examination, maintenance or repair certify by date, time, engine hour reading, and signature that the test, examination, maintenance or repair was made;

(3) That records of tests and examinations include the specific results of such tests and examinations;

(4) That records of maintenance and repairs include a description of the work or service that was performed, and the results of any subsequently required emissions testing.

(b) Rules of the commission shall specify the persons who are required to countersign records of tests, examinations, maintenance and repairs.

(c) Rules of the commission shall establish procedures and time periods for the retention of records and their availability for inspection by the commission and by miners and their representatives.

PART 9. TRAINING.

§22A-2A-901. Training and general requirements.

(a) Rules of the commission shall establish programs for training equipment operators and members of the mine health and safety committee. Training shall include, but not be limited to, the following:
(1) Fundamentals of the operation of a diesel engine;
(2) Federal and state regulations governing the use of
diesel-powered equipment;
(3) The mine operator's rules for safe operation;
(4) Specific features of each piece of equipment; and
(5) Problem recognition.
(b) Required training shall include equipment specific,
    hands-on orientation given in an area of the mine where
    the equipment will be operated. This orientation shall be
    specific to the type and make of the diesel machine and
    shall be presented in small groups.
(c) Rules of the commission shall establish a certifica-
    tion process for qualifying equipment operators to operate
    a specific type of diesel-powered equipment. An operator
    may be qualified to operate more than one type of equip-
    ment by completing additional equipment-specific train-
    ing covering differences specific to each additional type
    of equipment.
(d) Rules of the commission shall require refresher
    training, separate from that required by MSHA regulations
    at 30 C.F.R. Pt. 48 (relating to the training and retraining
    of miners), and annual recertification.

CHAPTER 135
(Com. Sub. for S. B. 470—By Senator Hunter)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter
twenty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to increasing the
state minimum wage to the federal standard.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.


(a) Minimum wage:

(1) After the thirtieth day of September, one thousand nine hundred ninety-seven, every employer shall pay to each of his or her employees wages at a rate not less than four dollars and seventy-five cents per hour.

(2) After the thirty-first day of August, one thousand nine hundred ninety-eight, every employer shall pay to each of his or her employees wages at a rate not less than five dollars and fifteen cents per hour.

(b) Training wage:

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after the thirtieth day of September, one thousand nine hundred ninety-seven, a subminimum training wage not less than four dollars and twenty-five cents per hour.

(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(i) Who has attained or attains while an employee of the employer, the age of twenty years; or

(ii) For a cumulative period of not more than ninety days per employee: Provided, That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.
AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the establishment of the missing children information clearinghouse; definitions; duties of the state police; duties of the department of education; duties of law-enforcement agencies; request for information by custodian; missing child reports; procedures upon receipt of missing child report; law-enforcement requirements upon receipt of information about unidentified bodies of children; release of dental records; immunity from civil liability or criminal prosecution for release of records; cross-checking and matching of information; cooperation required of state agencies and schools; confidentiality of information and records; duties of attorney general to enforce provisions; duty of law-enforcement agencies to forward contents of completed report; duties of law-enforcement agencies to update information and provide notice; creation of a clearinghouse advisory council as a public corporation and governmental instrumentality; membership of the council; appointment; terms of office; compensation and expenses; quorum; appointment of chairman; council to be subject to open governmental meetings act; designation of state police employee as executive director of council; authority to contract for research and administrative services; advisory services to the Legislature; annual report required; comprehensive strategic plan and recommendations required; advisory services to the state police; cooperation and coordination with other agencies; authority to seek funding from public and private sources; initial comprehensive plan to be presented by the first day of July, one thousand nine hundred ninety-eight; contents of initial
plan; authority to enter into public-private partnerships; approval of majority required; council members not prohibited from sitting on certain boards; application of governmental ethics act to council members; authority of council to solicit and accept gifts, grants, bequests and devises; and deposit of same into state treasury special account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-1. Short title.
§49-9-4. State department of education; missing children program.
§49-9-5. Information to clearinghouse.
§49-9-6. Custodian request for information.
§49-9-8. Law-enforcement requirements; missing child reports; unidentified bodies.
§49-9-11. Interagency cooperation.
§49-9-12. Confidentiality of records.
§49-9-15. Clearinghouse advisory council; members, appointments and expenses; appointment, duties and compensation of director.
§49-9-17. Public-private partnerships; funding.

§49-9-1. Short title.

This article may be cited as the “Missing Children Information Act.”


As used in this article:
"Child" means an individual under the age of eighteen years who is not emancipated;

(b) "Clearinghouse" means the West Virginia missing children information clearinghouse;

(c) "Custodian" means a parent, guardian, custodian or other person who exercises legal physical control, care or custody of a child;

(d) "Missing child" means a child whose whereabouts are unknown to the child's custodian and the circumstances of whose absence indicate that:

(1) The child did not leave the care and control of the custodian voluntarily and the taking of the child was not authorized by law; or

(2) The child voluntarily left the care and control of his or her custodian without the custodian's consent and without intent to return;

(e) "Missing child report" means information that is:

(1) Given to a law-enforcement agency on a form used for sending information to the national crime information center; and

(2) About a child whose whereabouts are unknown to the reporter and who is alleged in the form submitted by the reporter to be missing;

(f) "Possible match" means the similarities between an unidentified body of a child and a missing child that would lead one to believe they are the same child;

(g) "Reporter" means the person who reports a missing child; and

(h) "State agency" means an agency of the state, political subdivision of the state or public postsecondary educational institution.

(a) The missing children information clearinghouse is established under the West Virginia state police. The state police:

(1) Shall provide for the administration of the clearinghouse; and

(2) May promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to missing children;

(2) Provide a centralized file for the exchange of information on missing children and unidentified bodies of children within the state;

(3) Communicate with the national crime information center for the exchange of information on missing children suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on missing children;

(5) Provide a statewide toll-free telephone line for the reporting of missing children and for receiving information on missing children;

(6) Disseminate to custodians, law-enforcement agencies, the state department of education, the governor's cabinet on children and families and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) Compile statistics relating to the incidence of missing children within the state;

(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to missing children; and
(9) Establish a media protocol for disseminating information pertaining to missing children.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.

(e) The state police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

§49-9-4. State department of education; missing children program.

(a) The state department of education shall develop and administer a program for the location of missing children who may be enrolled in the West Virginia school system, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

(b) The program shall include the use of information received from the clearinghouse and shall be coordinated with the operations of the clearinghouse.

(c) The state board of education may promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code for the operation of the program and shall require the participation of all school districts and state-accredited private schools in this state.

§49-9-5. Information to clearinghouse.

Every law-enforcement agency in West Virginia shall provide to the clearinghouse any information the law-enforcement agency has that would assist in locating or identifying a missing child.

§49-9-6. Custodian request for information.

(a) Upon written request made to a law-enforcement agency by the custodian of a missing child, the law-enforcement agency shall request from the clearinghouse information concerning the child that may aid the custodian in locating or identifying the child.

(a) The clearinghouse shall distribute missing child report forms to law-enforcement agencies in the state.

(b) A missing child report may be made to a law-enforcement agency in person or by telephone or other indirect method of communication and the person taking the report may enter the information on the form for the reporter. A missing child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the missing child report form shall be filed with the clearinghouse.

§49-9-8. Law-enforcement requirements; missing child reports; unidentified bodies.

(a) A law-enforcement agency, upon receiving a missing child report, shall:

(1) Immediately start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child into the clearinghouse and the national crime information center missing person file if the child meets the center’s criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics and a description of the clothing worn when the missing child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.
(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.


(a) At the time a missing child report is made, the law-enforcement agency to which the missing child report is given may, when feasible and appropriate, provide a dental record release form to the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child. The law-enforcement agency shall endorse the dental record release form with a notation that a missing child report has been made in compliance with the provisions of this article. When the dental record release form is properly completed by the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the missing child and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing child to the law-enforcement agency.

(b) A circuit court judge may for good cause shown authorize the release of dental records of a missing child to a law-enforcement agency.

(c) A law-enforcement agency which receives dental records under the provisions of subsections (a) or (b) of this section shall send the dental records to the clearinghouse.

(d) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil
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liability or criminal prosecution for the release of the
dental records.


(a) The clearinghouse shall, in accordance with
national crime information center policies and procedures,
cross-check and attempt to match unidentified bodies with
descriptions of missing children. When the clearinghouse
discovers a possible match between an unidentified body
and a missing child description, the clearinghouse shall
notify the appropriate law-enforcement agencies.

(b) A law-enforcement agency that receives notice of a
possible match shall make arrangements for positive
identification. If a positive identification is made, the law-
enforcement agency shall complete and close the
investigation with notification to the clearinghouse.

§49-9-11. Interagency cooperation.

(a) State agencies and public and private schools shall
cooperate with a law-enforcement agency that is
investigating a missing child report and shall furnish any
information, including confidential information, that will
assist the law-enforcement agency in completing the
investigation.

(b) Information provided by a state agency or a public
or private school may not be released to any person
outside the law-enforcement agency or the clearinghouse,
except as provided by rules of the West Virginia state
police.

§49-9-12. Confidentiality of records.

(a) The state police shall promulgate rules according
to the provisions of article three, chapter twenty-nine-a of
this code to provide for the classification of information
and records as confidential that:

(1) Are otherwise confidential under state or federal
law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-
enforcement agency of a missing child or an unidentified
body, if the state police, in consultation with the law-
enforcement agency, determines that release of the
information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse
maintains for internal use in matters relating to missing
children and unidentified bodies and the state police
determines that release of the internal documents might
interfere with an investigation by a law-enforcement
agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the state police
determines might interfere with an investigation or
otherwise harm a child or custodian.

(b) The rules may provide for the sharing of
confidential information with the custodian of the missing
child.


The attorney general shall require each law-
enforcement agency to comply with the provisions of the
Missing Children Information Act and may seek writs of
mandamus or other appropriate remedies to enforce the
provisions of this article.


(a) Upon completion of the missing child report the
law-enforcement agency shall immediately forward the
contents of the report to the missing children information
clearinghouse and the national crime information center's
missing person file: Provided, That if an information
entry into the national crime information center file results
in an automatic entry of the information into the
clearinghouse, the law-enforcement agency is not required
to make a direct entry of that information into the
clearinghouse.

(b) Within fifteen days after completion of the report,
if the child is less than thirteen years of age the law-
enforcement agency may, when appropriate, forward the
contents of the report to the last:
(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child shall:

(1) Update the initial report filed by the agency that received notification of the missing child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the national crime information center’s wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child’s national crime information center’s missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the national crime information center when the missing child is located.

§49-9-15. Clearinghouse advisory council; members, appointments and expenses; appointment, duties and compensation of director.

(a) There is hereby created a clearinghouse advisory council, which is a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of eleven members, who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Four members to be appointed by the governor, with the advice and consent of the Senate, with not more than two belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with
preventing the abduction, runaway or exploitation of
children or locating missing children;

(2) One person 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) The secretary of the department of health and
human resources or his or her designee;

(5) The superintendent of the West Virginia state
police or his or her designee;

(6) The state superintendent of schools or his or her
designee;

(7) The director of the criminal justice and highway
safety division or his or her designee; and

(8) The executive director of the governor's cabinet
on children and families.

(b) Not later than the first day of June, one thousand
nine hundred ninety-seven, the governor shall appoint the
six appointed council members for staggered terms. The
terms of the board 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, one at the end of the year, two at the end of
the second year, and two at the end of the third year. As
the original appointments expire, each subsequent
appointment shall be for a full three-year term. Any
appointed member whose term is 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 chairman of the council shall be designated by the governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway or exploitation of children or locating missing children. The term of the chairman shall run concurrently with his or her term of office as a member of the council. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to article nine-a, chapter six of this code.

(d) The employee of the West Virginia state police who is primarily responsible for the clearinghouse established by section three of this article shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director.

(e) The expenses of the council members and the executive director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section seventeen of this article.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support. The executive director of the council shall be available to the governor and to 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 missing or exploited children.
(g) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the governor and to the Legislature's joint committee on government and finance on or before the fifteenth day of December of each year.


(a) The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children and to locate missing children; advise the West Virginia state police regarding operation of the clearinghouse and its other responsibilities under this article; and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, 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 efforts to prevent the abduction, runaway and exploitation of children and to locate missing children shall be developed and provided to the governor, the speaker of the House of Delegates and the president of the Senate no later than the first day of July, one thousand nine hundred ninety-eight, and shall include, but not be limited to, the following:

(1) Findings and determinations regarding the extent of the problem in this state related to: (i) Abducted children; (ii) runaway children; and (iii) exploited children;

(2) Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway or exploitation of children and to locate missing children and assessing the strengths and weaknesses of those systems and the clearinghouse;
(3) The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of eighteen years who has been: (i) Used in the production of pornography; (ii) subjected to sexual exploitation or sexual offenses under article eight-b, chapter sixty-one of this code; or (iii) employed or exhibited in any injurious, immoral or dangerous business or occupation in violation of the provisions of sections five through eight, article eight, chapter sixty-one of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, runaway or exploitation of children and to locate missing children. Those recommendations shall consider the following:

(i) Interaction of the clearinghouse with child custody proceedings;

(ii) Involvement of hospitals, child care centers and other private agencies in efforts to prevent child abduction, runaway or exploitation and to locate missing children;

(iii) Publication of a directory of and periodic reports regarding missing children;

(iv) Required reporting by public and private agencies and penalties for failure to report and false reporting;

(v) Removal of names from the list of missing children;

(vi) Creating of an advocate for missing and exploited children;

(vii) State funding for the clearinghouse and efforts to prevent the abduction, runaway and exploitation of children and to locate missing children;

(viii) Mandated involvement of state agencies, such as publication of information regarding missing children in existing state publications and coordination with the state registrar of vital statistics under section twelve-b, article five, chapter sixteen of this code;
(ix) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under section five-c, article two, chapter eighteen of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children;

(11) Programs for voluntary fingerprinting.

§49-9-17. Public-private partnerships; funding.

(a) In furtherance of its mission, the clearinghouse 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 prevention of missing or exploited children and to locate missing children. 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 shall solicit and 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 council.

CHAPTER 137

(S. B. 549—By Senators Dittmar, Wooton, Ball, Bowman, Hunter, Ross, Schoonover, Snyder, Buckalew, Deem and Scott)

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to promulgation of rules for motor boating.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTOR BOATING, LITTER.

§20-7-23. Local rules.

(a) The provisions of this article, and of other applicable laws of this state, shall govern the operation, equipment, numbering and all other matters relating thereto
state, or when any activity regulated by this article shall take place thereon, but nothing in this article shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels the provisions of which are identical to the provisions of this article, amendments thereto or rules promulgated thereunder: Provided, That such ordinances or local laws shall be operative only so long as to the extent that they continue to be identical to provisions of this article, amendments thereto or rules promulgated thereunder.

(b) Any subdivision of this state may, at any time, but only after public notice, make formal application to the director for special rules with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules necessary or appropriate.

(c) The director is hereby authorized to promulgate special rules with reference to the operation of vessels on any waters within the territorial limits of any subdivision of this state.

(d) The director shall immediately promulgate an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, providing for the use of electric motors on the waters of Miletree lake in Roane County.

CHAPTER 138
(Com. Sub. for S. B. 74—By Senator Dittmar)

[Passed March 28, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article three of said chapter; to amend and reenact section one, article five of said chapter; and to
amend and reenact sections one and three, article ten of said chapter, all relating to definition, titling, registration and taxation of special mobile equipment and mixed use equipment.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and four, article three of said chapter be amended and reenacted; that section one, article five of said chapter be amended and reenacted; and that sections one and three, article ten of said chapter be amended and reenacted, all to read as follows:

Article
1. Words and Phrases Defined.
3. Original and Renewal of Registration; Issuance of Certificates of Title.
5. Permits to Nonresident Owners.
10. Fees for Registration; Licensing, Etc.

ARTICLE 1. WORDS AND PHRASES DEFINED.

*§17A-1-1. Definitions.

1 Except as otherwise provided in this chapter the following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this article:

5 (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

10 (b) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

*Clerk's Note: This section was also amended by S. B. 47 (Chapter 92), which passed subsequent to this act.
(c) "Motorcycle" means every motor vehicle, including motor-driven cycles and mopeds as defined in sections five and five-a, article one, chapter seventeen-c of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding a tractor.

(d) "School bus" means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

(e) "Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(f) "Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(g) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(h) "Road tractor" means every motor vehicle designed, used or maintained for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

(i) "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

(j) "Trailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle but excluding recreational vehicles.
(k) "Semitrailer" means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(l) "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(m) "Specially constructed vehicles" means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(n) "Reconstructed vehicle" means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.

(o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

(p) "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to,
trucks used for spraying trees and plants: Provided, That said vehicle shall not be let for hire at any time.

"Special mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including, without limitation, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, graders, rollers, asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock-drilling equipment and earth-moving equipment. The foregoing enumeration shall be deemed partial and shall not operate to exclude other such vehicles which are within the general terms of this subdivision.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

"Commissioner" means the commissioner of motor vehicles of this state.

"Department" means the department of motor vehicles of this state acting directly or through its duly authorized officers and agents.

"Person" means every natural person, firm, copartnership, association or corporation.

"Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in
the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(z) "Nonresident" means every person who is not a resident of this state.

(aa) "Dealer" or "dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, factory-built home dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or all of such dealers or a combination thereof, and in some instances a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) "Licensed dealer" or "licensed dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of such dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by such manufacturer
where his books and records are kept and a large share of
his business is transacted.

(ff) "Street" or "highway" means the entire width
between boundary lines of every way publicly maintained
when any part thereof is open to the use of the public for
purposes of vehicular travel.

(gg) "Motorboat" means any vessel propelled by an
electrical, steam, gas, diesel or other fuel propelled or
driven motor, whether or not such motor is the principal
source of propulsion, but shall not include a vessel which
has a valid marine document issued by the bureau of cus-
toms of the United States government or any federal agen-
cy successor thereto.

(hh) "Motorboat trailer" means every vehicle de-
dsigned for or ordinarily used for the transportation of a
motorboat.

(ii) "All-terrain vehicle" (ATV) means any motor
vehicle designed for off-highway use and designed for
operator use only with no passengers, having a seat or
saddle designed to be straddled by the operator, and han-
dlebars for steering control.

(jj) "Travel trailer" means every vehicle, mounted on
wheels, designed to provide temporary living quarters for
recreational, camping or travel use of such size or weight
as not to require special highway movement permits when
towed by a motor vehicle and of gross trailer area less than
four hundred square feet.

(kk) "Fold down camping trailer" means every vehi-
cle consisting of a portable unit mounted on wheels and
constructed with collapsible partial sidewalls which fold
for towing by another vehicle and unfold at the camp site
to provide temporary living quarters for recreational,
camping or travel use.

(ll) "Motor home" means every vehicle, designed to
provide temporary living quarters, built into an integral
part of or permanently attached to a self-propelled motor
vehicle, chassis or van including: (1) Type A motor home
built on an incomplete truck chassis with the truck cab
constructed by the second stage manufacturer; (2) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on an incomplete van or truck chassis with a cab constructed by the chassis manufacturer.

(mm) "Snowmobile" means a self-propelled vehicle intended for travel primarily on snow and driven by a track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(nn) "Recreational vehicle" means a motorboat, motorboat trailer, all-terrain vehicle, travel trailer, fold down camping trailer, motor home or snowmobile.

(oo) Mobile equipment means every self-propelled vehicle not designed or used primarily for the transportation of persons or property over the highway but which may infrequently or incidentally travel over the highway among job sites, equipment storage sites or repair sites, including farm equipment, implements of husbandry, well-drillers, cranes and wood-sawing equipment.

(pp) "Factory-built home" includes mobile homes, house trailers and manufactured homes.

(qq) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401 et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(rr) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §5401.
et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI) — A119.1 standards for mobile homes.

(ss) "House trailers" means all trailers designed and used for human occupancy on a continual nonrecreational basis, but may not include fold down camping and travel trailers, mobile homes or manufactured homes.

(tt) "Parking enforcement vehicle" means a motor vehicle which does not fit into any other classification of vehicle in this chapter, has three or four wheels and is designed for use in an incorporated municipality by a city, county, state or other governmental entity primarily for parking enforcement or other governmental purposes with an operator area with sides permanently enclosed with rigid construction and a top which may be convertible, sealed beam headlights, turn signals, brake lights, horn, at least one rear view mirror on each side and such other equipment that will enable it to pass a standard motorcycle vehicle inspection.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; privilege tax on payments for leased vehicles; revenue allocations; transfers; penalty for false swearing.

*§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

(a) Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:

*Clerk’s Note: This section was also amended by S. B. 47 (Chapter 92), which passed subsequent to this act.
(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

(2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner thereof and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the commissioner of the division of highways from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points shall not exceed twenty-five miles, or for the purpose of taking it or other fixtures thereto attached, to and from a repair shop for repairs.

The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinbefore described or to any farm trailer owned by the owner or lessee of the farm on which such trailer is used, when such trailer is used by the owner thereof for the purpose of moving farm produce and livestock from such farm along a public highway for a distance not to exceed twenty-five miles to a storage house or packing plant, when such use is a seasonal operation:

(A) The exemptions contained in this section shall also apply to farm machinery and tractors: Provided, That such machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether such land be owned by the same or different persons.

(B) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates and fees therefor shall not be permitted to use the highways between sunset and sunrise.
(C) Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates shall be permitted to use the highways as herein provided whether such exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle for which registration is required.

(D) Any vehicle used as an implement of husbandry exempt hereunder must have the words "farm use" affixed to both sides of the implement in ten inch letters. Any vehicle which would be subject to registration as a Class A or B vehicle if not exempted by this section shall display a farm use exemption certificate on the lower driver's side of the windshield:

(i) The farm use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm use exemption certificate upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has been properly assessed as Class I personal property. The assessor shall charge a fee of two dollars for each certificate, one dollar of the fee shall be retained by the assessor and one dollar shall be remitted by the assessor to the commissioner of the division of motor vehicles to be deposited in a special revolving fund to be used in the administration of this section.

(ii) A farm use exemption certificate shall in no way exempt the applicant from maintaining the security as required by chapter seventeen-d of this code on any vehicle being operated on the roads or highways of this state.

(iii) No person charged with operating a vehicle without a farm use exemption certificate, if required under this section, shall be convicted if he or she produces in court or in the office of the arresting officer a valid farm use exemption certificate for the vehicle in question within five days;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;
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(4) Any vehicle of a type subject to registration owned by the government of the United States;

(5) Any wrecked or disabled vehicle which is being towed by a licensed wrecker or dealer on the public highways of this state;

(6) The following recreational vehicles shall be exempt from the requirements of annual registration, license plates and fees, unless otherwise specified by law, but shall be subject to the certificate of title provisions of this chapter regardless of highway use: Motorboats, all-terrain vehicles and snowmobiles;

(7) Any special mobile equipment as defined in subsection (r), section one, article one of this chapter.

(b) The provisions of this article relating to recreational vehicles shall become effective on the first day of July, one thousand nine hundred eighty-nine.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section:

(1) Mobile homes or manufactured homes are exempt from the requirements of annual registration, license plates and fees;

(2) House trailers may be registered and licensed; and

(3) Factory-built homes are subject to the certificate of title provisions of this chapter.

*§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; privilege tax on payments for leased vehicles; revenue allocations; transfers; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall not be issued or furnished by the division of motor vehicles or any other officer charged with the duty, unless the applicant therefor already has received, or at the

*Clerk's Note: This section was also amended by S. B. 47 (Chapter 92), which passed subsequent to this act.
the titling of Class C or Class L semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner must surrender to the commissioner the exempted registration, the exempted certificate of title, and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B, Class K or Class E vehicles in excess of fifty-five thousand pounds and Class C or Class L semitrailers, full trailers, pole trailers and converter gear shall not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is hereby imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of five dollars for each original certificate of title or duplicate certificate of title so issued: Provided, That
this state or any political subdivision thereof, or any vol-
unteer fire department, or duly chartered rescue squad, is
exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle,
so long as the same is owned or held by the original hold-
er of the certificate, and need not be renewed annually, or
any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes
the owner of a motor vehicle and the tax imposed by this
section previously has been paid, to the division of motor
vehicles, on that vehicle, he or she is not required to pay
the tax.

(10) A person who has paid the tax imposed by this
section is not required to pay the tax a second time for the
same motor vehicle, but is required to pay a charge of five
dollars for the certificate of retitle of that motor vehicle,
except that the tax shall be paid by the person when the
title to the vehicle has been transferred either in this or
another state from such person to another person and
transferred back to such person.

(c) Notwithstanding any provisions of this code to the
contrary, the owners of trailers, semitrailers, recreational
vehicles and other vehicles not subject to the certificate of
title tax prior to the enactment of this chapter are subject
to the privilege tax imposed by this section: Provided,
That the certification of title of any recreational vehicle
owned by the applicant on the thirtieth day of June, one
thousand nine hundred eighty-nine, is not subject to the
tax imposed by this section: Provided, however, That
mobile homes, manufactured homes, modular homes,
house trailers and similar nonmotive propelled vehicles,
except recreational vehicles, susceptible of being moved
upon the highways but primarily designed for habituation
and occupancy, rather than for transporting persons or
property, or any vehicle operated on a nonprofit basis and
used exclusively for the transportation of mentally retard-
ed or physically handicapped children when the applica-
tion for certificate of registration for the vehicle is accom-
panied by an affidavit stating that the vehicle will be oper-
ated on a nonprofit basis and used exclusively for the
transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section, who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, is on the first offense guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be imprisoned in the county jail for a period not to exceed six months, or, in the discretion of the court, both fined and imprisoned. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in the penitentiary for not less than one year nor more than five years, or, in the discretion of the court, fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia, or his or her dependents who possess a motor vehicle with valid registration, are exempt from the provisions of this article for a period of nine months from the date that that person returns to this state or the date his or her dependent returns to this state, whichever is later.

(f) After the first day of July, one thousand nine hundred ninety-seven, no person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county or regional jail for not more than one year or, both fined and imprisoned. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with imprisonment in the
county or regional jail not more than one year or, both
fined and imprisoned.

(2) Failure of the seller to transfer a certificate of title
upon sale or transfer of the factory-built home gives rise
to a cause of action, upon prosecution thereof, and allows
for the recovery of damages, costs and reasonable attorney
fees.

ARTICLE 5. PERMITS TO NONRESIDENT OWNERS.

§17A-5-1. Exemptions from registration of nonresident own-
ers; special permit and certificate in lieu of regist-
tration for nonresidents maintaining temporary
and recurrent or seasonal residence in state.

(a) A nonresident owner, except as otherwise provided
in this section, owning any vehicle registered in a foreign
state or country of a Class A type otherwise subject to
registration hereunder may operate or permit the opera-
tion of such vehicle within this state for a period of thirty
days without registering such vehicle in, or paying any
fees to, this state subject to the condition that such vehicle
at all times when operated in this state is duly registered in
and displays upon it a valid registration card and registra-
tion plate or plates issued for such vehicle in the place of
residence of such owner and that such vehicle is not oper-
ated for commercial purposes.

(b) Every nonresident, including any foreign corpora-
tion, carrying on business within this state and owning and
regularly operating in such business any motor vehicle,
trailer or semitrailer or mobile equipment as defined in
section one, article one, chapter seventeen-a of this code,
within this state, shall be required to register each such
vehicle and pay the same fee therefor as is required with
reference to like vehicles owned by residents of this state,
except as otherwise provided by reciprocal agreements
with other states accomplished pursuant to sections ten and
ten-a, article two of this chapter.

(c) Any nonresident who accepts or engages in tem-
porary and recurrent or seasonal employment, business,
profession or occupation in this state and maintains tem-
porary and recurrent or seasonal residence in this state in
connection with such employment, business, profession or
occupation, and any nonresident, including any corpora-
tion carrying on business of a temporary and recurrent or
seasonal nature in this state and owning and temporarily
and recurrently or seasonally operating in such business
any motor vehicle, trailer or semitrailer or mobile equip-
ment as defined in section one, article one, chapter
seventeen-a of this code, within this state, may operate or
permit the operation of such vehicle within this state with-
out causing said vehicle to be registered as otherwise re-
quired by article three of this chapter: Provided, That
such nonresident, in lieu of registration of such vehicle,
shall make application to the division and receive a special
permit for such vehicle which shall be evidenced by a
metal identification plate and certificate in writing, which
special permit plate and certificate shall together identify
the vehicle for which such special permit and plate shall
issue and such certificate shall bear the name and address
of the owner of such vehicle. Such special permit shall be
issued without previous certification of title to such vehicle
as otherwise required by article three of this chapter or the
provisions of subsection (b) of this section:

(1) Every owner of a vehicle for which such special
permit is desired shall make a verified application to the
division for such special permit upon the appropriate form
or forms furnished by the division and shall bear the sig-
nature of the owner written with pen and ink and shall
contain the character of information called for by section
three, article three of this chapter, a description of the
employment, residence, business and location of such
business set forth in such manner as to show the tempo-
rary and recurrent or seasonal nature of such residence,
employment, business, profession or occupation, and that
such vehicle is duly registered in the state of residence of
such owner. There shall be an application for each vehicle
for which a special permit is desired.

(2) Any special permit or plate issued by the division
under this section shall be effective and valid for a period
of sixty consecutive days from and including the date of
issuance and, upon similar application by the owner, the
commissioner may renew any such special permit for immediately ensuing similar period or periods of sixty days in any fiscal year. The division shall charge a fee of fifty dollars for each special permit issued under this section:

(A) A special permit shall be issued for one vehicle only and no combination of two or more vehicles shall be operated under fewer special permits than the number of vehicles in such combination. A special permit shall not be issued for any vehicle which is not duly registered in the state of residence of the owner thereof.

(B) The registration plate issued for such vehicle by the state of residence of the owner shall not be displayed on such vehicle while being operated over any highway during any period for which a special permit shall have been issued for such vehicle under this section, but there shall be carried in such vehicle the certificate of registration issued for such vehicle by the state of residence of such owner.

(C) Any owner of any vehicle making application to operate such vehicle upon the highways of this state pursuant to the provisions of this article shall also be required to comply with the provisions of chapter seventeen-d of this code prior to commencing such operation.

(3) The commissioner shall prescribe the substance, form, color and context of the certificate or special permit and the special permit plate, each of which shall be visually distinguishable from the certificates of registration and registration plates issued under article three of this chapter.

(4) It is a misdemeanor for any person to drive or move or knowingly to permit to be moved or driven upon any highway any vehicle for which a special permit shall have been issued under this section unless such vehicle shall bear the special plate called for by the certificate evidencing such special permit.

(5) When the employment, business, profession, occupation or residence of the owner of a vehicle for which
such special permit shall have been issued shall cease to be
temporary and recurrent or seasonal, any special permit
issued for such vehicle pursuant to this section shall imme-
diately terminate and become void and such vehicle shall
thereupon become subject to registration under article
three of this chapter or the provisions of subsection (b) of
this section.

(6) Any special permit issued pursuant to this section
shall be valid and effective on and after the first day of a
month; that is, such special permit issued between the first
and fifteenth days of a month shall be effective during
sixty consecutive days from and including the first day of
the month in which the permit shall issue; and a special
permit issued after the fifteenth day of any month shall be
effective during sixty consecutive days commencing with
and including the first day of the month next following
the month in which such special permit shall be issued.

(d) Any other provision of this section notwithstand-
ing, any nonresident referred to in subsection (c) of this
section who is engaged by a public utility, as the latter is
defined in chapter twenty-four of this code, for the exclu-
sive purpose of restoring the service of said utility as a
result of an emergency in which such service is affected
shall be permitted to operate such motor vehicle, trailer or
semitrailer or mobile equipment as defined in section one,
article one, chapter seventeen-a of this code, within this
state, without causing said motor vehicle, trailer or semi-
trailer or mobile equipment as defined in section one,
article one, chapter seventeen-a of this code to be regis-
tered as otherwise provided by this section and article
three of this chapter for the period actually necessary for
such restoration but not to exceed a period of ten consec-
utive days: Provided, That said motor vehicle, trailer or
semitrailer or mobile equipment shall be registered in
another state upon entry into this state. The provisions of
this subsection shall not affect the requirements of recip-
rocald agreements with other states accomplished pursuant
to sections ten and ten-a, article two of this chapter.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.
§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.
§17A-10-1. Classification of vehicles for purpose of registration.

Vehicles subject to registration under the provisions of this chapter shall be placed in the following classes for the purpose of registration:

Class A. Motor vehicles of passenger type and trucks with a gross weight of not more than eight thousand pounds, other than those operated for compensation;

Class B. Motor vehicles designated as trucks with a gross weight of more than eight thousand pounds, truck tractors, or road tractors other than those operated for compensation;

Class C. All trailers and semitrailers, except those operated for compensation, and except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

Class E. Motor vehicles designated as trucks, truck tractors or road tractors operated for transportation of property for compensation, but being exempt from the operating jurisdiction of the public service commission, and for which a statement of exemption has been received from the public service commission;

Class G. Motorcycles and parking enforcement vehicles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the public service commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class K. Motor vehicles designated as trucks, truck tractors or road tractors operated for transportation of property for compensation under a certificate of convenience and necessity or a contract carrier permit issued by the public service commission;
Class L. All trailers and semitrailers used for transportation of property for compensation;

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;

Class R. House trailers;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and

Class Farm Truck. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of sixty-four thousand pounds, used exclusively in the conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. Such farm truck shall be used only for the transportation of agricultural products so produced by the owner thereof, or for the transportation of agricultural supplies used in such production, or for private passenger use.

*§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration hereunder when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) Class A. — The registration fee for all motor vehicles of this class is as follows:

(A) For motor vehicles of a weight of three thousand pounds or less — twenty-five dollars.

*Clerk's Note: This section was also amended by S.B. 548 (Chapter 142), which passed subsequent to this act.*
(B) For motor vehicles of a weight of three thousand one pounds to four thousand pounds — thirty dollars.

(C) For motor vehicles of a weight in excess of four thousand pounds — thirty-six dollars.

(D) For motor vehicles designed as trucks with declared gross weights of four thousand pounds or less — twenty-five dollars.

(E) For motor vehicles designed as trucks with declared gross weights of four thousand one pounds to eight thousand pounds — thirty dollars.

For the purpose of determining the weight, the actual weight of the vehicle shall be taken: Provided, That for vehicles owned by churches, or by trustees for churches, which vehicles are regularly used for transporting parishioners to and from church services, no license fee shall be charged, but notwithstanding such exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B, Class E and Class K. — The registration fee for all motor vehicles of these three classes is as follows:

(A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds — twenty-eight dollars plus five dollars for each one thousand pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — seventy-eight dollars and fifty cents plus ten dollars for each one thousand pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — seven hundred thirty-seven dollars and fifty cents plus fifteen dollars and seventy-five cents for
each one thousand pounds or fraction thereof that the
gross weight of such vehicle or combination of vehicles
exceeds fifty-five thousand pounds.

(3) Class C and Class L. — The registration fee for all
vehicles of these two classes is seventeen dollars and fifty
cents except that semitrailers, full trailers, pole trailers and
converter gear registered as Class C and Class L may be
registered for a period of ten years at a fee of one hun-
dred dollars.

(4) Class G. — The registration fee for each motorcy-
icle or parking enforcement vehicle is eight dollars.

(5) Class H. — The registration fee for all vehicles for
this class operating entirely within the state is five dollars;
and for vehicles engaged in interstate transportation of
persons, the registration fee is the amount of the fees pro-
vided by this section for Class B, Class E and Class K re-
duced by the amount that the mileage of such vehicles
operated in states other than West Virginia bears to the
total mileage operated by such vehicles in all states under
a formula to be established by the division of motor vehi-
cles.

(6) Class J. — The registration fee for all motor vehi-
cles of this class is eighty-five dollars. Ambulances and
hearses used exclusively as such are exempt from the
above special fees.

(7) Class M. — The registration fee for all vehicles of
this class is seventeen dollars and fifty cents.

(8) Class U. — The registration fee for all vehicles of
this class is fifty-seven dollars and fifty cents.

(9) Class Farm Truck. — The registration fee for all
motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight
thousand one pounds to sixteen thousand pounds — thirty
dollars.
(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — sixty dollars.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — ninety dollars.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — one hundred fifteen dollars.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — one hundred sixty dollars.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — two hundred five dollars.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to sixty-four thousand pounds — two hundred fifty dollars.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion thereof based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. — The annual registration fee for all vehicles of this class is twelve dollars.

(2) Class T. — The annual registration fee for all vehicles of this class is eight dollars.

(c) The fees paid to the division for a multiyear registration provided for by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.
CHAPTER 139

(Com. Sub for H. B. 2598—By Mr. Speaker, Mr. Kiss, and Delegate Ashley) [By Request of the Executive]

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of specialized registration plates to members of certain military organizations and members of the silver haired legislature; and requiring the issuance of specialized registration plates displaying a species of nongame wildlife native to West Virginia; design of insignia; application for plates; requirements for issuance; fees for issuance; and disposition of fees; proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

1. Every registration plate shall be of reflectorized material and have displayed upon it the registration
number assigned to the vehicle for which it is issued; the
name of this state, which may be abbreviated; and the year
number for which it is issued or the date of expiration of
the plate.

(2) Every registration plate and the required letters
and numerals on the plate shall be of sufficient size to be
plainly readable from a distance of one hundred feet
during daylight: Provided, That the requirements of this
subdivision shall not apply to the year number for which
the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall
begin with number two.

(c) The division may not issue, permit to be issued or
distribute any special registration plates except as follows:

(1) The governor shall be issued two registration
plates, on one of which shall be imprinted the numeral one
and on the other the word one.

(2) State officials and judges may be issued special
registration plates as follows:

(A) Upon appropriate application, there shall be issued
to the secretary of state, state superintendent of schools,
auditor, treasurer, commissioner of agriculture and the
attorney general, the members of both houses of the
Legislature, including the elected officials thereof, the
justices of the supreme court of appeals of West Virginia,
the representatives and senators of the state in the
Congress of the United States, the judges of the United
States district courts for the state of West Virginia and the
judges of the United States court of appeals for the fourth
circuit, if any of the judges are residents of West Virginia,
a special registration plate for a Class A motor vehicle
owned by the official or his or her spouse: Provided, That
the division may not issue more than two plates for each
official.

(B) Each plate issued pursuant to this subdivision shall
bear any combination of letters and numbers not to
exceed an amount determined by the commissioner and a
designation of the office. Each plate shall supersede the
46 regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) An annual fee of fifteen dollars shall be charged for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) Members of the national guard forces may be issued special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, or the commanding officer of any United States armed forces reserve unit that the applicant is a member thereof, the division shall issue to any member of the national guard of this state or a member of any reserve unit of the United States armed forces a special registration plate designed by the commissioner for any number of Class A motor vehicles owned by the member.

(B) An initial application fee of ten dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this section.

(C) A surviving spouse may continue to use his or her deceased spouse’s national guard forces license plate until the surviving spouse dies, remarries or does not renew the license plate.

(4) Specially arranged registration plates may be issued as follows:

(A) Upon appropriate application, any owner of a motor vehicle subject to Class A registration, or a motorcycle subject to Class G registration, as defined by this article, may request that the division issue a
registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The division shall attempt to comply with the request wherever possible.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) Honorably discharged veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.
(6) Disabled veterans may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any disabled veteran, who is exempt from the payment of registration fees under the provisions of this chapter, a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters "DV" in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veteran license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(7) Recipients of the distinguished purple heart medal may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished purple heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the commissioner of motor vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the purple heart. All letterings shall be in purple where practical.

(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s purple heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.
(D) A recipient of the purple heart medal may obtain a second purple heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(8) Survivors of the attack on Pearl Harbor may be issued special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, shall be issued a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the commissioner of motor vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second plate.

(9) Nonprofit charitable and educational organizations may be issued special registration plates as follows:

(A) Nonprofit charitable and educational organizations may design a logo or emblem for inclusion on a special registration plate and submit the logo or emblem to the commissioner for approval and authorization. Upon the approval and authorization, the nonprofit
charitable and educational organizations may market the special registration plate to organization members and the general public.

(B) Approved nonprofit charitable and educational organizations may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the division of motor vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations’ logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(C) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(D) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educational organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

10) Specified emergency or volunteer registration plates may be issued as follows:

(A) Any owner of a motor vehicle who is a resident of the state of West Virginia and who is a certified paramedic or emergency medical technician, a member of a volunteer fire company or a paid fire department, a member of the state fire commission, the state fire marshal, the state fire marshal’s assistants, the state fire administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A
vehicles titled in the name of the qualified applicant which
bears the insignia of the profession, group or commission.
Any insignia shall be designed by the commissioner.
License plates issued pursuant to this subdivision shall
bear the requested insignia in addition to the registration
number issued to the applicant pursuant to the provisions
of this article.

(B) Each application submitted pursuant to this
subdivision shall be accompanied by an affidavit signed
by the fire chief or department head of the applicant
stating that the applicant is justified in having a
registration with the requested insignia; proof of
compliance with all laws of this state regarding registration
and licensure of motor vehicles; and payment of all
required fees.

(C) Each application submitted pursuant to this
subdivision shall be accompanied by payment of a special
initial application fee of ten dollars, which is in addition to
any other registration or license fee required by this
chapter. All special fees shall be collected by the division
and deposited into a special revolving fund to be used for
the purpose of compensating the division of motor
vehicles for additional costs and services required in the
issuing of the special registration and for the
administration of this section.

(11) Special scenic registration plates:

(A) Upon appropriate application, the commissioner
shall issue a special registration plate displaying a scenic
design of West Virginia no later than the first day of
January, one thousand nine hundred ninety-six. This
special plate shall display the words “Wild Wonderful” as
a slogan.

(B) A special one-time initial application fee of ten
dollars shall be charged in addition to all other fees
required by this chapter. All initial application fees
collected by the division shall be deposited into a special
revolving fund to be used in the administration of this
chapter.
(12) Honorably discharged marine corps league members may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any honorably discharged marine corps league member, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's honorably discharged marine corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(13) Military organization registration plates:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from such organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, members of the chartered organization in good standing, as determined by the governing body of the chartered organization, may be issued a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) A special one-time initial application fee of ten dollars shall be charged for each special license plate in addition to all other fees required by this chapter. All
initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.

(14) Special nongame wildlife registration plates:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia nongame wildlife no later than the first day of January, one thousand nine hundred ninety-eight. This special plate shall display a species of nongame wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) An annual fee of fifteen dollars shall be charged for each special nongame wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) A special one-time initial application fee of ten dollars shall be charged in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(15) Members of the silver haired legislature may be issued special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any person who is a duly qualified member of the silver haired legislature a specialized registration plate which
bears recognition of the applicant as a member of the silver haired legislature.

(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the plate. All annual fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(d) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the proper forms to be used in making application for the special license plates authorized by this section.

(e) (1) Nothing in this section may be construed to require a charge for a free prisoner of war license plate or a free recipient of the congressional medal of honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.

(2) A surviving spouse may continue to use his or her deceased spouse's prisoner of war or congressional medal of honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the congressional medal of honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for the second special plate.

(f) Special ten-year registration plates may be issued as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted
from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.

(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached thereto to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

(i) Any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.
CHAPTER 140

(Com. Sub. for H. B. 2435—By Delegates Proudfoot, Boggs, Prunty, Stemple, Claypole, Border and Evans)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license plates for conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, treasurer, three plates per elected office of the board of public works, vehicles operated by the state police, vehicles operated by conservation officers of the division of natural resources, not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal and not to exceed sixteen vehicles operated by inspectors of the office of the alcohol beverage control commissioner, may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words "West Virginia" in one line and the words "State Car" in another line, and the lettering for the words "State Car" shall be of suffi-
The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word "County" on top of the plate and the words "West Virginia" on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word "City" on top, and the words "West Virginia" on the bottom. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles.

The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

Upon application and payment of fees, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on law-enforcement vehicles while engaged in undercover investigations.

The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the state of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

The commissioner is authorized to issue twenty Class A license plates to the criminal investigation division of the department of tax and revenue for use by its investigators.

The commissioner may issue a maximum of ten Class A license plates to the division of natural resources.
for use by conservation officers. The commissioner shall
designate the color and design of the registration plates to
be displayed on the front and the rear of all other state-
owned vehicles owned by the division of natural resources
and operated by conservation officers.

No other registration plate may be issued for, or at-
tached to, any state-owned vehicle.

The commissioner of motor vehicles shall have a suffi-
cient number of both front and rear plates produced to
attach to all state-owned cars. The numbered registration
plates for the vehicles shall start with the number "five
hundred" and the commissioner shall issue consecutive
numbers for all state-owned cars.

It is the duty of each office, department, bureau, com-
mission or institution furnished any vehicle to have plates
as described herein affixed thereto prior to the operation
of the vehicle by any official or employee.

Any person who violates the provisions of this section
shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than fifty dollars nor more
than one hundred dollars.

Magistrates shall have concurrent jurisdiction with
circuit and criminal courts for the enforcement of this
section.

CHAPTER 141

(S. B. 376—By Senators Oliverio, Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Ross, Schoonover, Snyder, White, Wiedebusch, Deem, Kimble and
Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, seven,
eight, ten and thirteen, article six-a, chapter seventeen-a of
the code of West Virginia, one thousand nine hundred thirty-
one, as amended, all relating to motor vehicles, distributors,
wholesalers and manufacturers generally; providing defini-
tions; modifying requirements for cancellation of dealer
contracts and notification thereof; providing circumstances not constituting good cause; modifying notice provisions; modifying reasonable compensation to dealer upon termination of agreement; providing prohibited practices; and modifying obligations regarding warranties and limiting the period of time for audits thereon.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, seven, eight, ten and thirteen, article six-a, chapter seventeen-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 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.


For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

"Dealer agreement" means the agreement or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

"Designated family member" means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new
motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

"Distributor" means any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factory representative, resident or nonresident, or who controls any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.

"Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances.

"Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

"Factory representative" means an agent or employee of a manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contract-
“Good faith” means honesty in fact and the observa-
tion of reasonable commercial standards of fair dealing in
the trade.

“Manufacturer” means any person who manufactures
or assembles new motor vehicles; or any distributor, facto-
ry branch or factory representative.

“Motor vehicle” means that term as defined in sec-
tion one, article one of this chapter, including motorcycle
and recreational vehicle as defined in subsections (c) and
(nn), respectively, of that section, but not including a trac-
tor or farm equipment.

“New motor vehicle” means a motor vehicle which is
in the possession of the manufacturer, distributor or
wholesaler, or has been sold only to a new motor vehicle
dealer and on which the original title has not been issued
from the new motor vehicle dealer.

“New motor vehicle dealer” means a person who
holds a dealer agreement granted by a manufacturer or
distributor for the sale of its motor vehicles, who is en-
gaged in the business of purchasing, selling, leasing, ex-
changing or dealing in new motor vehicles, service of said
vehicles, warranty work and sale of parts who has an estab-
lished place of business in this state.

“Person” means a natural person, partnership, corpo-
ration, association, trust, estate or other legal entity.

“Proposed new motor vehicle dealer” means a person
who has an application pending for a new dealer agree-
ment with a manufacturer or distributor. Proposed motor
vehicle dealer does not include a person whose dealer
agreement is being renewed or continued.

“Relevant market area” means:

(a) For a proposed new motor vehicle dealer or a new
motor vehicle dealer who plans to relocate his or her place
of business in a county having a population which is
greater than thirty thousand, the area within a radius of
eight miles of the intended site of the proposed or relocated dealer.

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is not greater than thirty thousand, the area within a radius of fifteen miles of the intended site of the proposed or relocated dealer.


(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article;

(b) Acted in good faith;

(c) Engaged in full and open communication with franchised dealer; and

(d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subdivision (d), subsection (1) of this section when both of the following occur:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer; and

(b) The manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than two years prior to the date on which notification was given pursuant to section seven of this article.

(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales
or service, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;

(b) The notification stated that the notice of failure of performance was provided pursuant to this article;

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and

(d) The failure continued for more than one hundred eighty days after the date notification was given pursuant to subdivision (a) of this subsection.

Notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation, nonrenewal or discontinuance of a dealer agreement under subdivision (d), subsection (1), section four of this article:

(a) A change in ownership of the new motor vehicle dealer's dealership. The subdivision does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: Provided, That the new mo-
tor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter: Provided, That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.


Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d) of this subsection, notice shall be made not less than ninety days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail to the new motor vehicle dealer and shall contain the following:

(i) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement.

(ii) A statement of the reasons for the termination, cancellation, nonrenewal or discontinuance. Such statement shall include, at a minimum, a complete explanation of each reason upon which the manufacturer or distributor relies to support its proposed action, along with all supporting documentation which is material to the proposed action and available to the manufacturer or distributor at the time of termination, cancellation, nonrenewal or discontinuance.

(iii) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.
26 (c) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than fifteen days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance for any of the following reasons:

27 (i) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

28 (ii) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days.

29 (iii) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which the dealer was convicted, or the crime involved theft, dishonesty or false statement regardless of the punishment.

30 (iv) Revocation of a motor vehicle dealership license in accordance with section eighteen, article six, chapter seventeen-a of this code.

31 (v) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

32 (d) Notwithstanding subdivision (a) of this subsection notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

1 (1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

2 (a) Any new motor vehicle inventory purchased from the manufacturer or distributor, which has not been materially altered, substantially damaged or driven for more
than five hundred miles, except that for any new motorcycle inventory purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles.

(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer's or distributor's current parts catalog.

(c) Equipment, furnishings and signs purchased from the manufacturer or distributor.

(d) Special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, nonrenewal or discontinuance.

(2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of one year from the effective date of termination, cancellation, nonrenewal or discontinuance, or the remainder of the lease, whichever is less. However, the payment required by this subsection shall not apply to any termination, cancellation, nonrenewal or discontinuance made pursuant to subsection (c), section five of this article.


(1) A manufacturer or distributor shall not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, part or accessory thereof, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.

(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor.
(c) Participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices or display decorations or materials at the expense of the new motor vehicle dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of this article.

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor shall not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in
reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor.

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor.

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone or region, whichever geographical area is the smallest.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar.
(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters.

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line make.

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent.

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose.

(h) Establish a new motor vehicle dealership which would unfairly compete with a new motor vehicle dealer of the same line make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions.

(i) Unreasonably withhold consent to the sale, transfer or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.
(j) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days shall be deemed to be consent.

(k) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership.

(l) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service incentives, rebates or other forms of sales incentive compensation more than twelve months after the claim for payment or reimbursement has been made by the automobile dealer: Provided, That the provisions of this subsection shall not apply where a claim is fraudulent.

(3) A manufacturer or distributor, either directly or through any subsidiary, shall not terminate, cancel, fail to renew or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.


(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In
the determination of what constitutes reasonable compensation under this section, the principal factor to be given
consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing
business, and in no event shall the compensation of a dealer for warranty labor and parts be less than the rates
charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that such
rates are reasonable. However, in the case of a new motor vehicle dealer of motorcycles or recreational vehicles, in
no event may the compensation of a dealer for warranty parts be less than the dealer's cost of acquiring the part
plus twenty percent.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation.

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects.

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim.
AN ACT to amend and reenact section three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration and licensing fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) Class A. — The registration fee for all motor vehicles of this class is twenty-eight dollars and fifty cents: Provided, That the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

*Clerk's Note: This section was also amended by S. B. 74 (Chapter 138), which passed prior to this act.
No license fee shall be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) Class B, Class E and Class K. — The registration fee for all motor vehicles of these three classes is as follows:

(A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds — twenty-eight dollars plus five dollars for each one thousand pounds or fraction thereof that the gross weight of the vehicle or combination of vehicles exceeds eight thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — seventy-eight dollars and fifty cents plus ten dollars for each one thousand pounds or fraction thereof that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — seven hundred thirty-seven dollars and fifty cents plus fifteen dollars and seventy-five cents for each one thousand pounds or fraction thereof that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) Class C and Class L. — The registration fee for all vehicles of these two classes is seventeen dollars and fifty cents except that semitrailers, full trailers, pole trailers and converter gear registered as Class C and Class L may be registered for a period of ten years at a fee of one hundred dollars.

(4) Class G. — The registration fee for each motorcycle or parking enforcement vehicle is eight dollars.

(5) Class H. — The registration fee for all vehicles for this class operating entirely within the state is five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees pro-
vided by this section for Class B, Class E and Class K re-
duced by the amount that the mileage of the vehicles op-
erated in states other than West Virginia bears to the total
mileage operated by the vehicles in all states under a for-
mula to be established by the division of motor vehicles.

(6) Class J. — The registration fee for all motor vehi-
cles of this class is eighty-five dollars. Ambulances and
hearses used exclusively as such are exempt from the
special fees set forth in this section.

(7) Class M. — The registration fee for all vehicles of
this class is seventeen dollars and fifty cents.

(8) Class U. — The registration fee for all vehicles of
this class is fifty-seven dollars and fifty cents.

(9) Class Farm Truck. — The registration fee for all
motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight
thousand one pounds to sixteen thousand pounds — thirty
dollars.

(B) For farm trucks of declared gross weights of six-
 teen thousand one pounds to twenty-two thousand pounds — sixty dollars.

(C) For farm trucks of declared gross weights of
twenty-two thousand one pounds to twenty-eight thousand
pounds — ninety dollars.

(D) For farm trucks of declared gross weights of
twenty-eight thousand one pounds to thirty-four thousand
pounds — one hundred fifteen dollars.

(E) For farm trucks of declared gross weights of
thirty-four thousand one pounds to forty-four thousand
pounds — one hundred sixty dollars.

(F) For farm trucks of declared gross weights of
forty-four thousand one pounds to fifty-four thousand
pounds — two hundred five dollars.
(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to sixty-four thousand pounds — two hundred fifty dollars.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion thereof based on the number of years remaining in the three-year period designated by the commissioner:

(1) Class R. — The annual registration fee for all vehicles of this class is twelve dollars.

(2) Class T. — The annual registration fee for all vehicles of this class is eight dollars.

(c) The fees paid to the division for a multi-year registration provided for by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

CHAPTER 143

(H. B. 2163—By Delegates Osborne, Cann, Thompson, Yeager and Frederick)

[Passed April 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restricting the use of marked left turn lanes on roadways.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-9. Driving on roadways lane for traffic.

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(c) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

CHAPTER 144

(S. B. 395—By Senators Wiedebusch and Buckalew)

[Passed April 9, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public utilities tax imposed by municipalities and the exceptions or exemptions thereto.

Be it enacted by the Legislature of West Virginia:
That section five-a, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. TAXATION AND FINANCE.

PART 1. POWERS OF TAXATION.


1. Every municipality has the plenary power and authority to levy and collect an excise tax on the privilege of purchasing, using or consuming, within the corporate limits of the municipality, public utility services and tangible personal property from public utilities subject to the jurisdiction of the public service commission of West Virginia. The tax is computed on the basis of an amount not to exceed two percent of the gross amount of each periodic statement rendered purchasers or consumers by public utilities: Provided, That sales of tangible personal property such as appliances or the like, as distinguished from the public service supplied, are not included in the gross amount subject to the measure of this tax: Provided, however, That this tax does not apply to sales of telecommunications services to another telecommunications provider for the purposes of access, interconnection or resale to consumers. Charges or fees for items on the periodic statement that are not public utility services, including surcharges for telecommunications relay services for the hearing impaired and fees for enhanced emergency telephone systems, are not included in the gross amount subject to the measure of this tax. The purchasers or consumers shall pay to the public utilities the amount of the tax levied pursuant to this section which is added to and constitutes a part of the cost of the service or property so purchased or consumed and is collectible as such by the public utilities who shall account to the municipality levying same for all tax paid by the purchasers or consumers pursuant to the provisions of any ordinance imposing the tax.

2. Any ordinance imposing the tax shall require the collection thereof uniformly from all purchasers and consumers of all the services and property within the corporate limits of the municipality and contain reasonable rules...
governing the collection thereof by the utilities and the
method of its payment and accounting to the
municipality: Provided, That the tax is not effective until
the municipality gives sixty days written notice by
certified mail to any utility doing business therein of the
effective date of the ordinance. Any required separation
of gross income shall occur in the ordinance whenever
necessary to comply with state or federal law: Provided,
however, That the tax authorized by this section may not
be levied upon charges for telephone services which are
paid by the insertion of coins into coin-operated
telephones, and specific charges for telephone calls to
points outside the taxing municipality: Provided further,
That specific charges for telephone calls to points outside
the taxing municipality is construed to mean separately
itemized or bulk-billed charges for long distance
telecommunications service to points outside the local
exchange service area. The charges subject to the tax
authorized by this section include local usage charges
applicable to telephone calls originating within the
corporate limits of the municipality which imposes the tax,
regardless of where the calls terminate, and also include
the federal subscriber line charge.

Notwithstanding any other provisions of the law to the
contrary contained in the code of West Virginia, one
thousand nine hundred thirty-one, as amended, the
provisions of this section are in addition to all other taxing
authority heretofore granted municipalities.

CHAPTER 145

(S. B. 558—By Senators Helmick, Bailey, Oliverio, Wooton, Kimble, Buckalew,
Dittmar, Prezioso and Hunter)

[Passed April 11, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen and seventeen,
article one-b, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all relat-
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-16. Pay and allowances.
§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

§15-1B-16. Pay and allowances.

(a) Pay and allowances for officers and enlisted personnel of the national guard for drill, encampment or other duty for training prescribed or ordered by the federal government, shall be such as are provided by the laws of the United States.

(b) Officers and enlisted personnel of the national guard in active service of the state shall receive the same pay and allowances, in accordance with their rank and service, as are prescribed for the armed forces of the United States: Provided, That no member of the national guard shall receive base pay of less than seventy-five dollars per day while he or she is in active service of the state.

(c) Notwithstanding any of the provisions of this article, members of the national guard, may, with their consent, perform without pay, or without pay and allowances, any duties prescribed by section thirteen of this article pursuant to competent orders therefor: Provided, That necessary expenses may be furnished such personnel within the discretion of the adjutant general.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.
(a) There may be paid to each commander of a brigade, regiment, air wing, army group or other corresponding type organization, one hundred dollars per month and to each commander of a battalion, army squadron, air group or other equivalent type organization, fifty dollars per month, and to each commander of a company, air squadron or other equivalent type organization, twenty-five dollars per month, payable quarterly, to be known as command pay.

(b) There shall be allowed to each headquarters of a brigade, regiment, air wing, army group or equivalent type organization the sum of one hundred dollars per month and each headquarters of a battalion, army squadron, air group or corresponding type organization, the sum of fifty dollars per month for clerical services; and to each company air squadron or corresponding type unit, the sum of twenty-five dollars per month for like services, payable quarterly. The commandant of the West Virginia military academy shall be allowed the sum of twenty-five dollars a month, payable quarterly, for like services.

(c) At the discretion of the adjutant general, there may be paid to the enlisted man or woman who is directly responsible for the care and custody of the federal and state property of each organization or unit, the sum of ten dollars per month, payable quarterly, upon the certificate of his or her commanding officer, that he or she has faithfully and satisfactorily performed the duties assigned him or her and accounted for all property entrusted to his or her care.

(d) The adjutant general shall determine the amount of entitlement to command pay and clerical pay, not to exceed the amounts set forth in subsections (a) and (b) of this section, using organizational charts showing chain of command and authorized strengths and defining other equivalent type organizations.
AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making uniform statewide the seasons in which dogs can be trained in the hunting or tracking of wild animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the director, it is unlawful at any time for any person to:

1. Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

2. Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by rules promulgated by the director or by law;

3. Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her.
to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it may not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by rules promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession such nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the director;
(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he or she has in his or her possession a permit in writing issued to him or her by the director: Provided, That this section may not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in subdivision (11) below or in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting
site, campsite, home or other place of abode;

91 (11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals;

92 (12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

93 (13) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

94 (14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

95 (15) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

96 (16) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the director, or the sale of which is prohibited;

97 (17) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hun-
(18) Kill, take, catch or have in his or her possession, living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which may not be protected and the killing thereof at any time is lawful;

(19) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(20) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(21) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(22) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(23) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(24) Shoot an arrow across any public highway or
(25) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: **Provided**, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands, at any time: **Provided, however**, That non-residents may not train dogs in this state at any time except during the legal small game hunting season: **Provided further**, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(26) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: **Provided**, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(27) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the director as authorized by subdivision (6), section seven, article one of this chapter.
AN ACT to amend and reenact sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the neighborhood investment program act; amending the definition of economically disadvantaged area; eliminating certain definitions; removing certain time limitations within which an application for approval of a project must be certified and permitting the neighborhood investment program advisory board to delay consideration of an application when additional information is needed; requiring project transferees to file quarterly reports on progress of certified projects; removing obsolete language regarding an initial appropriation from general revenue for administrative expenses and initial appointments to the advisory board; permitting advisory board members to solicit support or donations for certified projects; reducing the required number of meetings of the advisory board; clarifying language permitting the tax division and the development office to perform joint audits; clarifying program evaluation language; and providing for termination of the act on the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia
§11-13J-4a. Neighborhood investment program advisory board.

§11-13J-8. Total maximum aggregate tax credit amount.

§11-13J-11. Audits and examinations; information sharing.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlements.


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

(b) Terms defined.

(1) Affiliate. — The terms “affiliate” or “affiliates” include all concerns which are affiliates of each other when either directly or indirectly:

(A) One concern controls or has the power to control the other; or

(B) A third party or third parties control or have the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) Capacity building. — The term “capacity building” means to generally enhance the capacity of the community to achieve improvements and to obtain the community services described in items (i) through (v), inclusive, of the definition of that term, as set forth in subdivision (4) of this subsection. Capacity building includes, but is not limited to, improvement of the means, or capacity, to:

(i) Access, obtain and use private, charitable and governmental assistance programs, administrative assistance, and private, charitable and governmental resources or funds;
(ii) Fulfill legal, bureaucratic and administrative re-
quirements and qualifications for accessing assistance,
resources or funds; and

(iii) Attract and direct political and community atten-
tion to needs of the community for the purpose of in-
creasing access to and use of assistance, resources or funds
for a given purpose, goal or need.

(3) Commissioner or tax commissioner. — The terms
“commissioner” and “tax commissioner” are used inter-
changeably herein and mean the tax commissioner of the
State of West Virginia, or his or her delegate.

(4) Community services. — “Community services”
means services, provided at no charge whatsoever, of:

(i) Providing any type of health, personal finance,
psychological or behavioral, religious, legal, marital, edu-
cational or housing counseling and advice to economically
disadvantaged citizens or a specifically designated
group of economically disadvantaged citizens or in an
economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to
economically disadvantaged citizens or to a specifically
designated group of economically disadvantaged citizens
or in an economically disadvantaged area; or

(iii) Establishing, maintaining or operating recreation-
al facilities, or housing facilities for economically disad-
vantaged citizens or a specifically designated group of
economically disadvantaged citizens or in an economically
disadvantaged area; or

(iv) Providing economic development assistance to
economically disadvantaged citizens or a specifically des-
ignated group of economically disadvantaged citizens;
without regard to whether they are located in an economi-
cally disadvantaged area, or to individuals, groups or
neighborhood or community organizations, in an eco-
nomically disadvantaged area; or

(v) Providing community technical assistance and
capacity building to economically disadvantaged citizens
or a specifically designated group of economically disadvantaged citizens, or to individuals, groups or neighborhood or community organizations in an economically disadvantaged area.

(5) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation. — The term "corporation" means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.


(8) Delegate. — The term "delegate" in the phrase "or his or her delegate", when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(9) Director or director of the West Virginia development office. — The term "director" or "director of the West Virginia development office" means the director of the West Virginia office.

(10) Economically disadvantaged area. — The term "economically disadvantaged area" means:

(A) In a municipality - any area not exceeding fifteen square miles in West Virginia which contains any portion of an incorporated municipality and:

(i) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(ii) That is certified as an economically disadvantaged area by the West Virginia development office;
(B) In a rural area - any area not exceeding twenty-five square miles in West Virginia:

(i) Which area is located in a rural area and which contains no incorporated municipalities or portions thereof;

(ii) In which area the aggregate poverty rate of persons residing in the area, based upon the most recent decennial census of population, is at least one hundred twenty-five percent of the statewide poverty rate; and

(iii) That is certified as an economically disadvantaged area by the West Virginia development office;

(C) An economically disadvantaged area shall qualify as such only pursuant to a certification issued by the West Virginia development office. Such certifications issued by the West Virginia development office shall expire after the passage of five calendar years, unless specifically limited to a shorter time by specific order of the West Virginia development office, and no area shall hold the status of a certified economically disadvantaged area for a period of time greater than ten years, either consecutively or in the aggregate;

(D) The certification of an economically disadvantaged area shall be made on the basis of a determination by the development office that an area meets the poverty criteria established in paragraphs (A) and (B) of this subdivision;

(E) No economically disadvantaged area may be certified within twenty-five miles of any other certified economically disadvantaged area. Not more than six economically disadvantaged areas may hold the status of certified economically disadvantaged areas at any one time in this state;

(F) At least a majority of all economically disadvantaged areas holding designations as economically disadvantaged areas at any one time shall be located in rural areas; and

(G) Such certification shall be filed with the secretary
of state and shall specifically set forth the boundaries of the economically disadvantaged area by both description and map, the date of certification of the area as an economically disadvantaged area, the date on which such certification will terminate and a statement of the director's findings as to the aggregate poverty rate of persons living in the certified economically disadvantaged area.

(11) **Economically disadvantaged citizen.** — The term "economically disadvantaged citizen" means a natural person, who during the current taxable year has, or during the immediately preceding taxable year had, an annual gross personal income not exceeding one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who is a domiciliary and resident of this state.

(12) **Education.** — "Education" means any type of scholastic instruction to, or scholarship by, an individual that enables such individual to prepare for better life opportunities. Education does not include courses in physical training, physical conditioning, physical education, sports training, sports camps and similar training or conditioning courses (except for physical therapy prescribed by a physician or other person licensed to prescribe courses of medical treatment under West Virginia law).

(13) **Eligible contribution.** —

(A) An eligible contribution consists of cash, tangible personal property valued at its fair market value, real property valued at its fair market value or a contribution of in kind professional services valued at seventy-five percent of fair market value;

(B) For purposes of this definition, the value of in kind professional services will not qualify as an eligible contribution unless the services are:

(i) Reasonably priced and valued, and reasonably necessary services customarily and normally provided by the contributor in the normal course of business to customers, clients or patients other than those encompassed by the project plan;
(ii) Not reimbursable, in whole or in part, from sources other than the tax credit provided under this article; and

(iii) Are services which are not available without cost elsewhere in the community;

(C) The term "professional services" means only those services provided directly by a physician licensed to practice in this state, those services provided directly by a dentist licensed to practice in this state, those services provided directly by a lawyer licensed to practice in this state, those services provided directly by a registered nurse, licensed practical nurse, dental hygienist or other health care professional licensed to practice in this state and those services provided directly by a certified public accountant or public accountant licensed to practice in this state;

(D) Minimum contribution. — No contribution of cash, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value of less than five hundred dollars qualifies as an eligible contribution;

(E) Maximum contribution. — No contribution of cash, property or professional services or any combination thereof contributed in any tax year by any taxpayer having a fair market value in excess of two hundred thousand dollars qualifies as an eligible contribution; and

(F) Limitations. — Not more than twenty-five percent of total eligible contributions to a certified project may be in kind contributions. Not more than twenty-five percent of total eligible contributions made by any taxpayer to any certified project may be in kind contributions.

(14) Eligible taxpayer. —

(A) The term "eligible taxpayer" means any person subject to the taxes imposed by article twenty-one, twenty-three or twenty-four of this chapter which makes an eligible contribution to a qualified charitable organization pursuant to the terms of a certified project plan for the purpose of providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education for individuals not em-
employed by the contributing taxpayer or an affiliate of the
contributing taxpayer or a person related to the contribut-
ing taxpayer;

(B) "Eligible taxpayer" also includes an affiliated
group of taxpayers if such group elects to file a consoli-
dated corporation net income tax return under article
twenty-four of this chapter and if one or more affiliates
included in such affiliated group would qualify as an
eligible taxpayer under paragraph (A) of this subdivision.

(15) Includes and including. — The terms "in-
cludes" and "including", when used in a definition con-
tained in this article, shall not be deemed to exclude other
things otherwise within the meaning of the term defined.

(16) Job training. — "Job training" means instruc-
tion to an individual that enables the individual to acquire
vocational skills so as to become employable or to be able
to seek a higher grade of employment.

(17) Natural person or individual. — The term "natu-
ral person" and the term "individual" means a human
being. The terms "natural person" and "individual" do
not mean, and specifically exclude any corporation, limit-
ed liability company, partnership, joint venture, trust, orga-
nization, association, agency, governmental subdivision,
syndicate, affiliate or affiliation, group, unit or any entity
other than a human being.

(18) Neighborhood assistance. — "Neighborhood
assistance" means either:

(A) Furnishing financial assistance, labor, material and
technical advice to aid in the physical or economic im-
provement of any part or all of an economically disadvan-
taged area; or

(B) Furnishing technical advice to promote higher
employment in an economically disadvantaged area.

(19) Neighborhood organization. — "Neighborhood
organization" means any organization:

(A) Which is performing community services, as de-

ned in this section; and
(B) Which is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code.

(20) Partnership and partner. — The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(21) Person. — The term "person" includes any natural person, corporation, limited liability company or partnership.

(22) Project transferee. — The term "project transferee" means any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person that receives an eligible contribution or part of an eligible contribution from an eligible taxpayer for the purpose of directly or indirectly providing neighborhood assistance, community services or crime prevention, or for the purpose of providing job training or education or other services or assistance pursuant to a project plan. The project transferee is typically the first entity or person receiving eligible contributions from eligible taxpayers under a project plan. However, in the case of eligible contributions of in kind services or other eligible contributions or portions thereof made pursuant to a certified project plan directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. The project transferee is the entity, organization or person that is liable under this
article for payment of the project certification fee to the
West Virginia development office. The term "project
transferee" shall mean and include any deemed project
transferee, deemed as such under the provisions of this
article.

(23) Qualified charitable organization. — The term
"qualified charitable organization" means a neighbor-
hood organization, as defined in this section, which is the
sponsor of a project which has received certification by
the director of the West Virginia development office pur-
suant to the requirements of this article: Provided, That
no organization may qualify as a qualified organization
for purposes of this article if such organization is not
registered with this state as required under the solicitation
of charitable funds act.

(24) Related person. — The term "related person" or
"person related to" a stated taxpayer means:

(A) An individual, corporation, partnership, affiliate,
association or trust or any combination or group thereof
controlled by the taxpayer; or

(B) An individual, corporation, partnership, affiliate,
association or trust or any combination or group thereof
that is in control of the taxpayer; or

(C) An individual, corporation, partnership, affiliate,
association or trust or any combination or group thereof
controlled by an individual, corporation, partnership, affil-
iate, association or trust or any combination or group
thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the
taxpayer.

For purposes of this article, "control", with respect to a
corporation means ownership, directly or indirectly, of
stock possessing fifty percent or more of the total com-
bined voting power of all classes of the stock of such cor-
poration which entitles its owner to vote. "Control", with
respect to a trust, means ownership, directly or indirectly,
of fifty percent or more of the beneficial interest in the
principal or income of such trust. The ownership of stock
in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c), other than paragraph (3) of such section, of the United States Internal Revenue Code, as amended.

(25) *State fiscal year.* — "State fiscal year" means a twelve-month period beginning on the first day of July and ending on the thirtieth day of June.

(26) *Taxpayer.* — The term "taxpayer" means any person subject to the tax imposed by article twenty-one, twenty-three or twenty-four of this chapter (or any one or combination of such articles of this chapter).

(27) *Technical assistance.* — The term "technical assistance" means:

(A) Assistance in understanding, using and fulfilling the legal, bureaucratic and administrative requirements and qualifications which must be negotiated for the purpose of effectively accessing, obtaining and using private, charitable, not-for-profit or governmental assistance, resources or funds, and maximizing the value thereof;

(B) Assistance provided by any person holding a license under West Virginia law to practice any licensed profession or occupation, whereby such person, in the practice of such profession or occupation, assists economically disadvantaged citizens or the persons in an economically disadvantaged area by:

(i) Providing any type of health, personal finance, psychological or behavioral, religious, legal, marital, educational or housing counseling and advice to economically disadvantaged citizens or a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or

(ii) Providing emergency assistance or medical care to economically disadvantaged citizens or to a specifically designated group of economically disadvantaged citizens or in an economically disadvantaged area; or
(iii) Establishing, maintaining or operating recreation-
facilities, or housing facilities for economically disad-
vantaged citizens or a specifically designated group of 
economically disadvantaged citizens or in an economi-

cally disadvantaged area; or

(iv) Providing economic development assistance to 
economically disadvantaged citizens or a specifically des-
ignated group of economically disadvantaged citizens,
without regard to whether they are located in an economi-
cally disadvantaged area, or to individuals, groups or 
neighborhood or community organizations, in an econo-

mically disadvantaged area; or

(v) Providing community technical assistance and 
capacity building to economically disadvantaged citizens 
or a specifically designated group of economically disad-
vantaged citizens or to individuals, groups or neighbor-
hood or community organizations in an economically 
disadvantaged area.

§11-13J-4. Eligibility for tax credits; creation of neigh-

borhood investment fund; certification of project 

plans by the West Virginia development office.

(a) A neighborhood organization which seeks to spon-

sor a project and have that project certified pursuant to 
this article shall submit to the director of the West Virginia 
development office an application for certification of a 
project plan, in such form as the director shall prescribe, 
setting forth the project to be implemented, the identity of 
all project participant organizations, the economically 

disadvantaged citizens or a specifically designated group 
of economically disadvantaged citizens, to be assisted by 
the project, or the economically disadvantaged area or 
areas selected for assistance by the project, the amount of 
total tax credits to be created by the proposed project 
pursuant to the receipt of eligible contributions from eligi-
ble taxpayers under this article, the amount of the total 
estimated eligible contributions to be received pursuant to 
the project and the schedule for implementing the project.

(b) Project certification fee; payment of costs; revolv-
ing fund. —
(1) (A) Project certification fee. — Any project transferee that receives eligible contributions under or pursuant to a certified project plan shall pay to the West Virginia development office a project certification fee in the amount of three percent of the amount of the total eligible contributions received by such project transferee pursuant to the certified project plan. The project certification fee shall be paid to the West Virginia development office within thirty days of the receipt of any eligible contribution, or portion thereof.

(B) Eligible contributions made through direct service to end users or recipients, or contributions to end users or recipients. — In the case of eligible contributions of in kind services or other eligible contributions or portions thereof made pursuant to a certified project plan and contributed or provided directly to indigent, disadvantaged or needy persons, economically disadvantaged citizens or other persons or organizations made under the sponsorship or auspices of any neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person as a certified project participant, such eligible contributions shall be deemed to have been made to the entity, organization or person under whose sponsorship or auspices such eligible contributions are made, and that entity, organization or person is deemed to be the project transferee with relation to those eligible contributions. Such deemed project transferee shall be liable for the project certification fee due for such eligible contributions.

(C) Computation of fee based on fair market value. — In the case of eligible contributions consisting of in kind services, tangible personal property or realty, the project transferee shall pay to the West Virginia development office a project certification fee in the amount of three percent of the fair market value of eligible contributions received pursuant to the certified project plan.

(2) Sanctions for failure to timely pay the project certification fee. — Failure to timely pay the project certification fee imposed by this section shall be grounds for imposition of any of the following sanctions, to be imposed
by the director of the West Virginia development office at
the discretion of the director:

(A) Prospective revocation of the project certification.

No tax credit shall be allowed for any project for
which certification has been revoked for periods subse-
quent to the effective date of revocation. Credit taken by
any taxpayer in accordance with this article pursuant to
the making of an eligible contribution to a project trans-
ferree pursuant to a certified project plan prior to the effec-
tive date of revocation of project certification shall not be
subject to recapture by reason of revocation of the certifi-
cation. However, such credit shall otherwise be subject to
audit and adjustment or recapture in accordance with the
requirements of this article.

(B) Retroactive withdrawal of the project certification.

No tax credit shall be allowed for any project for
which certification has been withdrawn. Credit taken by
any taxpayer in accordance with this article pursuant to
the making of an eligible contribution to a project trans-
ferree pursuant to a certified project plan for which certifi-
cation is later withdrawn pursuant to the provisions of this
section shall be subject to recapture upon withdrawal of
the certification.

(C) Suspension of the project certification for a stated
period of time.

No tax credit shall be allowed for contributions made
during the suspension period for a project. Credit taken
by any taxpayer in accordance with this article pursuant to
the making of an eligible contribution to a project trans-
ferree pursuant to a certified project plan prior to or subse-
quent to the suspension period shall not be subject to
recapture by reason of the suspension. However, such
credit shall otherwise be subject to audit and adjustment or
recapture in accordance with the requirements of this
article.

(D) Temporary or permanent disqualification of one
or more project transferees, neighborhood organizations,
qualified charitable organizations, charitable organizations
97 or other organizations, entities or persons from participa-
98 tion in a particular specified certified project.

99 No tax credit shall be allowed under this article for
100 any contribution made during the disqualification period
101 to any project transferee, neighborhood organization,
102 qualified charitable organization, charitable organization
103 or other organization, entity or person disqualified under
104 this section from participation in a certified project. Tax
105 credit taken by any taxpayer in accordance with this arti-
106 cle pursuant to the making of an eligible contribution to
107 any project transferee, neighborhood organization, quali-
108 fied charitable organization, charitable organization or
109 other organization, entity or person pursuant to a certified
110 project plan prior to or subsequent to the disqualification
111 period shall not be subject to recapture by reason of the
112 disqualification of the recipient thereof. However, such
113 credit shall otherwise be subject to audit and adjustment or
114 recapture in accordance with the requirements of this
115 article.

116 (E) Temporary or permanent disqualification of any
117 project transferee, neighborhood organization, qualified
118 charitable organization, charitable organization or other
119 organization, entity or person, or group thereof, from
120 participation in any and all certified projects currently in
121 existence or to be formed, proposed or certified under this
122 article:

123 (i) No tax credit shall be allowed under this article for
124 any contribution made during the disqualification period
125 to any project transferee, neighborhood organization,
126 qualified charitable organization, charitable organization
127 or other organization, entity or person disqualified under
128 this section from participation in any and all certified
129 projects under this article. Tax credit taken by any eligi-
130 ble taxpayer in accordance with this article pursuant to the
131 making of an eligible contribution to the project transfe-
132 ree, neighborhood organization, qualified charitable orga-
133 nization, charitable organization or other organization,
134 entity or person disqualified from participation in any and
135 all certified projects under this article, pursuant to a certi-
136 fied project plan prior to or subsequent to the disqualifica-
tion period shall not be subject to recapture by reason of the disqualification. However, such credit shall otherwise be subject to audit and adjustment or recapture in accordance with the requirements of this article; and

(ii) No certification shall be issued during the disqualification period for any proposed project in which a project transferee, neighborhood organization, qualified charitable organization, charitable organization or other organization, entity or person disqualified under this section from participation in any and all certified projects is listed as a proposed project participant.

(F) Any combination of the aforementioned sanctions.

(3) Audits and investigations. — The West Virginia development office or the department of tax and revenue, or both, may initiate and carry out investigations or audits of any recipient of any eligible contribution under this article, any eligible taxpayer or any project transferee to determine whether the project certification fee imposed by this section has been paid in accordance with the requirements of this article.

(4) Procedures, failure to timely pay the project certification fee upon written demand. —

(A) Written demand. — The director of the West Virginia development office shall, upon a reasonable belief that a project transferee has failed to timely pay the fee imposed by this section, issue a written demand for payment thereof, plus interest determined at the interest rate prescribed under section seventeen, article ten of this chapter, in such form as the director of the West Virginia development office may specify. The director of the West Virginia development office may also impose a penalty for failure to timely pay the project certification fee in the amount of twenty percent of the amount of the project certification fee due and interest due. Such demand shall notify the project transferee of the opportunity to show that the project certification fee is not due and owing.

(B) Failure to pay pursuant to written demand. —

Failure of the project transferee to pay any project
certification fee due, with interest and penalties, as stated in
the written demand for payment of the project certification
fee, within thirty days of service of such demand, and
failure of the project transferee to prove to the satisfaction
of the director of the West Virginia development office
that the fee imposed by this section is not due and owing,
shall result in a determination by the director of the West
Virginia development office that sanctions shall apply.

(C) Notice of pending sanctions. — Upon the making
of a determination by the director of the West Virginia
development office that sanctions for failure to pay the
project certification fee apply, the director of the West
Virginia development office shall serve upon the project
transferee from which the project certification fee, or some
portion thereof, is due and owing, a notice of pending
sanctions. If the project transferee from which the certi-
ified project fee, or some portion thereof, is due and owing
is not the applicant for project certification, then an infor-
mational copy of the notice of pending sanctions shall
also be served upon the applicant for project certification.

(D) Service of notice, content of notice. — The notice
of pending sanctions shall be served upon the delinquent
project transferee in the same manner as an assessment of
tax in accordance with article ten of this chapter. Such
notice of pending sanctions shall state the sanctions to be
applied in accordance with this section, the effective date
or dates of such sanctions, with specific statements of
whether any sanction is to be applied retroactively or in
part retroactively, and the commencement and termination
dates for any suspensions of certification or temporary
disqualifications of any program transferee, neighborhood
organization, qualified charitable organization, charitable
organization or other organization, entity or person to be
disqualified under this section from participation in certi-
ﬁed projects. The notice of pending sanctions shall state
that sanctions shall be imposed sixty days after service of
the notice of pending sanctions upon the delinquent pro-
ject transferee, unless the delinquent project transferee
pays the amount of the project certification fee due and
owing, plus interest and penalties.
Appeals. — The project transferee may file an appeal of pending sanctions as if the notice of pending sanctions were an assessment of tax under article ten of this chapter, and the matter on appeal shall be subject to the procedures set forth in article ten of this chapter. On appeal, the burden of proof shall be on the project transferee to prove that the project certification fee and associated interest and penalties are not due and owing. The review on appeal shall be limited to:

(i) The issue of whether a failure to timely pay the project certification fee or any portion thereof has occurred, the time period or periods over which such failure occurred, and whether such failure continues to occur;

(ii) The amount of the project certification fee and interest due; and

(iii) The mathematical and methodological accuracy of the computation of the project certification fee, interest and penalties.

Statutory confidentiality. — No information, document or proceeding brought pursuant to this section, relating to the liability of any project transferee for the project certification fee, interest or penalties imposed under this section is subject to the confidentiality provisions of article ten of this chapter or any other confidentiality provision of this code. However, any proceeding relating to any amount of tax due or the recapture of tax credit taken under this article or any adjustment of the amount of tax credit taken under this article is subject to the provisions of article ten of this chapter, including all statutory confidentiality provisions, and shall be subject to all other applicable statutory tax confidentiality provisions of this code.

Effect of a final determination, waiver of penalties or sanctions. — The notice of pending sanctions shall become final sixty days after service, unless an appeal is filed under this section, and shall not be subject to further appeal by the recipient thereof. When a determination has become final that a project transferee has failed to timely pay the project certification fee, or any part thereof, the
sanctions described in the notice of pending sanctions shall apply, effective as of the date set forth in that notice, unless the project certification fee, interest and penalties due are paid to the West Virginia development office within thirty days of the date on which the determination has become final. The twenty percent penalty authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the director of the West Virginia development office. However, payment of the project certification fee and interest due shall not be subject to waiver. The sanctions for failure to pay the project certification fee authorized under this section may be imposed, adjusted, withdrawn or waived, in whole or in part, at the discretion of the director of the West Virginia development office.

(c) Within sixty days after the close of the regular meeting of the neighborhood investment advisory board at which a complete application for approval of a proposed project is considered by the board, the director of the West Virginia development office shall certify, or deny certification of, the proposed project for which such application has been filed: Provided, That applications for which the board requires additional information may be considered at the next regular meeting of the board. Those applications not approved by the director within sixty days of final action of the board shall be deemed disapproved by operation of law.

(d) The West Virginia development office shall promptly notify an applicant as to whether an application for certification of a project plan has been approved or disapproved.

(e) Those prospective qualified charitable organizations which receive certification of a project plan, and which otherwise comply with the requirements of this article so as to become qualified charitable organizations, as defined in section three of this article, may receive eligible contributions, as defined in said section. Eligible taxpayers which make eligible contributions shall receive a tax credit as provided in section five of this article. No tax credit may be granted under this article for any contribution except eligible contributions made to a project which
has been certified in accordance with the requirements of this article prior to the making of the contribution. No tax credit may be granted under this article for any contribution which, if allowed, would cause the amount of tax credit generated by the project to exceed the maximum amount of tax credit for which the project was certified as stated in the application for project certification filed with the West Virginia development office.

(f) All applications for certification of a project filed with the West Virginia development office, whether such project is certified or denied certification, are public information which may be viewed and copied by the public and, at the discretion of the West Virginia development office, published by the West Virginia development office.

(g) Project transferees shall file quarterly reports with the West Virginia development office on the progress of the certified project. The quarterly reports shall be filed in a form approved by the director.

(h) Revolving fund. —

(1) For the purpose of permitting payments to be made and costs to be met for operation of the program established by this article, there is hereby created a revolving fund for the West Virginia development office, which shall be known as the neighborhood investment fund. All money received by the West Virginia development office under this article shall be paid into the state treasury, and shall be deposited to the credit of the neighborhood investment fund, and shall be expended only for the purposes of defraying the costs of the neighborhood investment program advisory board and the West Virginia development office in administering the program established pursuant to this article, unless otherwise directed by the Legislature.

(2) The neighborhood investment fund shall be accumulated and administered as follows:

(A) Payments received under this article shall be deposited into the neighborhood investment fund.

(B) Any appropriations made to the neighborhood
§11-13J-4a. Neighborhood investment program advisory board.

(a) There is hereby created a neighborhood investment program advisory board, which shall consist of twelve voting members and the chairperson.

(b) Chairperson. —

(1) The director of the West Virginia development office, or the designee of the director of the West Virginia development office, shall be the ex officio chairperson of the neighborhood investment program advisory board.

(2) The chairperson shall vote on actions of the board only in the event of a tie vote, in which case the chairperson's vote shall be the deciding vote.

(c) Board members. —

(1) Four members shall be officers or members of the boards of directors of unrelated corporations which are not affiliated with one another and which are currently licensed to do business in West Virginia.

(2) Four members shall be executive directors, officers or members of the boards of directors of unrelated not-for-profit organizations which are not affiliated with one another which currently hold charitable organization status under Section 501(c)(3) of the Internal Revenue Code and which are currently licensed to do business in West Virginia.

(3) Four members shall be economically disadvantaged citizens of the state that, for the taxable year immediately preceding the year of appointment to the board, had an annual gross personal income that was not more than one hundred twenty-five percent of the federal designated poverty level for personal incomes, and who has been a domiciliary and resident of this state for at least one year at the time of appointment.

A member appointed under this subdivision is not disqualified from completion of his or her term if his or
her income in the year of appointment or in any year
subsequent to the year of appointment exceeds one hun-
dred twenty-five percent of the federal designated poverty
level. A member shall not be eligible for reappointment
under this subdivision unless he or she meets the original
qualifications for appointment: Provided, That such
member may be reappointed pursuant to qualification
under subdivision (1) or (2) of this subsection if the mem-
er meets the requirements of subdivision (1) or (2), re-
spectively.

(d) Limitations; terms of members; appointments. —

(1) Not more than four members (exclusive of the
chairperson) shall be appointed from any one congressio-
nal district. Not more than seven of the members (exclu-
sive of the chairperson) may belong to the same political
party. Members shall be eligible for reappointment.
However, no member may serve for more than three con-
secutive terms.

(2) Appointment terms. —

(A) Except for initial appointments described under
subdivision (3) of this subsection, and except for midterm
special appointments made to fill irregular vacancies on
the board, members shall be appointed for terms of three
years each.

(B) Except for midterm special appointments made to
fill irregular vacancies on the board, appointment terms
shall begin on the first day of July of the beginning year.
All appointment terms, special and regular, shall end on
the thirtieth day of June of the ending year.

(3) Selection of members. —

(A) For the initial appointment of members under this
subdivision, members shall be selected by the director of
the West Virginia development office.

(B) At the end of a member's term, the chairperson
shall solicit new member nominations from the board and
appoint the most appropriate person to serve, in compli-
ance with the requirements set forth in this section.
(C) Vacancies on the board shall be filled in the same manner as the original appointments for the duration of the unexpired term.

(e) Quorum; meetings; funding. —

(1) The presence of a majority of the members of the board constitutes a quorum for the transaction of business. The board shall elect from among its members a vice chairperson and such other officers as are necessary.

(2) The board shall meet not less than four times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members: Provided, That no meeting of the board shall be required if the total amount of tax credits available for the fiscal year have been allotted.

(3) Board members shall be reimbursed by the West Virginia development office for sums necessary to carry out responsibilities of the board and for reasonable travel expenses to attend board meetings.

(f) Annual report. — The board shall make a report to the governor and the Legislature within thirty days of the close of each fiscal year. The report shall include summaries of all meetings of the board, an analysis of the overall progress of the program, fiscal concerns, the relative impact the program is having on the state and any suggestions and policy recommendations that the board may have. The report shall be public information made available to the general public for examination and copying. The board is authorized to publish the annual report, should the board elect to do so.

(g) Duties of the board. —

(1) Administrative duties. — The board shall be responsible for advising the West Virginia development office concerning the administrative obligations of the program.

(2) Project evaluation and approval; prohibition on project promotion. —

(A) The board shall select and approve projects, which may then be certified by the director of the West Virginia
development office pursuant to section four of this article.

(B) Only projects sponsored by qualified charitable organizations, as defined in section three of this article, may be approved by the board or certified by the director of the West Virginia development office. An applicant that does not hold current status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code may not receive project approval from the board, or project certification from the director of the West Virginia development office, for any proposed project. Failure of any applicant to provide convincing documentation proving such status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code shall result in automatic denial of project approval and denial of project certification under this article.

(3) Criteria for evaluation. — In evaluating projects for approval, the board shall give priority to projects based upon the following criteria. A proposed project shall be favored if:

(A) The project is community based. A project is community based if:

(i) The project is to be managed locally, without national, state, multi-state or international affiliations;

(ii) The project will benefit local citizens in the immediate geographic area where the project is to operate; and

(iii) The sponsor of the project is a local entity, rather than a statewide, national or international organization or an affiliate of a statewide, national or international organization.

(B) The proposed project will primarily serve low income persons.

(C) The proposed project will serve highly distressed neighborhoods or communities.

(D) The project plan incorporates collaborative partnerships among nonprofit groups, businesses, government organizations and other community organizations.

(E) The applicant or sponsor of the project has dem-
onstrated a proven capacity to deliver the proposed services.

(F) The applicant or sponsor of the project historically maintains low administrative costs.

(G) The applicant produces a strong showing of need for the services which the proposed project would provide, and produces convincing documentation of that need.

(H) The proposed project is innovative, novel, creative or unique in program approach.

(4) In the event that an applicant is directly or indirectly affiliated with one or more board members, those members may discuss the proposals with the board, but may not have a vote when that project is considered for final approval or disapproval.

(5) Project approval by the board. — Proposed projects shall be approved or denied approval by a majority vote of the board after competitive comparison with proposed projects of other applicants.

(h) Project certification by the director of the West Virginia development office. —

(1) Upon issuance of approval for a project by the board, the approved project shall be certified by the director of the West Virginia development office: Provided, That no certification may issue for any project, even though the project may have been approved by the board, if the issuance of certification for such project will cause the aggregate amount of tax credits certified to exceed the limitation set forth in this article. No certification may be issued by the director of the West Virginia development office for any project which has not been approved by the board.

(2) The West Virginia development office shall promptly notify applicants of the issuance of certification for their projects, and shall issue tax credit vouchers to certified project applicants in the amount of the tax credit represented by the project.

(3) The West Virginia development office may provide incidental technical support and guidance to projects
§11-13J-8. Total maximum aggregate tax credit amount.

(a) The amount of tax credits allowed under this article may not exceed two million dollars in any state fiscal year.

(b) Applications for project certification shall be filed with the West Virginia development office. The West Virginia development office shall record the date each application is filed. All complete and valid applications shall be considered for approval or disapproval in a timely manner by the neighborhood assistance advisory board. The board may, in its discretion, consider applications for approval or disapproval at special or interim meetings for expedited processing.

(c) When the total amount of tax credits certified under this article equals the maximum amount of tax credits allowed, as specified in subsection (a) of this section, in any state fiscal year, no further certifications shall be issued in that same fiscal year. Upon approval of a project by the board, the director of the West Virginia development office shall certify the approved project unless certification is prohibited by the limitations and requirements set forth in this article.

(d) All applications filed in any state fiscal year and not certified during the state fiscal year in which they are filed shall be null and void by operation of law on the last day of the state fiscal year in which they are filed, and all applicants which elect to seek certification of a project plan shall file anew on and after the first day of the succeeding state fiscal year.

§11-13J-11. Audits and examinations; information sharing.

(a) The tax commissioner may, at his or her discretion, perform joint audits or examinations with the West Virginia development office or independently audit or examine the books, records and other information, as appropriate, of any taxpayer or of any person, organization or entity
which has filed an application for certification of a project plan under this article, or of any taxpayer which has asserted this credit on a tax return, or of any person, organization or entity believed to have relevant information.

(b) For purposes of joint audits, or any administrative or judicial proceeding or procedure relating to any tax credit taken, asserted or sought under this article, the tax commissioner may share such tax information as the tax commissioner may deem appropriate with the West Virginia development office, notwithstanding the provisions of section four-a, article one of this chapter or section five-d, article ten of said chapter, or any other provision of this code to the contrary.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlements.

On or before the thirtieth day of September, one thousand nine hundred ninety-eight, the board shall secure an independent review of the neighborhood investment program created by this article and present the findings to the Legislature. Pursuant to this report, and any independent evaluation that the Legislature or the joint committee on government operations may wish to initiate, the joint committee on government operations shall issue a recommendation to the Legislature, not later than the first day of February, one thousand nine hundred ninety-nine, as to whether the program should continue. Unless sooner terminated by law, the neighborhood investment program act shall terminate on the first day of July, one thousand nine hundred ninety-nine. No entitlement to the tax credit under this article shall result from any contribution made to any certified project after the first day of July, one thousand nine hundred ninety-nine, and no credit shall be available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to the first day of July, one thousand nine hundred ninety-nine, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.
CHAPTER 148

(H. B. 2776—By Delegates Douglas and Compton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and eighteen, article five-c, chapter sixteen 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-a; to amend said chapter by adding thereto a new article, designated article five-d; to amend and reenact sections one, two, three, five and six, article five-e of said chapter; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact article five-h of said chapter, all relating to the licensure of nursing homes, personal care homes and residential board and care homes; requiring the registration of and authorizing the inspection of legally unlicensed health care homes; stating the purposes; defining terms; specifying the powers and duties of the director of the division of health; authorizing administrative and inspection staff; authorizing the proposal of legislative rules and requiring rules establishing minimum standards of operation; requiring licenses; establishing fees; requiring cost disclosure and surety for residents' funds; investigating complaints; inspecting and reporting of inspections; requiring plans of correction; assessing penalties and attorneys' costs and using funds derived therefrom; providing the opportunity for hearings; limiting suspending and revoking licenses; banning admissions; continuing disciplinary proceedings; closing homes and transferring residents; appointing temporary management; assessing interest; collecting assessments; allowing administrative appeals and judicial review; providing legal counsel; specifying unlawful acts; providing for civil and criminal penalties, injunctions and private rights of action; making available inspection reports and records; making a registry of
service providers available to the public; continuing licenses and rules; and establishing requirements for accounting for residents' personal funds.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and eighteen, article five-c, chapter sixteen 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-a; that said chapter be further amended by adding thereto a new article, designated article five-d; that sections one, two, three, five and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-a; and that article five-h of said chapter be amended and reenacted, all to read as follows:

Article

5C. Nursing Homes.
5D. Personal Care Homes.
5E. Registration and Inspection of Service Providers in Legally Unlicensed Health Care Homes.
5H. Residential Board and Care Homes.

ARTICLE 5C. NURSING HOMES.

§16-5C-1. Purpose.
§16-5C-2. Definitions.
§16-5C-3. Powers, duties and rights of director.
§16-5C-4. Administrative and inspection staff.
§16-5C-5. Rules; minimum standards for nursing homes.
§16-5C-6. License required; application; fees; duration; renewal.
§16-5C-7. Cost disclosure; surety for resident funds.
§16-5C-8. Investigation of complaints.
§16-5C-9. Inspections.
§16-5C-9a. Exemptions.
§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements; hearings.
§16-5C-12 Administrative appeals for civil assessments, license limitation, suspension or revocation.

§16-5C-14. Legal counsel and services for the director.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

§16-5C-16. Availability of reports and records.

§16-5C-17. Licenses and rules in force.

§16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5C-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective and financially efficient care and treatment of persons who are convalescing or whose physical or mental condition requires them to receive a degree of nursing or related health care greater than that necessary for well individuals. Such care and treatment require a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental nursing homes it is the policy of this state to encourage, promote and require the maintenance of nursing homes so as to ensure protection of the rights and dignity of those using the services of such facilities.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16-5C-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) "Deficiency" means a nursing home's failure to meet the requirements specified in article five-c, chapter sixteen of this code and rules promulgated thereunder.

(b) "Director" means the secretary of the department of health and human resources or his or her designee.
(c) "Household" means a private home or residence which is separate from or unattached to a nursing home.

(d) "Immediate jeopardy" means a situation in which the nursing home's noncompliance with one or more of the provisions of this article or rules promulgated thereunder has caused or is likely to cause serious harm, impairment or death to a resident.

(e) "Nursing home" or "facility" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to article three, chapter thirty-five of this code.

(f) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedure contributing
to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

(g) "Resident" means an individual living in a nursing home.

(h) "Review organization" means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee, a health insurance review committee, a professional health service plan review committee or organization, a dental review committee, a physician's advisory committee, a podiatry advisory committee, a nursing advisory committee, any committee or organization established pursuant to a medical assistance program, any committee or organization established or required under state or federal statutes, rules or regulations, and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of: (1) Evaluating and improving the quality of health care rendered; (2) reducing morbidity or mortality; or (3) establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.

(i) "Sponsor" means the person or agency legally responsible for the welfare and support of a resident.

(j) "Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state.

(k) "Substantial compliance" means a level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The director may define in the rules any term used herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.
In the administration of this article, the director shall have the following powers, duties and rights:

(a) To enforce rules and standards promulgated hereunder for nursing homes;

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes;

(c) To enforce rules promulgated hereunder governing the qualification of applicants for nursing home licenses, including, but not limited to, educational requirements, financial requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated to the division of health by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division of health by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division of health's operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements and instruments shall be executed by the director;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing homes for clinical, administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and
operation of nursing homes and to the health, care, treatment and service in general of such homes;

(k) To assess civil penalties for violations of facility standards, in accordance with section ten of this article;

(l) To inspect any nursing home and any records maintained therein that are necessary to determine compliance with licensure laws or medicare or medicaid certification, subject to the provisions of section ten of this article;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of article three, chapter twenty-nine-a of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of rules issued hereunder. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if the officer fails or refuses to discharge his or her duty. The circuit court of the county in which the conduct has occurred or, if emergency circumstances require, the circuit court of Kanawha County shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the director or any person acting under the director’s direction be required to give security for costs;
(p) To delegate authority to the director’s employees and agents to perform all functions of the director except the making of final decisions in adjudications;

(q) To submit an annual report to the governor, the Legislature and the public sixty days before the governor is required to submit an annual budget report to the Legislature. The report shall describe the licensing and investigatory activities of the department during the year, and the nature and status of other activities of the department, and may include comment on the acts, policies, practices or procedures of any public or private agency that affect the rights, health or welfare of residents of nursing homes. The annual report shall include a list of all nursing homes in the state, whether such homes are proprietary or nonproprietary; the name of the owner or owners; the total number of beds; the number of private and semiprivate rooms; the costs per diem for private residents; the number of full-time employees and their professions; recreational programs; services and programs available as well as the costs thereof; and whether or not those nursing homes listed accept medicare and medicaid residents. The report shall also contain the department’s recommendations as to changes in law or policy which it deems necessary or appropriate for the protection of the rights, health or welfare of residents of nursing homes in the state;

(r) To establish a formal process for licensed facilities to file complaints about the survey process or surveyors; and

(s) To establish a committee to study and make a recommendation to the Legislature on a central reporting system for allegations of abuse.

§16-5C-4. Administrative and inspection staff.

The director may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the department shall be members of the state civil service system and surveyors
shall be trained to perform their assigned duties. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home.

§16-5C-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The director shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents' rights as included in the United States department of health and human services regulations, in force on the effective date of this article, governing participation of nursing homes in the medicare and medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

(2) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(3) Qualifications of facility's administrators, medical directors, nurses, aides, and other personnel;
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(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights; and

(15) Admission, transfer and discharge rights.

§16-SC-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a nursing home within this state unless and until he or she obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any nursing home, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, as established by this article and the rules.
lawfully promulgated hereunder. The application and any exhibits thereto shall provide the following information:

1. The name and address of the applicant;

2. The name, address and principal occupation: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;

3. The name and address of the owner of the premises of the nursing home or proposed nursing home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the owner; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of the owner if it is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in the owner, the name and address of each officer and director of the corporation;

4. Where the applicant is the lessee or the assignee of the nursing home or the premises of the proposed nursing home, a signed copy of the lease and any assignment thereof;

5. The name and address of the nursing home or the premises of the proposed nursing home;

6. A description of the nursing home to be operated;

7. The bed quota of the nursing home as determined by the health care cost review authority;

8. (A) An organizational plan for the nursing home indicating the number of persons employed or to be employed and the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) such evidence of compliance
with applicable laws, and rules governing zoning, buildings, safety, fire prevention and sanitation as the director may require;

(9) A listing of other states in which the applicant owns, operates or manages a nursing home or long-term care facility;

(10) Such additional information as the director may require; and

(11) Assurances that the nursing home is in compliance with the provisions of article two-d of this chapter.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section, and inspection of the applicant nursing home pursuant to section ten of this article, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a nursing home by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years or consistent poor performance in other states;

(2) That the facility is under the supervision of an administrator who is licensed pursuant to the provisions of article twenty-five, chapter thirty of this code; and

(3) That the facility is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as may be established by rule under this article.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued and the expiration date. Such licenses shall be issued for a period not to exceed fifteen months
for nursing homes:  *Provided*, That any license in effect
for which timely application for renewal, together with
payment of the proper fee has been made to the director
in conformance with the provisions of this article and the
rules issued thereunder, and prior to the expiration date of
the license, shall continue in effect until: (A) Six months
following the expiration date of the license; or (B) the date
of the revocation or suspension of the license pursuant to
the provisions of this article; or (C) the date of issuance of
a new license, whichever date first occurs. Each license
shall be issued only for the premises and persons named
in the application and is not transferable or assignable:
*Provided, however*, That in the case of the transfer of
ownership of a facility with an unexpired license, the
application by the proposed new owner shall be filed with
the director no later than thirty days before the proposed
date of transfer. Upon receipt of proof of the transfer of
ownership, the application shall have the effect of a license
for three months. The director shall issue or deny a
license within three months of the receipt of the proof of
the transfer of ownership. Every license shall be posted in
a conspicuous place in the nursing home for which it is
issued so as to be accessible to and in plain view of all
residents of and visitors to the nursing home.

(c) A license is renewable, conditioned upon the
licensee filing timely application for the extension of the
term of the license accompanied by the fee, and
contingent upon evidence of compliance with the
provisions of this article and rules promulgated hereunder.
Any application for renewal of a license shall include a
report by the licensee in such form and containing such
information as shall be prescribed by the director,
including the following:

(1) A balance sheet of the nursing home as of the end
of its fiscal year, setting forth assets and liabilities at such
date, including all capital, surplus, reserve, depreciation
and similar accounts;

(2) A statement of operations of the nursing home as
of the end of its fiscal year, setting forth all revenues,
expenses, taxes, extraordinary items and other credits or charges; and

(3) If a nursing home is in compliance with the requirements of the health care facility financial disclosure act, as provided in article five-f, chapter sixteen of this code, it will be considered to have met the requirements established in subdivisions (1) and (2) of this subsection.

(4) A statement of any changes in the name, address, management or ownership information on file with the director. All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such information as is required for initial applicants under the provisions of subsection (a) of this section.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may at his or her discretion issue a provisional license, provided that care given in the nursing home is adequate for resident needs and the nursing home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional license may not be issued for a period greater than six months, may not be renewed, and may not be issued to any nursing home that is a poor performer.

(e) A nonrefundable application fee in the amount of two hundred dollars for an original nursing home license shall be paid at the time application is made for the license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of fifteen dollars per bed per year for nursing homes, except the annual rate per bed may be assessed for licenses issued for less than fifteen months. Annually, the director may adjust the licensure fees for inflation based upon the increase in the consumer price index during the last twelve months. All such license fees shall be due and payable to the director, annually, and in the manner set
forth in the rules promulgated hereunder. The fee and
application shall be submitted to the director who shall
retain both the application and fee pending final action on
the application. All fees received by the director under
the provisions of this article shall be deposited in
accordance with section thirteen, article one of this
chapter.

§16-SC-7. Cost disclosure; surety for resident funds.

(a) Each nursing home shall disclose in writing to all
residents at the time of admission a complete and accurate
list of all costs which may be incurred by them; and shall
notify the residents thirty days in advance of changes in
costs. The nursing home shall make available copies of
the list in the nursing home's business office for
inspection. Residents may not be liable for any cost not
so disclosed.

(b) If the nursing home handles any money for
residents within the facility, the licensee or his or her
authorized representative shall either: (1) Give a bond; or
(2) obtain and maintain commercial insurance with a
company licensed in this state in an amount consistent
with this subsection and with the surety as the director
shall approve. The bond or insurance shall be upon
condition that the licensee shall hold separately and in
trust all residents' funds deposited with the licensee, shall
administer the funds on behalf of the resident in the
manner directed by the depositor, shall render a true and
complete account to the depositor and the director when
requested, and at least quarterly to the resident, and upon
termination of the deposit, shall account for all funds
received, expended, and held on hand. The licensee shall
file a bond or obtain insurance in a sum at least one and
twenty-five one-hundredths the average amount of funds
deposited with the nursing home during the nursing
home's previous fiscal year.

This insurance policy shall specifically designate the
resident as the beneficiary or payee reimbursement of lost
funds. Regardless of the type of coverage established by
the facility, the facility shall reimburse, within thirty days,
the resident for any losses directly and seek
reimbursement through the bond or insurance itself. Whenever the director determines that the amount of any bond or insurance required pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond or insurance is impaired by any recovery against the bond or insurance, the director may require the licensee to file an additional bond or insurance in such amount as necessary to adequately protect the money of residents being handled.

The provisions of this subsection do not apply if the licensee handles less than thirty-five dollars per resident per month in the aggregate.

§16-5C-8. Investigation of complaints.

The director shall establish rules for prompt investigation of all complaints of alleged violations by nursing homes of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and for promptly informing the complainant and the nursing home involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy.

No nursing home may discharge or in any manner discriminate against any resident, legal representative or employee for the reason that the resident, legal representative or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any nursing home constitutes ground for the suspension or revocation of the license of the nursing home as provided in section eleven of this article. Any type of discriminatory treatment of a resident, legal representative or employee by whom, or upon whose behalf, a complaint has been submitted to the
director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the nursing home in retaliation for such complaint or action.

§16-5C-9. Inspections.

(a) The director and any duly designated employee or agent shall have the right to enter upon and into the premises of any nursing home at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home without a license. If entry is refused by the owner or person in charge of the nursing home, the director may apply to the circuit court of the county in which the nursing home is located or the circuit court of Kanawha County for a warrant authorizing inspection to conduct the following inspections:

1. An initial inspection prior to the issuance of a license pursuant to section six of this article;

2. A license inspection for a nursing home, which shall be conducted at least once every fifteen months, if the nursing home has not applied for and received an exemption from the requirement as provided for in this section;

3. The director, by the director’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the nursing home with applicable rules promulgated thereunder. All facilities shall comply with regulations of the state fire commission. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and
serious threat to a consumer’s health or safety exists, the
director may invoke any remedies available pursuant to
section eleven of this article. Any nursing home
aggrieved by a determination or assessment made
pursuant to this section, shall have the right to an
administrative appeal as set forth in section twelve of this
article;

(4) A complaint inspection based on a complaint
received by the director. If, after investigation of a
complaint, the director determines that the complaint is
substantiated, the director may invoke any applicable
remedies available pursuant to section eleven of this
article.

§16-5C-9a. Exemptions.

(a) The director may grant an exemption from a
license inspection if a nursing home was found to be in
substantial compliance with the provisions of this chapter
at its most recent inspection and there have been no
substantiated complaints thereafter. The director may not
grant more than one exemption in any two-year period.

(b) The director may grant an exemption to the extent
allowable by federal law from a standard survey, only if
the nursing home was found to be in substantial
compliance with certification participation requirements at
its previous standard survey and there have been no
substantiated complaints thereafter.

(c) The director may grant an exemption from
periodic license inspections if a nursing home receives
accreditation by an accrediting body approved by the
director and submits a complete copy of the accreditation
report. The accrediting body shall identify quality of care
measures that assure continued quality care of residents.
The director may not grant more than one exemption in
any two-year period.

(d) If a complaint is substantiated, the director has the
authority to immediately remove the exemption.
§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the nursing home's compliance with the provisions of this article and the rules adopted hereunder. The director shall send a copy of such report to the nursing home and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies. The plan shall be approved, rejected or modified by the director. The surveyors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article: Provided, That any action by the director shall be stayed until federal proceedings arising from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of the rule jeopardizes the health or safety of residents, or where the violation of the rule is the second or subsequent such violation occurring during a period of twelve full months.

(d) Civil penalties assessed against nursing homes shall not be less than fifty nor more than eight thousand dollars: Provided, That the director may not assess a penalty under state licensure for the same deficiency or violation cited under federal law and may not assess a penalty against a nursing home if the nursing home corrects the deficiency within twenty days of receipt of
(e) In determining whether to assess a penalty, and the amount of penalty to be assessed, the director shall consider:

(1) How serious the noncompliance is in relation to direct resident care and safety;

(2) The number of residents the noncompliance is likely to affect;

(3) Whether the noncompliance was noncompliance during a previous inspection;

(4) The opportunity the nursing home has had to correct the noncompliance; and

(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety or welfare of one or more residents, the director may impose a civil penalty of not less than three thousand nor more than eight thousand dollars;

(2) For a deficiency which actually harms one or more residents, the director may impose a civil penalty of not less than one thousand nor more than three thousand dollars;

(3) For a deficiency which has the potential to harm one or more residents, the director may impose a civil penalty of not less than fifty nor more than one thousand dollars;

(4) For a repeated deficiency, the director may impose a civil penalty of up to one hundred fifty percent of the penalties provided in subdivisions (1), (2) and (3) of this subsection; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of...
one hundred dollars a day unless a reasonable explanation has been provided and accepted by the director.

(g) The director shall assess a civil penalty of not more than one thousand dollars against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The director shall impose a civil penalty of not more than five thousand dollars against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

(h) The director shall assess a civil penalty of not more than two thousand dollars against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted under this article or under titles eighteen or nineteen of the federal Social Security Act.

(i) If the director assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director assessed the penalty and selected the amount of the penalty.

(j) The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under section twelve of this article within thirty days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within thirty days of receipt of the director's final order, or which has been affirmed on judicial review, as provided in section thirteen of this article. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the director for: (1) The protection of the health or property of facility residents; (2) long-term care educational activities; (3) the costs arising from the
relocation of residents to other nursing homes when no
other funds are available; and (4) in an emergency
situation in which there are no other funds available, the
operation of a facility pending correction of deficiencies
or closure.

(k) The opportunity for a hearing on an action taken
under this section shall be as provided in section twelve of
this article.

§16-5C-11. License limitation, suspension, revocation; con-
tinuation of disciplinary proceedings; closure,
transfer of residents, appointment of temporary
management; assessment of interest; collection
of assessments; promulgation of rules to
conform with federal requirements; hearings.

(a) The director may reduce the bed quota of the
nursing home or impose a ban on new admissions, where
he or she finds upon inspection of the nursing home that
the licensee is not providing adequate care under the
nursing home's existing bed quota, and that reduction in
quota or ban on new admissions, or both, would place the
licensee in a position to render adequate care. A
reduction in bed quota or a ban on new admissions, or
both, may remain in effect until the nursing home is
determined by the director to be in substantial compliance
with the rules. In addition, the director shall determine
that the facility has the management capability to ensure
continued substantial compliance with all applicable
requirements. The director shall evaluate the continuation
of the admissions ban or reduction in bed quota on a
continuing basis, and may make a partial lifting of the
admissions ban or reduction in bed quota consistent with
the purposes of this section. If the residents of the facility
are in immediate jeopardy of their health, safety, welfare
or rights, the director may seek an order to transfer
residents out of the nursing home as provided for in
subsection (e) of this section. Any notice to a licensee of
reduction in bed quota or a ban on new admissions shall
include the terms of such order, the reasons therefor, and a
date set for compliance.
(b) The director may suspend or revoke a license issued under this article or take other action as set forth in this section, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section or the director imposes other action set forth in this section, the director shall file a complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation or other action. Upon the filing of the complaint, the director shall notify the licensee in writing of the filing of the complaint within twenty days of exit conference, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, a circuit court in the county in which a facility is located, or in Kanawha County if emergency circumstances occur, may determine that a nursing home's deficiencies under this article, or under titles eighteen or nineteen of the federal Social Security Act, if applicable, constitute an emergency immediately jeopardizing the health, safety, welfare or rights of its residents, and issue an order to:
(1) Close the nursing home;

(2) Transfer residents in the nursing home to other nursing homes; or

(3) Appoint temporary management to oversee the operation of the facility and to assure the health, safety, welfare and rights of the nursing home's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the facility; or

(B) Improvements are made in order to bring the nursing home into compliance with all the applicable requirements of this article and, if applicable, titles eighteen and nineteen of the federal Social Security Act.

If the director petitions a circuit court for the closure of a nursing home, the transfer of residents, or the appointment of temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the nursing home may participate and present evidence. The burden of proof is on the director.

A circuit court may divest the licensee or operator of possession and control of a nursing home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve and expend funds, including medicare, medicaid and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating
The expenses totaling more than twenty thousand dollars shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment and is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any thirty-day period may not exceed the seventy-fifth percentile of the allowable administrators salary as reported on the most recent cost report for the nursing home’s peer group as determined by the director. The temporary manager shall bill the nursing home for compensation and per diem costs. Within fifteen days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state medicaid agency in the same fashion as a benefits overpayment.

The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the
temporary management, expenditures and civil penalties
and interest no longer subject to appeal, in that order, any
excess shall be paid to the licensee or operator of the
nursing home.

(f) The assessments for penalties and for costs of
actions taken under this article shall have interest assessed
at five percent per annum beginning thirty days after
receipt of notice of such assessment or thirty days after
receipt of the director's final order following a hearing,
whichever is later. All such assessments against a nursing
home that are unpaid shall be added to the nursing
home's licensure fee and may be filed as a lien against the
property of the licensee or operator of the nursing home.
Funds received from such assessments shall be deposited
as funds received in section ten of this article.

(g) The director may propose additional rules and
emergency rules that expand the power of the director in
excess of that provided in this article to the extent required
to comply with federal requirements, but any such rules
shall expand the power of the director to the minimum
extent required by federal requirements. Such rules are
subject to the provisions of article three, chapter
twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by the
director taken under this section shall be as provided in
section twelve of this article.

§16-5C-12. Administrative appeals for civil assessments,
license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order
issued pursuant to sections five, six, ten or eleven of this
article shall have the opportunity to request an informal
and formal hearing at which the licensee or applicant may
contest such order as contrary to law or unwarranted by
the facts or both. All of the pertinent provisions of article
five, chapter twenty-nine-a of this code shall apply to and
govern such hearing and the administrative procedures in
connection with any formal hearing.
The director may impose the following prior to or during the pendency of a hearing:

1. A reduction in the bed quota pursuant to section eleven of this article;

2. Transfer of residents and a ban on new admissions pursuant to section eleven of this article.

(b) Informal hearings shall be held within twenty working days of the director's receipt of timely request for appeal, unless the licensee or applicant aggrieved by the order consents to a postponement or continuance. In no event may the informal hearing occur more than thirty business days after the director receives timely request for appeal. At the informal hearing, neither the licensee nor the applicant may be represented by an attorney. Within ten days of the conclusion of the informal hearing, the director shall issue an informal hearing order, including a basis for the decision.

(c) If the applicant or licensee requested a formal hearing only, the director and the licensee shall proceed in accordance with the provisions of the department of health rules of procedure for contested case hearings and declaratory rulings. If the applicant or licensee also requested an informal hearing and if the order is not favorable to the applicant or licensee, the director shall notify the administrative hearing examiner of the request for an appeal within five business days of issuing the informal hearing order.

§16-SC-14. Legal counsel and services for the director.

(a) Legal counsel and services for the director in all administrative hearings may be provided by the attorney general or a staff attorney and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general, or his or her assistants, or an attorney employed by the director in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The governor may appoint counsel for the director, who shall perform such legal services in
representing the interests of residents in nursing homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a nursing home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county or regional jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in the county or regional jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his or her discretion bring an action to enforce compliance with this article or any rule or order hereunder whenever it shall appear to the director that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it shall appear to the director that any person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur, the circuit court of Kanawha County, shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.
Whenever the director shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a nursing home, or shall have ordered a person to refrain from conduct violating the rules of the director, and the person deeming himself or herself aggrieved by such refusal or revocation or order shall have appealed the action of the director, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the director, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the director.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available
administrative remedies may not be required prior to
commencement of suit hereunder.

The amount of damages recovered by a resident, in an
action brought pursuant to this section, shall be exempt
for purposes of determining initial or continuing
eligibility for medical assistance under article four, chapter
nine of this code, and may neither be taken into
consideration nor required to be applied toward the
payment or part payment of the cost of medical care or
services available under said article.

Any waiver by a resident or his or her legal
representative of the right to commence an action under
this section, whether oral or in writing, shall be null and
void as contrary to public policy.

(d) The penalties and remedies provided in this section
are cumulative and shall be in addition to all other
penalties and remedies provided by law.

§16-5C-16. Availability of reports and records.

The director shall make available for public inspection
and at a nominal cost provide copies of all inspections and
other reports of nursing homes filed with or issued by the
director. Nothing contained in this section may be
construed or deemed to allow the public disclosure of
confidential medical, social, personal or financial records
of any resident. The director shall adopt such rules as may
be necessary to give effect to the provisions of this section
and to preserve the confidentiality of medical, social,
personal or financial records of residents.

§16-5C-17. Licenses and rules in force.

All licenses for nursing homes which are in force on
the first day of July, one thousand nine hundred ninety-
five, shall continue in full force and effect during the
period for which issued unless sooner revoked as provided
in this article.

All rules in effect on the first day of July, one
thousand nine hundred ninety-five, which were adopted
by the director relating to licensing nursing homes shall
§16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each nursing home subject to the provisions of this article shall hold in a separate account and in trust each resident’s personal funds deposited with the nursing home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such nursing home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each nursing home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the nursing home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the nursing home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the director’s ability to perform his or her oversight function as mandated by federal regulations and this section.

ARTICLE 5D. PERSONAL CARE HOMES.

§16-5D-1. Purpose.
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§16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.
§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.
§16-5D-14. Legal counsel and services for the director.
§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.
§16-5D-16. Availability of reports and records.
§16-5D-17. Licenses and rules in force.
§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5D-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental personal care homes it is the policy of this state to encourage, promote and require the maintenance of personal care homes so as to ensure protection of the rights and dignity of those using the services of personal care homes.
The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16-5D-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(b) "Department" means the state department of health and human resources;

(c) "Director" means the secretary of the department of health and human resources or his or her designee;

(d) "Division" means the bureau for public health of the state department of health and human resources;

(e) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode. This care may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the personal care home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of the normal aging process. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the secretary for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(f) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as:
Irrigations, catheterization, special procedures contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

(g) "Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state;

(h) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(i) "Personal care home" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and personal assistance and supervision, for a period of more than twenty-four hours, to four or more persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the personal care home has a backup power generator: Provided, however, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a personal care home within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter; or state institutions, as defined under section three, article one, chapter twenty-five of this code or section six, article one, chapter twenty-seven of this code;
or personal care homes operated by the federal
government or the state; or institutions operated for the
treatment and care of alcoholic patients; or offices of
physicians; or hotels, boarding homes or other similar
places that furnish to their guests only room and board; or
to homes or asylums operated by fraternal orders pursuant
to article three, chapter thirty-five of this code;

(j) "Resident" means an individual living in a
personal care home for the purpose of receiving personal
assistance or limited and intermittent nursing services from
the home;

(k) "Secretary" means the secretary of the state
department of health and human resources or his or her
designee; and

(l) "Substantial compliance" means a level of
compliance with the rules such that identified deficiencies
pose no greater risk to resident health or safety than the
potential for causing minimal harm.

The secretary may define in rules any term used herein
which is not expressly defined.

§16-5D-3. Powers, duties and rights of director.

In the administration of this article, the director has the
following powers, duties and rights:

(a) To enforce rules and standards for personal care
homes; which are adopted, promulgated, amended or
modified by the secretary;

(b) To exercise as sole authority all powers relating to
the issuance, suspension and revocation of licenses of
personal care homes;

(c) To enforce rules adopted, promulgated, amended
or modified by the secretary governing the qualification
of applicants for personal care home licenses, including,
but not limited to, educational requirements, financial
requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take
whatever action not contrary to law as may be proper and
necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division's operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements and instruments shall be executed by the director;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for personal care homes' administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and operation of personal care homes and to the health, care, treatment and service in general of residents of such homes;

(k) To assess civil penalties for violations of personal care home standards, in accordance with section ten of this article;

(l) To inspect any personal care home and any records maintained therein, subject to the provisions of section ten of this article;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of article three, chapter twenty-nine-a of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder, by the secretary;
(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder, by the secretary. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if the prosecuting attorney fails or refuses to discharge his or her duty. The circuit court of Kanawha County or the circuit court of the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the director or any person acting under the director's direction be required to give security for costs;

(p) To delegate authority to the director's employees and agents to perform all functions of the director except the making of final decisions in adjudications; and

(q) To submit an annual report to the governor, the Legislature and the public. The report shall describe the personal care home licensing and investigatory activities of the division during the year, and the nature and status of other activities of the division, and may include comment on the acts, policies, practices or procedures of any public or private agency that affect the rights, health or welfare of residents of personal care homes. The annual report shall include a list of all personal care homes in the state and such of the following information as the director determines to apply: Whether the homes are proprietary or nonproprietary; the classification of each home; the name of the owner or owners; the total number of beds; the number of private and semi-private
rooms; the costs per diem for private residents; the number of full-time employees and their professions; recreational programs; services and programs available as well as the costs thereof; and whether or not those personal care homes listed accept medicare and medicaid residents. The report shall also contain the division’s recommendations as to changes in law or policy which it deems necessary or appropriate for the protection of the rights, health or welfare of residents of personal care homes in the state.

§16-5D-4. Administrative and inspection staff.

The director may, as he or she determines necessary, employ administrative employees, inspectors or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division shall be members of the state civil service system. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated rules of the secretary and, in the discharge of official duties, shall have the right of entry into any place maintained as a personal care home at any time.

§16-5D-5. Rules; minimum standards for personal care homes.

(a) All rules shall be approved by the secretary and proposed in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The secretary shall adopt, amend or repeal such rules as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

(b) The secretary shall propose rules establishing minimum standards of operation of personal care homes including, but not limited to, the following:

1. Administrative policies, including: (A) An affirmative statement of the right of access to personal care homes by members of recognized community
organizations and community legal services programs
whose purposes include rendering assistance without
charge to residents, consistent with the right of residents to
privacy; and (B) a statement of the rights and
responsibilities of residents;

(2) Minimum numbers and qualifications of personnel,
including management, medical and nursing, aides,
orderlies and support personnel, according to the size and
classification of the personal care home;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made
available;

(9) Physical facilities;

(10) Requirements related to provision of limited and
intermittent nursing; and

(11) Such other categories as the secretary determines
to be appropriate to ensure resident's health, safety and
welfare.

(c) The secretary shall include in rules detailed
standards for each of the categories of standards
established pursuant to subsections (b) and (d) of this
section, and shall classify such standards as follows: (1)
Class I standards are standards the violation of which, as
the secretary determines, would present either an imminent
danger to the health, safety or welfare of any resident or a
substantial probability that death or serious physical harm
would result; (2) Class II standards are standards which the
secretary determines have a direct or immediate
relationship to the health, safety or welfare of any resident,
but which do not create imminent danger; (3) Class III
standards are standards which the secretary determines
have an indirect or a potential impact on the health, safety or welfare of any resident.

(d) A personal care home must attain substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as may be established by rule under this article.

§16-5D-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a personal care home within this state unless and until he or she obtains a valid license therefor as provided in this article, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any personal care home, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for personal care homes as established by this article and the rules lawfully promulgated by the secretary hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;
(3) The name and address of the owner of the premises of the personal care home or proposed personal care home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the owner; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of the owner if it is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in the owner, the name and address of each officer and director of the corporation;

(4) Where the applicant is the lessee or the assignee of the personal care home or the premises of the proposed personal care home, a signed copy of the lease and any assignment thereof;

(5) The name and address of the personal care home or the premises of the proposed personal care home;

(6) The proposed bed quota of the personal care home and the proposed bed quota of each unit thereof;

(7) (A) An organizational plan for the personal care home indicating the number of persons employed or to be employed, the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention and sanitation as the director may require; and

(8) Such additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subsection (a) of this section, and inspection of the applicant personal care home pursuant to section ten of this article, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, is a person
responsible and suitable to operate or to direct or participate in the operation of a personal care home by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the personal care home is under the supervision of an administrator who is qualified by training and experience; or

(3) That the personal care home is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as the secretary may establish by rule under this article.

The director may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false, or the applicant fails to report required information, or for any other reason permitted by law or rules promulgated pursuant to this article.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses shall be issued for a period not to exceed one year for personal care homes: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the state division of health in conformance with the provisions of this article and the rules issued thereunder, and prior to the expiration date of the license, shall continue in effect until: (A) One year following the expiration date of the license; or (B) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (C) the date of issuance of a new license, whichever date first occurs. Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable: Provided, however, That in the case of the transfer of ownership of a personal care home with an unexpired license, the application of the new owner for a license shall have the effect of a license for a
period of three months when filed with the director. Every license shall be posted in a conspicuous place in the personal care home for which it is issued so as to be accessible to and in plain view of all residents and visitors of the personal care home.

(c) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the secretary hereunder; the application shall be accompanied by the information required in subdivisions (1), (2) and (3) of this subsection.

(1) A balance sheet of the personal care home as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;

(2) A statement of operations of the personal care home as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) A statement of any changes in the name, address, management or ownership information on file with the director.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may in his or her discretion issue a provisional license, provided that care given in the personal care home is adequate for resident needs and the personal care home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: Provided, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any personal care home with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.
(e) A nonrefundable application fee in the amount of sixty-five dollars for an original personal care home license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding ten facilities based on the size of the facility's licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of six dollars per bed per year for personal care homes, except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license shall be determined by the director. All license fees shall be due and payable to the director, annually, and in the manner set forth in the rules promulgated by the secretary. The fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.

§16-5D-7. Cost disclosure; surety for residents' funds.

(a) Each personal care home shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the personal care home handles any money for residents within the personal care home, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director shall approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds.
received, expended, and held on hand. The licensee shall
file a bond in a sum to be fixed by the director based
upon the magnitude of the operations of the applicant, but
which sum may not be less than two thousand five
hundred dollars.

Every person injured as a result of any improper or
unlawful handling of the money of a resident of a
personal care home may bring an action in a proper court
on the bond required to be posted by the licensee
pursuant to this subsection for the amount of damage
suffered as a result thereof to the extent covered by the
bond. Whenever the director determines that the amount
of any bond which is filed pursuant to this subsection is
insufficient to adequately protect the money of residents
which is being handled, or whenever the amount of any
bond is impaired by any recovery against the bond, the
director may require the licensee to file an additional
bond in such amount as necessary to adequately protect
the money of residents being handled.

The provisions of this subsection do not apply if the
licensee handles less than twenty-five dollars per resident
and less than five hundred dollars for all residents in any
month.

§16-5D-8. Investigation of complaints.

If, after its investigation, the director determines that
the complaint has merit, the director shall take appropriate
disciplinary action and shall advise any injured party of
the possibility of a civil remedy under this article.
No personal care home may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any personal care home constitutes ground for the suspension or revocation of the license of the personal care home as provided in section eleven of this article. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the personal care home in retaliation for the complaint or action.

§16-5D-9. Inspections.

The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any personal care home at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a personal care home without a license. If entry is refused by the owner or person in charge of the personal care home, the director shall apply to the circuit court of the county in which the personal care home is located or the circuit court of Kanawha County for an order authorizing inspection, and the court shall issue an appropriate order if it finds good cause.

The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the personal care home with applicable statutes and rules promulgated thereunder. All personal care homes shall comply with rules of the state fire commission. The state fire marshal, by his or her employees or authorized agents, shall make all fire, safety and like inspections. The director may
provide for such other inspections as the director may
demean necessary to carry out the intent and purpose of this
article. If after investigating a complaint, the director
determines that the complaint is substantiated and that an
immediate and serious threat to a resident's health or
safety exists, the director may invoke any remedies
available pursuant to section eleven of this article. Any
personal care home aggrieved by a determination or
assessment made pursuant to this section shall have the
right to an administrative appeal as set forth in section
twelve of this article.

§16-5D-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section
nine of this article shall be in writing and filed with the
director, and shall list all deficiencies in the personal care
home's compliance with the provisions of this article and
the rules adopted by the secretary hereunder. The
director shall send a copy of the report to the personal
care home by certified mail, return receipt requested, and
shall specify a time within which the personal care home
shall submit a plan for correction of deficiencies, which
plan shall be approved, rejected or modified by the
director. The surveyors shall allow audio taping of the
exit conference for licensure inspections with all costs
directly associated with the taping to be paid by the
personal care home provided that an original tape is
provided to surveyors at the end of taping.

(b) Upon a personal care home's failure to submit a
plan of correction which is approved by the director, or to
correct any deficiency within the time specified in an
approved plan of correction, the director may assess civil
penalties as hereinafter provided or may initiate any other
legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to
prohibit the director from enforcing a rule,
administratively or in court, without first affording formal
opportunity to make correction under this section, where,
in the opinion of the director, the violation of the rule
jeopardizes the health or safety of residents or where the
violation of the rule is the second or subsequent violation
occurring during a period of twelve full months.

(d) Civil penalties assessed against personal care homes
shall be classified according to the nature of the violation
as defined in subsection (c), section five of this article and
rules promulgated thereunder by the secretary, as follows:
For each violation of a Class I standard, a civil penalty of
not less than fifty nor more than five hundred dollars shall
be imposed; for each violation of a Class II standard, a
civil penalty of not less than twenty-five nor more than
fifty dollars shall be imposed; for each violation of a Class
III standard, a civil penalty of not less than ten nor more
than twenty-five dollars shall be imposed. Each day a
violation continues, after the date of citation, shall
constitute a separate violation. The date of citation is the
date the facility receives the written statement of
deficiencies.

(e) The director shall assess a civil penalty not to
exceed two thousand dollars against any individual who
notifies, or causes to be notified, a personal care home of
the time or date on which an inspection is scheduled to be
conducted under this article.

(f) If the director assesses a penalty under this section,
the director shall cause delivery of notice of the penalty
by personal service or by certified mail. The notice shall
state the amount of the penalty, the action or circumstance
for which the penalty is assessed, the requirement that the
action or circumstance violates, and the basis upon which
the director assessed the penalty and selected the amount
of the penalty.

(g) The director shall, in a civil judicial proceeding,
recover any unpaid assessment which has not been
contested under section twelve of this article within thirty
days of receipt of notice of the assessment, or which has
been affirmed under the provisions of that section and not
appealed within thirty days of receipt of the director's final
order, or which has been affirmed on judicial review, as
provided in section thirteen of this article. All money
collected by assessments of civil penalties or interest shall
be paid into a special resident benefit account and shall be
applied by the director only for the protection of the
health or property of residents of personal care homes
operated within the state that the director finds to be
deficient, including payment for the costs of relocation of
residents to other facilities, operation of a personal care
home pending correction of deficiencies or closure, and
reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken
under this section shall be as provided in section twelve of
this article. In addition to any other rights of appeal
conferred upon a personal care home pursuant to this
section, a personal care home shall have the right to
request a hearing and seek judicial review pursuant to
sections twelve and thirteen of this article to contest the
citing by the director of a deficiency on an inspection
report, irrespective of whether the deficiency results in the
imposition of a civil penalty.

§16-5D-11. License limitation, suspension, revocation; ban on
admissions; continuation of disciplinary pro-
cedings; closure, transfer of residents, appoint-
ment of temporary management; assessment of
interest; collection of assessments; hearings.

(a) The director shall by order, impose a ban on the
admission of residents or reduce the bed quota of the
personal care home, or any combination thereof, where he
or she finds upon inspection of the personal care home
that the licensee is not providing adequate care under the
personal care home's existing bed quota, and that
reduction in quota or imposition of a ban on admissions,
or any combination thereof, would place the licensee in a
position to render adequate care. Any notice to a licensee
of reduction in quota or ban on new admissions shall
include the terms of the order, the reasons therefor, and
the date set for compliance.

(b) The director may suspend or revoke a license
issued under this article if he or she finds upon inspection
that there has been a substantial failure to comply with the
provisions of this article or the standards or rules
promulgated pursuant hereto.
(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file an administrative complaint stating facts constituting a ground or grounds for the limitation, suspension or revocation. Upon the filing of the administrative complaint, the director shall notify the licensee in writing of the filing of the administrative complaint, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, the circuit court of the county in which the conduct has occurred or is occurring, or the circuit court of Kanawha County, may determine that a personal care home's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the personal care home;

(2) Transfer residents in the personal care home to other facilities; or

(3) Appoint temporary management to oversee the operation of the personal care home and to assure the health, safety, welfare and rights of the personal care
home's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the personal care home; or

(B) Improvements are made in order to bring the personal care home into compliance with all the applicable requirements of this article.

If the director petitions a circuit court for the closure of a personal care home, the transfer of residents, or the appointment of a temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the personal care home may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a personal care home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the personal care home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the personal care home or to repair or improve the personal care home so as to return it to compliance with applicable requirements, and the power to receive, conserve and expend funds, including payments on behalf of the licensee or operator of the personal care home. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

The person charged with temporary management: (i) Shall be an officer of the court; (ii) shall be paid by the licensee; (iii) is not liable for conditions at the personal care home which existed or originated prior to his or her appointment; (iv) is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the personal care home during his or her temporary management.
No person may impede the operation of temporary management. There shall be an automatic stay for a ninety-day period subsequent to the establishment of temporary management of any action that would interfere with the functioning of the personal care home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the personal care home.

A temporary management established for the purpose of making improvements in order to bring a personal care home into compliance with applicable requirements may not be terminated until the court has determined that the personal care home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the personal care home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the personal care home.

(f) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning thirty days after receipt of notice of the assessment or thirty days after receipt of the director’s final order following a hearing, whichever is later. All assessments against a personal care home that are unpaid shall be added to the personal care home’s licensure fee and may be filed as a lien against the property of the licensee or operator of the personal care home. Funds received from assessments shall be deposited as funds received as provided in section ten of this article.
(g) The secretary shall have the power to promulgate emergency rules that expand the power of the director in excess of that provided in this article to the extent required to comply with federal requirements, but any such rules shall expand the power of the director to the minimum extent required by federal requirements. The rules are subject to the provisions of article three, chapter twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by the director taken under this section shall be as provided in section twelve of this article.

§16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he or she may contest the order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with the hearing. The licensee or applicant may also request an informal meeting with the director before the hearing.

Following the hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the order and accompanying findings and conclusions shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the director suspends a personal care home’s license, it shall also specify the conditions giving rise to the suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of the license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a
showing that the delay is necessary to assure appropriate placement of residents. The order of the director shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.

(b) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by the licensee in order to avoid either suspension or revocation. In such a case, the director shall enter an order accordingly and so notify the licensee and his or her attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of the order, the director shall enter an order showing satisfactory compliance and dismissing the complaint and shall so notify the licensee and the licensee’s attorney of record, if any, by certified mail, return receipt requested.


Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of section twelve of this article 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 with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-5D-14. Legal counsel and services for the director.

(a) Legal counsel and services for the director in all administrative hearings and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general, his or her assistants, or an attorney employed by the director, in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.
8 (b) The governor may appoint counsel for the director, who shall perform such legal services in representing the interests of residents in personal care homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a personal care home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in jail for a period of not more than ninety days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the director that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director that any person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.
Whenever the director refuses to grant or renew a license, or revokes a license required by law to operate or conduct a personal care home, or orders a person to refrain from conduct violating the rules of the secretary, and the person deeming himself aggrieved by the refusal, revocation or order appeals the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the personal care home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the personal care home. Should a person who is refused a license or the renewal of a license to operate or conduct a personal care home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the secretary, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a personal care home without a license as required by law, or has continued to violate the rules of the secretary.

(c) Any personal care home that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of the deprivation, and unless there is a finding that the personal care home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available
administrative remedies may not be required prior to commencement of suit hereunder.

The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available under said article.

Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void as contrary to public policy.

(d) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

§16-5D-16. Availability of reports and records.

The director shall make available for public inspection and at a nominal cost provide copies of all inspections and other reports of personal care homes filed with or issued by the director. Nothing contained in this section may be construed or deemed to allow the public disclosure of confidential medical, social, personal or financial records of any resident. The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to give effect to the provisions of this section and to preserve the confidentiality of medical, social, personal or financial records of residents.

§16-5D-17. Licenses and rules in force.

(a) All licenses for personal care homes which are in force on the first day of July, one thousand nine hundred ninety-seven, shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.
§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each personal care home subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the personal care home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any personal care home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each personal care home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the personal care home, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident's stay in the personal care home.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1. Purpose.

§16-5E-1a. Powers, rights and duties of the director.

§16-5E-2. Definitions.

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

§16-5E-5. Inspections; right of entry.
§16-5E-6. Enforcement; criminal penalties.

§16-5E-1. Purpose.

It is the policy of this state to encourage the availability of appropriate noninstitutional surroundings for the elderly and for the care of persons in need limited and intermittent of nursing care or personal assistance. The registration of providers of services to such residents in unlicensed homes will help to identify where the services are available and to ensure that individuals in unlicensed homes are receiving care appropriate to their needs.

§16-5E-1a. Powers, rights and duties of the director.

In the administration of this article, the director shall have the following powers, duties and rights:

(a) To promulgate and enforce rules governing complaint investigations within the homes of legally unlicensed health care providers registered under this article. Such rules shall include the minimum health, safety and welfare standards in the following areas:

(1) Physical environment;
(2) Nutrition;
(3) Requirements related to limited and intermittent nursing care;
(4) Medication administration;
(5) Protective and personal services to be provided;
(6) Treatment;
(7) Such other categories as the director determines to be appropriate to ensure residents’ health, safety and welfare.

(b) To exercise as sole authority all powers relating to issuance, suspension and revocation of registration of legally unlicensed homes providing health care;

(c) To issue directed plans of correction for deficiencies identified during complaint investigations;
(d) To order closure of any home for failure to comply with a directed plan of corrections;

(e) To take all actions required under the provisions of sections three, four, five, and six of this article; and

(f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.


1 As used in this article, unless a different meaning appears from the context:

2 (a) "Director" means the secretary of the department of health and human resources or his or her designee.

3 (b) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of no longer than ninety consecutive days per episode, which may only be provided when the need for such care meets the following factors: (1) The resident requests to remain in the home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of normal aging process. Limited and intermittent nursing care shall be provided under the supervision of a registered professional nurse and in accordance with rules promulgated by the director.

4 (c) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations; catheterization; special procedures contributing to rehabilitation; and administration of medication by any method prescribed by a physician which involves a level of complexity and skill in administration not possessed by the untrained person.
(d) “Personal assistance” means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or physical or mental impairment of the resident.

(e) “Resident” means an individual who is provided services, whether or not for a fee, by a service provider, but resident does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of the second cousin. Residents, who are incapable of self-preservation, shall be housed only on a ground floor level of the home with direct egress to the outside. A registered unlicensed health care home shall:

1. Provide residents at the time of admission with the name, address and telephone number of the offices of health facility licensure and certification, the state long-term care ombudsman, and adult protective services, all within the department of health and human resources; and
2. Advise residents both orally and in writing of their right to file a complaint with the aforementioned entities.

(f) “Self-preservation” means that a person is at least capable of removing him or her self from situations involving imminent danger, such as fire.

(g) “Service provider” means the individual administratively responsible for providing to consumers for a period of more than twenty-four hours, whether for compensation or not, services of personal assistance for one to three residents and who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the home has a backup power generator.

§16-SE-3. Registration of service providers required; form of registration; information to be provided.

(a) Service providers shall register with the director. No fee may be charged for registration. Registration
information shall be provided on a registration form or may be verbally communicated to the director for placement by the director on the form, but no provision of information may 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) Address and telephone numbers where services are provided to residents and the number of residents provided service;

(3) The services, such as nursing care or personal assistance, provided to residents; and

(4) Other information required by rules promulgated by the director.

(c) The director may deny registration if the information provided in an application is known by the applicant to be false or the applicant fails to report required information.

(d) A legally unlicensed provider may operate no more than one legally unlicensed home.

§16-SE-5. Inspections; right of entry.

The director may employ inspectors to enforce the provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of residents therein and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services. The inspectors shall have access to all parts of the home and grounds, including, but not limited to, all areas of all buildings on the grounds of a home, food supplies, resident medications and resident medical records.
Inspectors shall also be permitted to conduct private interviews with all residents and staff of a home.

If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident’s health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate action or proceeding to: (1) Close the home; (2) transfer residents in the home to other facilities; or (3) appoint temporary management to oversee the operation of the home to assure the health, safety, welfare and rights of the home’s residents where there is a need for temporary management to ensure compliance with the court’s order.

Any home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve, article five-c of this chapter.

§16-5E-6. Enforcement; criminal penalties.

(a) Any service provider who fails to register with the director shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or more than twenty-five hundred dollars or imprisoned in jail not less than ten days, or more than thirty days after notice by certified mail by the director to such service provider of the requirements of this article.

(b) Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or more than twenty-five hundred dollars or imprisoned in the jail not less than ten days, or more than thirty: Provided, That prior to the first day of July, one thousand nine hundred eighty-nine, no such penalty may be imposed upon a service provider until thirty days after notice by certified mail by the director to the service provider at the requirements of this article.

(c) If after investigating a complaint, the director determines that the home is housing more than three residents, the director shall assess a civil penalty of fifty
22 dollars per day per the number of residents exceeding
23 three. Each day the violation continues, after the date of
24 citation shall constitute a separate violation. The date of
25 citation is the date the facility receives the written
26 statement of deficiencies.
27 (d) The director may in his or her discretion bring an
28 action to enforce compliance with the provisions of this
29 article.
30 (e) The circuit court of Kanawha County or the circuit
31 court of the county in which the conduct occurred shall
32 have jurisdiction in all civil enforcement actions brought
33 under this article and may order equitable relief without
34 bond.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

§16-5H-1. Purpose.
§16-5H-4. Administrative and inspection staff.
§16-5H-5. Rules; minimum standards for residential board and care homes.
§16-5H-6. License required; application; fees; duration; renewal.
§16-5H-7. Cost disclosure; surety for residents' funds.
§16-5H-8. Investigation of complaints.
§16-5H-9. Inspections.
§16-5H-10. Reports of inspections; plans of correction; assessment of
penalties and use of funds derived therefrom; hearings.
§16-5H-11. License limitation, suspension, revocation; ban on
admissions; continuation of disciplinary proceedings;
closure, transfer of residents, appointment of temporary
management; assessment of interest; collection of
assessments; hearings.
§16-5H-12. Administrative appeals for civil assessments, license
limitation, suspension or revocation.
§16-5H-14. Legal counsel and services for the director.
§16-5H-15. Unlawful acts; penalties; injunctions; private right of action.
§16-5H-16. Availability of reports and records.
§16-5H-17. Licenses and rules in force.
§16-5H-18. Separate accounts for residents' personal funds; consent for use;
records; penalties.

§16-5H-1. Purpose.
It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary and voluntary residential board and care homes, it is the policy of this state to encourage, promote and require the maintenance of residential board and care homes so as to ensure protection of the rights and dignity of those using the services of such residential board and care homes.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16-SH-2. Definitions.

As used in this article, unless a different meaning appears from the context:

(a) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(b) "Department" means the state department of health and human resources;

(c) "Director" means the secretary of the department of health and human resources or his or her designee;

(d) "Division" means the division of health of the state department of health and human resources;
(e) "Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode which may only be provided when the need for such care meets these factors: (1) The resident requests to remain in the residential board and care home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of the normal aging process. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules promulgated by the secretary;

(f) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: irrigations, catheterization, special procedures contributing to rehabilitation and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

(g) "Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association or political subdivision of the state;

(h) "Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

(i) "Resident" means an individual living in a residential board and care home for the purpose of receiving personal assistance or limited and intermittent nursing services from the home;
(j) "Residential board and care home" means any residence or place or any part or unit thereof, however named, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations, personal assistance and supervision, for a period of more than twenty-four hours, to four or more persons who are dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation, as certified in consultation with a licensed health care professional, and are not bedfast, including those individuals who qualify for and are receiving services coordinated by a licensed hospice: Provided, That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential board and care home has a backup power generator: Provided, however, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a residential board and care home within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter; or state institutions, as defined under section three, article one, chapter twenty-five of this code or section six, article one, chapter twenty-seven of this code; or residential board and care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to article three, chapter thirty-five of this code;

(k) "Secretary" means the secretary of the state department of health and human resources or his or her designee;
"Self-preservation" means that a person is, at least, capable of removing his or her physical self from situations involving imminent danger, such as fire; and

(m) "Substantial compliance" means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The secretary may define in rules any term used herein which is not expressly defined.


In the administration of this article, the director shall have the following powers, duties and rights:

(a) To enforce rules and standards for residential board and care homes which are adopted, promulgated, amended or modified by the secretary;

(b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of residential board and care homes;

(c) To enforce rules adopted, promulgated, amended or modified by the secretary governing the qualification of applicants for residential board and care home licenses, including, but not limited to, educational requirements, financial requirements, personal and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the division's operation, or otherwise;
(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all contracts, agreements and instruments shall be executed by the director;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for residential board and care homes' administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and operation of residential board and care homes and to the health, care, treatment and service in general of residents of such homes;

(k) To assess civil penalties for violations of residential board and care home standards, in accordance with section ten of this article;

(l) To inspect any residential board and care home and any records maintained therein, subject to the provisions of section ten of this article;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of article three, chapter twenty-nine-a of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder, by the secretary;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person or persons for the violation
of the provisions of this article or of rules issued
hereunder, by the secretary. Such action may be taken by
the director without the sanction of the prosecuting
attorney of the county in which proceedings are instituted,
if the officer fails or refuses to discharge his or her duty.
The circuit court of Kanawha County or the circuit court
of the county in which the conduct has occurred shall
have jurisdiction in all civil enforcement actions brought
under this article and may order equitable relief without
bond. In no such case may the director or any person
acting under the director’s direction be required to give
security for costs;

(p) To delegate authority to the director’s employees
and agents to perform all functions of the director except
the making of final decisions in adjudications; and

(q) To submit a report to the governor, the Legislature
and the public, on or before the first day of December,
one thousand nine hundred ninety-seven, and annually
thereafter. The report shall describe the residential board
and care home licensing and investigatory activities of the
division during the year, and the nature and status of other
activities of the division, and may include comment on the
acts, policies, practices or procedures of any public or
private agency that affect the rights, health or welfare of
residents of residential board and care homes. The annual
report shall include a list of all residential board and care
homes in the state and such of the following information
as the director determines to apply: Whether the homes are
proprietary or nonproprietary, the classification of each
home; the name of the owner or owners; the total number
of beds; the number of private and semiprivate rooms; the
costs per diem for private residents; the number of
full-time employees and their professions; recreational
programs; services and programs available as well as the
costs thereof, and whether or not those residential board
and care homes listed accept medicare and medicaid
residents. The report shall also contain the division’s
recommendations as to changes in law or policy which it
deems necessary or appropriate for the protection of the
rights, health or welfare of residents of residential board
and care homes in the state.
§16-5H-4. Administrative and inspection staff.

1 The director may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division shall be members of the state civil service system. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated rules of the secretary and, in the discharge of official duties, shall have the right of entry into any place maintained as a residential board and care home.

§16-5H-5. Rules; minimum standards for residential board and care homes.

(a) All rules shall be approved by the secretary and promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The secretary shall adopt, amend or repeal such rules as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

(b) The secretary shall promulgate rules establishing minimum standards of operation of residential board and care homes including, but not limited to, the following:

1 Administrative policies, including: (A) An affirmative statement of the right of access to residential board and care homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents;

2 Minimum numbers and qualifications of personnel, including management, medical and nursing, aides,
orderlies and support personnel, according to the size and
classification of the residential board and care home;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made
available;

(9) Physical facilities;

(10) Requirements related to limited and intermittent
nursing care; and

(11) Such other categories as the secretary determines
to be appropriate to ensure resident's health, safety and
welfare.

(c) The secretary shall include in rules detailed
standards for each of the categories of standards
established pursuant to subsections (b) and (d) of this
section, and shall classify such standards as follows: Class I
standards are standards the violation of which, the
secretary determines, would present either an imminent
danger to the health, safety or welfare of any resident or a
substantial probability that death or serious physical harm
would result; Class II standards are standards which the
secretary determines have a direct or immediate
relationship to the health, safety or welfare of any resident,
but which do not create imminent danger; Class III
standards are standards which the secretary determines
have an indirect or a potential impact on the health, safety
or welfare of any resident.

(d) A residential board and care home shall attain
substantial compliance with standards established pursuant
to section five of this article, and such other requirements
for a license as may be established by rule under this
article.
§16-5H-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a residential board and care home within this state unless and until he or she obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any residential board and care home, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for residential board and care homes as established by this article and the rules lawfully promulgated by the secretary hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (B) of each officer and director of a corporate applicant; (C) of each trustee and beneficiary of an applicant which is a trust; and (D) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of such corporation;

(3) The name and address of the owner of the premises of the residential board and care home or proposed residential board and care home, if he or she is a different person from the applicant, and in such case, the name and address: (A) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more
in such owner; (B) of each officer and director of a
39 corporate applicant; (C) of each trustee and beneficiary of
40 such owner if he or she is a trust; and (D) where a
41 corporation has a proprietary interest of twenty-five
42 percent or more in such owner, the name and address of
43 each officer and director of such corporation;
44
45 (4) Where the applicant is the lessee or the assignee of
46 the residential board and care home or the premises of the
47 proposed residential board and care home, a signed copy
48 of the lease and any assignment thereof;
49
50 (5) The name and address of the residential board and
51 care home or the premises of the proposed residential
52 board and care home;
53
54 (6) The proposed bed quota of the residential board
55 and care home and the proposed bed quota of each unit
56 thereof;
57
58 (7) (A) An organizational plan for the residential
59 board and care home indicating the number of persons
60 employed or to be employed, the positions and duties of
61 all employees; (B) the name and address of the individual
62 who is to serve as administrator; and (C) such evidence of
63 compliance with applicable laws and rules governing
64 zoning, buildings, safety, fire prevention and sanitation as
65 the director may require; and
66
67 (8) Such additional information as the director may
68 require.
69
70 (b) Upon receipt and review of an application for
71 license made pursuant to subsection (a) of this section, and
72 inspection of the applicant residential board and care
73 home pursuant to section ten of this article, the director
74 shall issue a license if he or she finds:
75
76 (1) That an individual applicant, and any partner,
77 trustee, officer, director and controlling person of an
78 applicant which is not an individual, is a person
79 responsible and suitable to operate or to direct or
80 participate in the operation of a residential board and care
81 home by virtue of financial capacity, appropriate business
82 or professional experience, a record of compliance with
lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the residential board and care home be under the supervision of an administrator who is qualified by training and experience; or

(3) That the residential board and care home is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as the secretary may establish by rule under this article.

The director may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Such licenses shall be issued for a period not to exceed one year for residential board and care homes: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the state division of health in conformance with the provisions of this article and the rules issued thereunder, and prior to the expiration date of such license, shall continue in effect until: (A) One year following the expiration date of such license; or (B) the date of the revocation or suspension of such license pursuant to the provisions of this article; or (C) the date of issuance of a new license, whichever date first occurs.

Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable: Provided, however, That in the case of the transfer of ownership of a residential board and care home with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be displayed in a conspicuous place in the residential board and care home for which it is issued so as to be accessible to and in plain view of all residents and visitors of the residential board and care home.
(c) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the secretary hereunder. The application shall be accompanied by the information required in subdivisions (1), (2) and (3) of this subsection.

(1) A balance sheet of the residential board and care home as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;

(2) A statement of operations of the residential board and care home as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) A statement of any changes in the name, address, management or ownership information on file with the director.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may in his or her discretion issue a provisional license, provided that care given in the residential board and care home is adequate for resident needs and the residential board and care home has demonstrated improvement and evidences potential for substantial compliance within the term of said license: Provided, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any residential board and care home with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of sixty-five dollars for an original residential board and care home license shall be paid at the time application is made for such license. The average cost of all direct costs for the initial licensure inspections of all such homes for the preceding ten facilities shall be borne by the applicant and shall be received by the director prior to the issuance of an
initial or amended license. The license fee for renewal of
a license shall be at the rate of four dollars per bed per
year for residential board and care homes, except the
annual rate per bed may be assessed for licenses issued for
less than one year. The director may annually adjust the
licensure fees for inflation based upon the consumer price
index. The bed capacity for the holder of each license
shall be determined by the director. All such license fees
shall be due and payable to the director, annually, and in
such manner set forth in the rules promulgated by the
secretary. Such fee and application shall be submitted to
the director who shall retain both the application and fee
pending final action on the application. All fees received
by the director under the provisions of this article shall be
deposited in accordance with section thirteen, article one
of this chapter.

§16-SH-7. Cost disclosure; surety for residents' funds.

(a) Each residential board and care home shall disclose
in writing to all prospective residents a complete and
accurate list of all costs which may be incurred by them.
Residents are not liable for any cost not so disclosed.

(b) If the residential board and care home handles any
money for residents within the residential board and care
home, the licensee or his or her authorized representative
shall give a bond in an amount consistent with this
subsection and with such surety as the director shall
approve. Such bond shall be upon condition that the
licensee shall hold separately and in trust all residents' 

funds deposited with the licensee, shall administer the 

funds on behalf of the resident in the manner directed by 

the depositor, shall render a true and complete account to 

the depositor and the director when requested, and at least 

quarterly to the resident, and upon termination of the 

deposit, shall account for all funds received, expended, 

and held on hand. The licensee shall file a bond in a sum 

to be fixed by the director based upon the magnitude of 

the operations of the applicant, but which sum may not be 

less than two thousand five hundred dollars.

(c) Every person injured as a result of any improper or 

unlawful handling of the money of a resident of a
residential board and care home may bring an action in a
proper court on the bond required to be posted by the
licensee pursuant to this subsection for the amount of
damage suffered as a result thereof to the extent covered
by the bond. Whenever the director determines that the
amount of any bond which is filed pursuant to this
subsection is insufficient to adequately protect the money
of residents which is being handled, or whenever the
amount of any such bond is impaired by any recovery
against the bond, the director may require the licensee to
file an additional bond in such amount as necessary to
adequately protect the money of residents being handled.

(d) The provisions of this subsection do not apply if
the licensee handles less than twenty-five dollars per
resident and less than five hundred dollars for all residents
in any month.

§16-5H-8. Investigation of complaints.

The secretary shall establish by rule procedures for
prompt investigation of all complaints of alleged
violations by residential board and care homes of
applicable requirements of state law or rules, except for
such complaints that the director determines are willfully
intended to harass a licensee or are without any reasonable
basis. Such procedures shall include provisions for
ensuring the confidentiality of the complainant and of any
other person so named in the complaint, and for promptly
informing the complainant and the residential board and
care home involved of the results of the investigation.

If, after its investigation, the director determines that
the complaint has merit, the director shall take appropriate
disciplinary action and shall advise any injured party of
the possibility of a civil remedy under this article.

No residential board and care home may discharge or
in any manner discriminate against any resident or
employee for the reason that such resident or employee
has filed a complaint or participated in any proceeding
specified in this article. Violation of this prohibition by
any residential board and care home constitutes ground
for the suspension or revocation of the license of the
residential board and care home as provided in section eleven of this article. Any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the residential board and care home in retaliation for such complaint or action.

§16-5H-9. Inspections.

The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any residential board and care home for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a residential board and care home without a license. If such entry is refused by the owner or person in charge of any such residential board and care home, the director shall apply to the circuit court of the county in which the residential board and care home is located or the circuit court of Kanawha County for an order authorizing inspection, and such court shall issue an appropriate order if it finds good cause.

The director, by the director’s authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the residential board and care home with applicable statutes and rules promulgated thereunder. All residential board and care homes shall comply with rules of the state fire commission. The state fire marshal, by his or her employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and
serious threat to a consumer’s health or safety exists, the
director may invoke any remedies available pursuant to
section eleven of this article. Any residential board and
care home aggrieved by a determination or assessment
made pursuant to this section shall have the right to an
administrative appeal as set forth in section twelve of this
article.

§16-5H-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived
therefrom; hearings.

(a) Reports of all inspections made pursuant to section
nine of this article shall be in writing and filed with the
director, and shall list all deficiencies in the residential
board and care home’s compliance with the provisions of
this article and the rules adopted by the secretary
hereunder. The director shall send a copy of such report
to the residential board and care home by certified mail,
return receipt requested, and shall specify a time within
which the residential board and care home shall submit a
plan for correction of such deficiencies, which plan shall
be approved, rejected or modified by the director. The
surveyors shall allow audio taping of the exit conference
for both licensure and certification inspections with all
costs directly associated with such taping to be paid by the
residential board and care home provided that an original
tape is provided to surveyors at the end of taping.

(b) Upon a residential board and care home's failure to
submit a plan of correction which is approved by the
director, or to correct any deficiency within the time
specified in an approved plan of correction, the director
may assess civil penalties as hereinafter provided or may
initiate any other legal or disciplinary action as provided
by this article.

(c) Nothing in this section may be construed to
prohibit the director from enforcing a rule,
administratively or in court, without first affording formal
opportunity to make correction under this section, where,
in the opinion of the director, the violation of such rule
jeopardizes the health or safety of residents or where the
 violation of such rule is the second or subsequent such violation occurring during a period of twelve full months.

(d) Civil penalties assessed against residential board and care homes shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and rules promulgated thereunder by the secretary, as follows: For each violation of a Class I standard, a civil penalty of not less than fifty nor more than five hundred dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than ten nor more than twenty-five dollars shall be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The director shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies, or causes to be notified, a residential board and care home of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director assessed the penalty and selected the amount of the penalty.

(g) The director shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under section twelve of this article within thirty days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within thirty days of receipt of the director's final order, or which has been affirmed on judicial review, as provided in section thirteen of this article. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be
applied by the director only for the protection of the health or property of residents of residential board and care homes operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of a residential board and care home pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in section twelve of this article. In addition to any other rights of appeal conferred upon a residential board and care home pursuant to this section, a residential board and care home shall have the right to request a hearing and seek judicial review pursuant to sections twelve and thirteen of this article to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

§16-SH-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

(a) The director shall by order, impose a ban on the admission of residents or reduce the bed quota of the residential board and care home, or any combination thereof, where he or she finds upon inspection of the residential board and care home that the licensee is not providing adequate care under the residential board and care home’s existing quota, and that, reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate care. Any notice to a licensee of reduction in quota or ban on admissions shall include the terms of such order, the reasons therefor, and the date set for compliance.

(b) The director may suspend or revoke a license issued under this article if he or she finds upon inspection that there has been a substantial failure to comply with the
provisions of this article or the standards or rules promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file an administrative complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation. Upon the filing of the administrative complaint, the director shall notify the licensee in writing of the filing of the administrative complaint, enclosing a copy of the administrative complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, the circuit court of the county in which the conduct has occurred or is occurring, or the circuit court of Kanawha County, may determine that a residential board and care home's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the residential board and care home;

(2) Transfer residents in the residential board and care home to other facilities; or
(3) Appoint temporary management to oversee the operation of the residential board and care home and to assure the health, safety, welfare and rights of the residents, where there is a need for temporary management while:

(A) There is an orderly closure of the residential board and care home; or

(B) Improvements are made in order to bring the residential board and care home into compliance with all the applicable requirements of this article.

If the director petitions a circuit court for the closure of a residential board and care home, the transfer of residents, or the appointment of temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the residential board and care home may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential board and care home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents of the residential board and care home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the residential board and care home or to repair or improve the residential board and care home so as to return it to compliance with applicable requirements, and the power to receive, conserve and expend funds, including payments on behalf of the licensee or operator of the residential board and care home. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

The person charged with temporary management shall be an officer of the court, shall be paid by the residential board and care home when resources are available, is not
liable for conditions at the residential board and care home which existed or originated prior to his or her appointment, and is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the residential board and care home during his or her temporary management.

No person may impede the operation of a temporary management. There shall be an automatic stay for a ninety-day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the residential board and care home, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the residential board and care home.

A temporary management established for the purpose of making improvements in order to bring a residential board and care home into compliance with applicable requirements may not be terminated until the court has determined that the residential board and care home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the residential board and care home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the residential board and care home.

The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning thirty days after receipt of notice of such assessment or thirty days after
receipt of the director’s final order following a hearing, whichever is later. All such assessments against a residential board and care home that are unpaid shall be added to the residential board and care home’s licensure fee and may be filed as a lien against the property of the licensee or operator of the residential board and care home. Funds received from such assessments shall be deposited as funds received, as provided, in section ten of this article.

(g) The secretary shall have the power to promulgate emergency rules that expand the power of the director in excess of that provided in this article to the extent required to comply with federal requirements, but any such rules shall expand the power of the director to the minimum extent required by federal requirements. Such rules are subject to the provisions of article three, chapter twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by the director taken under this section shall be as provided in section twelve of this article.

§16-5H-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he or she may contest such order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with such hearing. Such licensee or applicant may also request an informal meeting with the director before such hearing.

Following such hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this
18 code, and a copy of such order and accompanying
19 findings and conclusions shall be served upon the licensee
20 and his or her attorney of record, if any, by certified mail,
21 return receipt requested. If the director suspends a
22 residential board and care home’s license, it shall also
23 specify the conditions giving rise to such suspension, to be
24 corrected by the licensee during the period of suspension
25 in order to entitle the licensee to reinstatement of the
26 license. If the director revokes a license, the director may
27 stay the effective date of revocation by not more than
28 ninety days upon a showing that such delay is necessary to
29 assure appropriate placement of residents. The order of
30 the director shall be final unless vacated or modified upon
31 judicial review thereof in accordance with the provisions
32 of section thirteen of this article.
33
34 (b) In addition to all other powers granted by this
35 chapter, the director may hold the case under advisement
36 and make a recommendation as to requirements to be met
37 by the licensee in order to avoid either suspension or
38 revocation. In such a case, the director shall enter an
39 order accordingly and so notify the licensee and his or her
40 attorney of record, if any, by certified mail, return receipt
41 requested. If the licensee meets the requirements of such
42 order, the director shall enter an order showing
43 satisfactory compliance and dismissing the complaint and
44 shall so notify the licensee and the licensee’s attorney of
45 record, if any, by certified mail, return receipt requested.


1 Any licensee adversely affected by an order of the
director rendered after a hearing held in accordance with
the provisions of section twelve of this article 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 with like effect as if the
provisions of said section four were set forth in extenso in
this section.

9 The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme
court of appeals in accordance with the provisions of
section one, article six, chapter twenty-nine-a of this code.
§16-5H-14. Legal counsel and services for the director.

(a) Legal counsel and services for the director in all administrative hearings and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general, his or her assistants or an attorney employed by the director, in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The governor may appoint counsel for the director, who shall perform such legal services in representing the interests of residents in residential board and care homes in matters under the jurisdiction of the director as the governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the governor.

§16-5H-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a residential board and care home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in jail for a period of not more than ninety days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it shall appear to the director that any person has engaged in, or is engaging in,
an act or practice in violation of this article or any rule, or
order hereunder, or whenever it shall appear to the
director that any person has aided, abetted or caused, or is
aiding, abetting or causing such an act or practice. Upon
application by the director, the circuit court of the county
in which the conduct has occurred or is occurring, or if
emergency circumstances occur, the circuit court of
Kanawha County, shall have jurisdiction to grant without
bond a permanent or temporary injunction, decree or
restraining order.

Whenever the director shall have refused to grant or
renew a license, or shall have revoked a license required
by law to operate or conduct a residential board and care
home, or shall have ordered a person to refrain from
conduct violating the rules of the secretary, and the person
deeming himself or herself aggrieved by such refusal or
revocation or order shall have appealed the action of the
director, the court may, during pendency of such appeal,
issue a restraining order or injunction upon proof that the
operation of the residential board and care home or its
failure to comply with the order of the director adversely
affects the well-being or safety of the residents of the
residential board and care home. Should a person who is
refused a license or the renewal of a license to operate or
conduct a residential board and care home or whose
license to operate is revoked or who has been ordered to
refrain from conduct or activity which violates the rules of
the secretary, fail to appeal or should such appeal be
decided favorably to the director, then the court shall issue
a permanent injunction upon proof that the person is
operating or conducting a residential board and care
home without a license as required by law, or has
continued to violate the rules of the secretary.

(c) Any residential board and care home that deprives
a resident of any right or benefit created or established for
the well-being of the resident by the terms of any contract,
by any state statute or rule, or by any applicable federal
statute or regulation, shall be liable to the resident for
injuries suffered as a result of such deprivation. Upon a
finding that a resident has been deprived of such a right or
benefit, and that the resident has been injured as a result of
such deprivation, and unless there is a finding that the
residential board and care home exercised all care
reasonably necessary to prevent and limit the deprivation
and injury to the resident, compensatory damages shall be
assessed in an amount sufficient to compensate such
resident for such injury. In addition, where the
deprivation of any such right or benefit is found to have
been willful or in reckless disregard of the lawful rights of
the resident, punitive damages may be assessed. A
resident may also maintain an action pursuant to this
section for any other type of relief, including injunctive
and declaratory relief, permitted by law. Exhaustion of
any available administrative remedies is not required prior
to commencement of suit hereunder.

The amount of damages recovered by a resident, in an
action brought pursuant to this section, shall be exempt
for purposes of determining initial or continuing
eligibility for medical assistance under article four, chapter
nine of this code, and shall neither be taken into
consideration nor required to be applied toward the
payment or part payment of the cost of medical care or
services available under said article.

Any waiver by a resident or his or her legal
representative of the right to commence an action under
this section, whether oral or in writing, shall be null and
void as contrary to public policy.

(d) The penalties and remedies provided in this section
are cumulative and shall be in addition to all other
penalties and remedies provided by law.

§16-5H-16. Availability of reports and records.

The director shall make available for public inspection
and at a nominal cost provide copies of all inspections and
other reports of residential board and care homes filed
with or issued by the director. Nothing contained in this
section may be construed or deemed to allow the public
disclosure of confidential medical, social, personal or
financial records of any resident. The secretary shall
propose rules for legislative approval in accordance with
the provisions of article three, chapter twenty-nine-a of
this code as may be necessary to give effect to the
provisions of this section and to preserve the
§16-5H-17. Licenses and rules in force.

All licenses for residential board and care homes which are in force on the first day of July, one thousand nine hundred ninety-seven, shall continue in full force and effect during the period for which issued unless sooner revoked as provided in this article.

All rules in effect on the first day of July, one thousand nine hundred ninety-seven, which were adopted by the secretary relating to licensing residential board and care homes, shall remain in full force and effect until altered, amended or repealed by the secretary.

§16-5H-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each residential board and care home subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the residential board and care home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such residential board and care home unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each residential board and care home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the residential board and care home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident’s stay in the residential board and care home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.
AN ACT to amend and reenact section two, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the director of the division of natural resources; allowing campsites to be reserved two days in advance when space is available; providing for credit card reservations at state parks and recreational areas; and requiring the director to develop a plan for a centralized computer reservation system and to implement the plan when funding becomes available.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

The director of the division of natural resources is responsible for the execution and administration of the provisions in this article as an integral part of the parks and recreation program of the state and shall organize and staff the section of parks and recreation for the orderly, efficient and economical accomplishment of these ends.

The authority granted in the year one thousand nine hundred ninety-four to the director of the division of natural resources to employ up to six additional
The director of the division of natural resources shall:

(a) Establish, manage and maintain the state's parks and recreation system for the benefit of the people of this state and do all things necessary and incidental to the development and administration of the state's parks and recreation system;

(b) Acquire property for the state in the name of the division of natural resources by purchase, lease or agreement; retain, employ and contract with legal advisors and consultants; or accept or reject for the state, in the name of the division, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in the property, including lands and waters, for state park or recreational areas for the purpose of providing public recreation: Provided, That the provisions of section twenty, article one of this chapter are specifically made applicable to any acquisitions of land: Provided, however, That any sale, exchange or transfer of property for the purposes of completing land acquisitions or providing improved recreational opportunities to the citizens of the state is subject to the procedures of article one-a of this chapter: Provided further, That no sale of any park or recreational area property, including lands and waters, used for purposes of providing public recreation on the effective date of this article and no privatization of any park may occur without statutory authority;

(c) Approve and direct the use of all revenue derived from the operation of the state parks and public recreation system for the operation, maintenance and improvement of the system, individual projects of the system or for the retirement of park development revenue bonds;

(d) Approve the use of no less than twenty percent of the: (i) Funds appropriated for purposes of advertising and marketing expenses related to the promotion and
development of tourism, pursuant to subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code; and (ii) funds authorized for expenditure from the tourism promotion fund for purposes of direct advertising, pursuant to section twelve, article two, chapter five-b of this code and section ten, article twenty-two-a, chapter twenty-nine of this code, to effectively promote and market the state's parks, state forests, state recreation areas and wildlife recreational resources;

(e) Issue park development revenue bonds as provided in this article;

(f) Provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational service facilities, subject to the provisions of section fifteen of this article and section twenty, article one of this chapter;

(g) Propose rules to control uses of the parks, subject to the provisions of chapter twenty-nine-a of this code: Provided, That the director may not permit public hunting, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park;

(h) Exempt designated state parks from the requirement that all payments must be deposited in a bank within twenty-four hours for amounts less than two hundred fifty dollars notwithstanding any other provision of this code to the contrary;

(i) Waive the use fee normally charged to an individual or group for one day's use of a picnic shelter or one week's use of a cabin in a state recreation area when the individual or group donates the materials and labor for the construction of the picnic shelter or cabin: Provided, That the individual or group was authorized by the director to construct the picnic shelter or cabin and that it was constructed in accordance with the authorization granted and the standards and requirements of the division pertaining to the construction. The individual or group to whom the waiver is granted may use the picnic shelter for
one reserved day or the cabin for one reserved week
during each calendar year until the amount of the
donation equals the amount of the loss of revenue from
the waiver or until the individual dies or the group ceases
to exist, whichever first occurs. The waiver is not
transferable. The director shall permit free use of picnic
shelters or cabins to individuals or groups who have
contributed materials and labor for construction of picnic
shelters or cabins prior to the effective date of this section.
The director shall propose a legislative rule for
promulgation in accordance with the provisions of article
three, chapter twenty-nine-a of this code governing the
free use of picnic shelters or cabins provided for in this
section, the eligibility for free use, the determination of the
value of the donations of labor and materials, the
appropriate definitions of a group and the maximum time
limit for the use;

(j) Provide within the parks a market for West Virginia
arts, crafts and products, which shall permit gift shops
within the parks to offer for sale items purchased on the
open market from local artists, artisans, craftsmen and
suppliers and local or regional crafts cooperatives;

(k) Provide that reservations for reservable campsites
may be made, upon two days advance notice, for any date
for which space is available within a state park or
recreational area managed by the parks and recreation
section;

(l) Provide that reservations for all state parks and
recreational areas managed by the parks and recreation
section of the division may be made by use of a valid
credit card; and

(m) Develop a plan to establish a centralized computer
reservation system for all state parks and recreational areas
managed by the parks and recreation section and to
implement the plan as funds become available.
CHAPTER 150

(Com. Sub. for S. B. 105—By Senators Ball, Anderson, Love, Bowman, Schoonover, Ross and Helmick)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notification of parole hearings; victims' right to be heard; and notification of parole release dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a "Parole Hearing Notification Form". This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;

(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;
(4) The name of the judge who presided over the criminal case and who sentenced the offender;

(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim's spouse, father, mother, brothers and sisters.

(b) The prosecuting attorney shall retain the original of the "Parole Hearing Notification Form", and shall provide copies of it to the circuit court which sentenced the offender, the parole board, the commissioner of corrections and to all persons whose names and addresses are listed on the "Parole Hearing Notification Form".

(c) At least forty-five days prior to the date of a parole hearing, the parole board shall notify all persons who are listed on the "Parole Hearing Notification Form" of the date, time and place at which a parole hearing will be held. Such notice shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the parole board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

(d) The parole board shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the parole board shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the parole board grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days
after the date on which parole is granted. On the date on which parole is granted, the parole board shall notify all persons listed on the “Parole Hearing Notification Form” that parole has been granted and that the prisoner will be released on a particular date. A written statement of reasons for releasing the prisoner, prepared pursuant to subdivision (4), subsection (d), section thirteen of this article, shall be provided upon request to all persons listed on the “Parole Hearing Notification Form.”

CHAPTER 151

(Com. Sub. for H. B. 2795—By Delegates Laird, Staton, Stemple and Thomas)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and five, article fourteen-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investigation and interrogation rights of police officers and firefighters; defining certain terms, including “accused officer”, for purposes of the article; providing for composition of hearing board in civil service and noncivil service jurisdictions; and providing for appeal rights both for officers and department chiefs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS; PROCEDURE FOR INVESTIGATION.

§8-14A-1. Definitions.
§8-14A-5. Appeal.
§8-14A-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) “Accused officer” means any police officer or firefighter who is the subject of an investigation or interrogation which results in a recommendation of punitive action against him or her.

(2) “Civil service,” when followed by the terms “department,” “officer” or “accused officer”, means any department, officer or accused officer who is subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(3) “Hearing” means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

(4) “Hearing board” means a board appointed to hold a hearing on a complaint against an accused officer. The hearing board shall consist of three members to be appointed pursuant to paragraphs (a), (b) or (c) of this subdivision. Hearing board members appointed under paragraphs (b) or (c) of this subdivision may be removed from office as provided under paragraph (d) of this subdivision.

(a) For civil service departments, the department chief shall appoint the first member, the members of the accused officer’s department shall appoint the second member, and the first and second members shall appoint the third member by agreement. Should the first and second members fail to agree on the appointment of the third member within five days, they shall submit to the department’s civil service commission a list of four qualified candidates from which list the commission shall appoint the third member. The appointment of members under this paragraph shall be subject to the following qualifications and limitations:
(1) No member shall have had any part in the investigation or interrogation of the accused officer;

(2) Each member shall be a police officer or firefighter within the accused officer’s department, or, with the department chief’s approval, a law-enforcement officer or firefighter from another law-enforcement agency or fire department;

(3) At least one member shall be of the same rank as the accused officer; and

(4) If there are fewer than three persons who meet the qualifications described in subparagraphs (1), (2) and (3) of this paragraph, then the department’s civil service commission shall appoint as many citizens of the municipality in which the department is located as may be necessary to constitute the board.

(b) For noncivil service police departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local fraternal order of police shall appoint the second member, and the local chamber of commerce or local businessmen’s association shall appoint the third member. If there is no local fraternal order of police, the state fraternal order of police shall appoint the second member. If there is no local chamber of commerce or local businessmen’s association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each police department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. When the hearing board is appointed, the three members shall
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79  elect one of their number to act as president of the board,
80  who shall serve as president for one year. In the event that
81  a member has had a part in the investigation or
82  interrogation of an accused officer or is related by
83  consanguinity or affinity to an accused officer, that
84  member shall be recused from participation in the accused
85  officer's hearing. In such an instance, the officer or body
86  who in the first instance appointed the recused member
87  shall appoint another person for sole purpose of the
88  accused's officer hearing. No member shall hold any
89  other office (other than the office of notary public) under
90  the United States, this state, or any municipality, county or
91  other political subdivision thereof; nor shall any member
92  serve on any political committee or take any active part in
93  the management of any political campaign.

94  (c) For noncivil service fire departments, the hearing
95  board shall be a standing hearing board. The department
96  chief shall appoint the first member, the local international
97  association of firefighters shall appoint the second
98  member, and the local chamber of commerce or local
99  businessmen's association shall appoint the third member.
100  If there is no local international association of firefighters
101  in the municipality, the local central body of the West
102  Virginia Federation of Labor AFL-CIO shall appoint the
103  second member. If there is no local central body of the
104  West Virginia Federation of Labor AFL-CIO in the
105  municipality, the West Virginia Federation of Labor AFL-
106  CIO shall appoint the second member. If there is no local
107  chamber of commerce or local businessmen's association,
108  the first and second members shall appoint the third
109  member by agreement. Of the three original
110  appointments in each fire department, the first member
111  shall serve for six years from the date of his or her
112  appointment; the second member shall serve four years
113  from the date of his or her appointment; and the third
114  member shall serve for two years from the date of his or
115  her appointment. After the original appointments, all
116  appointments shall be made for periods of four years each
117  by the designated appointing authority. In the event that
118  any member shall cease to be a member due to death,
119  resignation, final removal or other cause, a new member
120  shall be appointed within thirty days of the date the ex-
121  member ceased to be a member. This appointment shall
be made by the officer or body who in the first instance appointed the member who is no longer a member. Each of the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer’s hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for the sole purpose of the accused officer’s hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(d) Any member of a hearing board appointed under paragraphs (b) or (c) of this subdivision may be removed as provided in this paragraph.

The mayor of the municipality may, at any time, remove any hearing board member for good cause, which shall be stated in writing and made a part of the records of the hearing board. However, within ten days of removing any member, the mayor shall file in the circuit clerk’s office of the county in which the municipality is located a petition setting forth in full the reason for the removal and seeking the circuit court’s confirmation of the mayor’s removal of the member. The mayor shall file a copy of the petition with the removed member at the same time it is filed with the circuit clerk. The petition shall have precedence on the circuit court’s docket and shall be heard as soon as practicable on the request of the removed member. All rights vested in a circuit court by this subsection may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time the petition is filed, and the judge thereof cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding circuit court term, whether regular or special, and the removed member shall remain removed until a hearing is held on the petition. The court or the judge
thereof in vacation shall hear and decide the issues presented by the petition. The party affected adversely by the court’s or judge’s decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk’s office within ten days as provided above, the removed member shall immediately resume his or her position as a hearing board member.

Any resident of the municipality shall have the right at any time to seek the removal of any hearing board member. To do so, the resident shall file a petition in the circuit clerk’s office of the county where the municipality is located. The resident shall also serve a copy of the petition on the member sought to be removed. The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard. Any party adversely affected by the circuit court’s or judge’s decision shall have the right to petition the supreme court of appeals for a review of the decision as in other civil cases.

(5) “Noncivil service,” when followed by the terms “department,” “officer” or “accused officer”, means any department, officer or accused officer who is not subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(6) “Police officer or firefighter” or “officer” means any police officer or firefighter of a police or fire department employed by the city or municipality, but shall not include (a) the highest ranking officer of the police or fire department or (b) any noncivil service officer who has not completed the probationary period established by the department by which he or she is employed.

(7) “Punitive action” means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(8) “Under investigation” or “under interrogation” means any situation in which any police officer or
firefighter becomes the focus of inquiry regarding any matter which may result in punitive action.


(a) Before taking any punitive action against an accused officer, the police or fire department shall give notice to the accused officer that he or she is entitled to a hearing on the issues by a hearing board or the applicable civil service commission. The notice shall state the time and place of the hearing and the issues involved and shall be delivered to the accused officer no later than ten days prior to the hearing.

(b) When a civil service accused officer faces a recommended punitive action of discharge, suspension or reduction in rank or pay, but before such punitive action is taken, a hearing board must be appointed and must afford the accused civil service officer a hearing conducted pursuant to the provisions of article fourteen, section twenty, or article fifteen, section twenty-five of this chapter: Provided, That the punitive action may be taken before the hearing board conducts the hearing if exigent circumstances exist which require it.

(c) When a civil service accused officer faces a recommended punitive action of written reprimand or transfer for the purpose of punishment, or when a non-civil service accused officer faces any recommended punitive action, the applicable hearing board shall conduct hearing pursuant to the provisions of subsection (d) of this section.

(d) The following requirements shall govern the operation conduct of a hearing board under subsection (c) of this section:

(1) The hearing board shall keep an official record of each hearing it conducts. The official record shall include the testimony offered and exhibits introduced at the hearing.

(2) Both the police or fire department and the accused officer shall be given ample opportunity to present evidence and argument with respect to any issue raised at the hearing.
The hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts and other documents, in connection with any issue raised at the hearing.

The hearing board shall prepare a written order detailing any decision or action it takes as a result of the hearing. The written order shall include written findings of fact setting forth a concise statement of the hearing board's factual findings and conclusions on each issue raised at the hearing. The hearing board shall hand-deliver or promptly mail a copy of the written order to the accused officer or his attorney of record.

A hearing board's order is binding on all parties involved unless it is overturned in the appeal process described in section five of this article.

§8-14A-5. Appeal.

(a) For civil service departments, a hearing board's decision rendered under subsections (b) or (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board's order. An appeal under this subsection shall be made to the applicable civil service commission. Any party aggrieved by the civil service commission's ruling on the appeal may further appeal the civil service commission's ruling pursuant to the provisions of subsection (b), section twenty, article fourteen of this chapter or subsection (b), section twenty-five, article fifteen of this chapter.

(b) For noncivil service departments, a hearing board's decision rendered under subsection (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board's order. An appeal under this subsection shall be made to the circuit court of the county in which the police officer or firefighter resides.
AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of "practice of podiatry" by including the ankle; and restricting surgical procedures on ankles by podiatrists only upon being granted privileges to do so by a hospital's medical staff credentialing committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-4. Definitions.

As used in this article:

1 (1) "Board" means the West Virginia board of medicine established in section five of this article. Whenever any other provision of this code refers to the "medical licensing board of West Virginia", the reference shall be construed to mean and refer to the "West Virginia board of medicine" as created and established in this article.

2 (2) "Medical peer review committee" means a committee of, or appointed by, a state or local professional medical society, or a committee of, or appointed by, a medical staff of a licensed hospital, long-term care facility or other health care facility, or any health care peer review organization as defined in section one, article three-c of this chapter, or any other organization of professionals in this state formed pursuant to state or federal law and authorized to evaluate medical and health care services.
(3) "Practice of medicine and surgery" means the
diagnosis or treatment of, or operation or prescription for,
any human disease, pain, injury, deformity or other
physical or mental condition.

(4) "Practice of podiatry" means the examination,
diagnosis, treatment, prevention and care of conditions
and functions of the human foot and ankle by medical,
surgical and other scientific knowledge and methods; with
surgical treatment of the ankle authorized only when a
podiatrist has been granted privileges to perform ankle
surgery by a hospital’s medical staff credentialing
committee based on the training and experience of the
podiatrist; and medical and surgical treatment of warts and
other dermatological lesions of the hand which similarly
occur in the foot. When a podiatrist uses other than local
anesthesia, in surgical treatment of the foot, the anesthesia
must be administered by, or under the direction of, an
anesthesiologist or certified registered nurse anesthetist
authorized under the state of West Virginia to administer
anesthesia. A medical evaluation shall be made by a
physician of every patient prior to the administration of
other than local anesthesia.

(5) "State director of health" means the state director
of health or his or her designee, which designee shall act
as secretary of the board and shall carry out any and all
responsibilities assigned in this article to the secretary of
the board.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. OPTOMETRISTS.

§30-8-2a. Prescriptive authority.

§30-8-2b. Expanded prescriptive authority.

§30-8-2a. Prescriptive authority.

Notwithstanding the provisions of section two of this article, the board of optometry may grant qualified optometrists prescriptive authority for oral antibiotics, oral non-steroidal anti-inflammatory drugs, and oral carbonic anhydrase inhibitors: Provided, That the board has proposed rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process for individual optometrists that provide standards for education, training and adequate insurance coverage determined by the board to be conditions precedent to certification authorizing the individual optometrist to prescribe drugs excluded pursuant to the provisions of section two of this article but authorized by this section, and the optometrist desiring to employ the use of these pharmaceutical agents has met the necessary qualifications as established by rule.

§30-8-2b. Expanded prescriptive authority.

Notwithstanding the provisions of section two of this article, on or before the thirty-first day of December, one thousand nine hundred ninety-seven, the board of optometry shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, defining a certification process and drug formulary which is authorized by this section, except that no emergency rules may be proposed. The board shall provide a formulary classifying those
categories of oral drugs rational to the diagnosis and
treatment of conditions or diseases of the human eye and
its appendages, which may be prescribed by optometrists
from Schedules III, IV and V of the Uniform Controlled
Substances Act, article two, chapter sixty-a of this code.
The board shall consult with other appropriate boards,
including the board of pharmacy, in the development of
the formulary. The rules shall further provide for
individual certification of optometrists for this expanded
scope of prescriptive authority. The rules shall provide
standards for education and training determined by the
board to be conditions precedent to individual
certification authorizing an optometrist to prescribe drugs
excluded pursuant to the provisions of section two of this
article and included in a drug formulary to be adopted by
the board; procedures for certification by the board of
education and training courses; procedure standards for
certification and recertification of individual optometrists
for an expanded scope of practice prescriptive authority,
which shall include a continuing education requirement;
administrative fees necessary for the certification and
recertification; procedures and standards for certification
and training courses; procedures and standards for
determining successful completion of education and
training; and standards to ensure adequate insurance
coverage, as well as compliance with the provisions of this
section.

CHAPTER 154

(S. B. 511—By Senators Plymale, Helmick, Ross, Minear and Anderson)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nineteen,
chapter thirty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to raising the
board of foresters annual license renewal fee.

Be it enacted by the Legislature of West Virginia:
That section seven, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 19. FORESTERS.

§30-19-7. Expiration and renewal of license; fee.

Licenses shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this article, at his or her last registered address, of the date of the expiration of his or her license and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least sixty days in advance of the date of the expiration of said license. On the first day of July, one thousand nine hundred ninety-seven, the annual fee for renewal of a license is fifteen dollars per year. Thereafter the board may increase the annual renewal fee in increments of five dollars per year, up to a maximum annual renewal fee of forty dollars.

CHAPTER 155

(Com. Sub. for H. B. 2566—By Delegates Anderson, Border, Beane, Stalnaker, Leach, Mezzatesta and Douglas)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to respiratory care practitioners; and terminating the temporary license for respiratory care practitioners on the thirty-first day of December, one thousand nine hundred ninety-seven.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITI-
NERS.

§30-34-11. Examination requirement; termination of tempo-
rary licenses.

(a) After the establishment of the board of respiratory care, a license shall be issued to applicants who, on the effective date of this article, have passed the National Board of Respiratory Care, Inc., entry-level or registry examinations, or their equivalent as approved by the board.

(b) Applicants who have not passed either of these national examinations or their equivalent and who, through written evidence verified by oath, demonstrate that they have been functioning for two years in the capacity of a respiratory care provider as defined by this article shall be issued a temporary license to practice respiratory care. A temporary license shall be valid until the thirty-first day of December, one thousand nine hundred ninety-seven. Persons holding a temporary license shall be issued a license to practice only after achieving a passing score on a licensure exam administered or approved by the board. After the thirty-first day of December, one thousand nine hundred ninety-seven, persons who have not passed either of these national examinations or their equivalent shall not be licensed to practice respiratory care until they have achieved a passing score on a licensure exam administered or approved by the board.

(c) Any person issued a license pursuant to this section shall be required to pay the license or renewal fees established in section seven of this article.
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-seven, relating to licensing massage therapists; license required after the thirtieth day of June, one thousand nine hundred ninety-eight; definitions; creating the West Virginia massage therapy licensure board; appointment and terms of members of board; meetings of board; reimbursement of members' expenses; establishment of massage therapy licensure board fund; powers of board; requirements for licensure; authority of board to enforce provisions of article; proceedings for the revocation, suspension or nonrenewal of licenses; criminal penalties for violations of provisions; persons and activities exempt from provisions of article; and termination of the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-1. License required to practice.
§30-37-3. Board established; membership; terms.
§30-37-4. Quorum meetings; officers; reimbursement; staff.
§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.
§30-37-6. Duties of board; authorization to propose rules and fees.
§30-37-7. Requirements for licensure.
§30-37-1. License required to practice.

To protect the health, safety and welfare of the public and to ensure standards of competency, it is necessary to require licensure of those engaged in the practice of massage therapy. After the thirtieth day of June, one thousand nine hundred ninety-eight, it shall be unlawful for any person not licensed under the provisions of this article to practice massage therapy in this state, or to use the initials LMT, C.M.T., or the words "licensed massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person, corporation or association is engaging in the practice of massage therapy, or employ any person, not duly licensed, who is engaging in the practice of massage therapy or who is using such words or titles to imply or represent that he or she is engaging in the practice of massage therapy.


(a) "Board" means the West Virginia massage therapy licensure board.

(b) "Massage therapist" means a person licensed to practice the health care service of massage therapy under this article who practices or administers massage therapy to a client of either gender for compensation. No person licensed by the massage therapy licensure board may be referred to as a primary care provider nor be permitted to use such designation.

(c) "Massage therapy" means a health care service which is a scientific and skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone, circulation, promoting health and physical well-being. Massage therapy includes massage, myotherapy, masotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications or other therapies which involve manipulation of the muscle and connective tissue of the body, for the purpose of enhancing health, reducing stress, improving
circulation, aiding muscle relaxation, increasing range of motion, or relieving neuro-muscular pain. Massage therapy does not include diagnosis or service which requires a license to practice medicine or surgery, osteopathic medicine, chiropractic, or podiatry, and does not include service performed by nurses, occupational therapists, or physical therapists who act under their own professional license, certificate or registration.

(d) "Massage establishment" means a place of business wherein massage therapy is practiced.

§30-37-3. Board established; membership; terms.

There is hereby created the West Virginia massage therapy licensure board. The board shall consist of five members who shall be appointed by the governor with the advice and consent of the Senate. Three members of the board shall be massage therapists, chosen from a list of not less than five names submitted by the West Virginia chapter of the American massage therapy association. One member of the board shall be an osteopathic physician or chiropractor who is knowledgeable of modalities which are included in massage therapy, and one member of the board shall be a lay person who is not a massage therapist or other health care professional.

The terms of board members shall be staggered initially from the first day of July, one thousand nine hundred ninety-seven. The governor shall appoint initially three members for a term of one year and two members for a term of two years. Subsequent appointments shall be for a term of two years. Each member shall serve until that member's successor is appointed and qualified, unless the board member is no longer competently performing the duties of office. Any vacancy on the board shall be filled by the governor for the balance of the unexpired term. The governor may remove members of the board from office for cause.

§30-37-4. Quorum meetings; officers; reimbursement; staff.

(a) A majority of the full authorized membership of the board constitutes a quorum.

(b) The board shall meet at least twice a year, at the times and places that it determines.
(c) The board shall annually elect a chairperson and a secretary/treasurer.

(d) Each member of the board is entitled to reimbursement of travel and other necessary expenses actually incurred while engaging in board activities. All reimbursement of expenses shall be paid out of the massage therapy board fund created by the provisions of this article.

(e) The board may employ staff as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel out of the massage therapy board fund created by the provisions of this article.

(f) The board may contract with other state boards or state agencies to share offices, personnel, and other administrative functions as authorized under this article.

§30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.

(a) There is hereby established a massage therapy licensure board fund in the state treasurer's office.

(b) The board may set reasonable fees for the issuance or renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members shall be generated by the fees set under this subsection.

(c) The disposition of all funds received by the board shall be governed by the provisions of section ten, article one, chapter thirty of this code.

§30-37-6. Duties of board; authorization to propose rules and fees.

(a) The board shall be responsible for licensure and continuing education requirements, standards of practice and professional ethics, disciplinary actions, and other issues of concern.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as are necessary to implement the provisions of this article.
(c) The board shall adopt reasonable rules regarding personal cleanliness of massage therapists and the sanitary conditions of towels, linens, creams, lotions and other materials, facilities, and equipment used in the practice of massage therapy.

(d) All fees for licensure, renewal of licensure, and all other related matters shall be set by the board.

§30-37-7. Requirements for licensure.

(a) The board shall propose rules establishing a procedure for licensing of massage therapists. License requirements shall include the following:

(1) Completion of a curriculum of massage education at a school approved by the commission on massage training accreditational approval or the West Virginia state college system board. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction. This requirement may be waived for those practitioners who were practicing massage therapy prior to the first day of December, one thousand nine hundred ninety-four;

(2) Successful completion of the national certification for therapeutic massage and body work (NCTMB) examination; except that any person who is currently practicing massage therapy and who completed the American massage therapy association educational and testing requirements prior to the first day of December, one thousand nine hundred ninety-four, may be granted a two year provisional license without having successfully completed the national certification for therapeutic massage and body work examination. Any such provisional license granted under this exception shall expire in two years if the national certification for therapeutic massage and body work examination is not successfully completed within that time; and

(3) Payment of a reasonable fee annually required by the board which shall compensate and be retained by the board for the costs of administration.

(b) In addition to provisions for licensure, the rules shall include the following:
(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements including the successful completion of the NCTMB examination.

c) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate must be publicly displayed and available for inspection by the board and the public at a massage therapist's work site.


(a) The board has the power and authority to enter into any court of this state having proper jurisdiction to seek an injunction against any person, corporation or association not in compliance with the provisions of this article, and is further empowered to enter into any court to enforce the provisions of this article to ensure compliance with such provisions.

(b) The board may suspend, revoke, or impose probationary conditions upon a license issued pursuant to rules adopted in accordance with this article concerning board requirements for licensure. The following are grounds for revocation, suspension, or annulment when a person, corporation or association is:

(1) Guilty of fraud in practice of massage, or fraud or deceit in the licensee's application for licensure;

(2) Engaged in practice under a false or assumed name, or impersonating another practitioner of a like or different name;

(3) Addicted to the habitual use of drugs, alcohol or stimulants to an extent as to incapacitate that person's performance of professional duties;

(4) Guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing medicines or drugs, or practicing any licensed profession without legal authority. The licensee may not diagnose, or imply or advertise in any way a service for a condition that would require diagnosis;
28 (5) Grossly negligent in the practice of massage or
29 guilty of employing, allowing or permitting an unlicensed
30 person to perform massage in the licensee's work site.

31 (6) Practicing massage or bodywork with a license
32 from another state or jurisdiction that has been canceled,
33 revoked, suspended or otherwise restricted;

34 (7) Incapacitated by a physical or mental disability
35 which is determined by a physician to render further
36 practice by the licensee inconsistent with competency and
37 ethics requirements;

38 (8) Convicted of sexual misconduct, assignation or the
39 solicitation or attempt thereof; or

40 (9) In violation of any of the provisions of this article
41 or any substantive rule adopted under the authority of this
42 article.


1 All proceedings for the revocation, suspension or
2 nonrenewal of licenses issued under the authority of this
3 chapter shall be governed by the provisions of section
4 eight, article one, chapter thirty of this code.


1 (a) After the thirtieth day of June, one thousand nine
2 hundred ninety-eight, a person, corporation or association
3 who is not licensed pursuant to the provisions of this
4 article may not engage in the practice of massage therapy
5 and may not use the initials LMT, C.M.T., or the words
6 "licensed massage therapist," "masseur," or
7 "masseeuse," or any other words or titles which imply or
8 represent that the person, corporation or association is
9 engaging in the practice of massage therapy, nor may a
10 person, corporation or association employ any person, not
11 duly licensed, who is engaging in the practice of massage
12 therapy or who is using such words or titles to imply or
13 represent that he or she is engaging in the practice of
14 massage therapy.

15 (b) Any person, corporation or association who
16 violates the provisions of subsection (a) of this section is
guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the county or regional jail not more than one year, or both fined and imprisoned.


Nothing in this article may be construed to prohibit or otherwise limit:

(1) The practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice. Persons exempted under this subdivision include, but are not limited to, those licensed, certified or registered to practice within the scope of any branch of medicine, nursing, osteopathy, chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists; and any student of a West Virginia state college system certified or authorized massage therapy school, provided that the student does not hold himself or herself out as a licensed massage therapist; and

(2) The activities of any resort spa that has been operating on a continuing basis since the first day of January, one thousand nine hundred seventy-five, or any employees thereof. The exemption set forth in this subsection does not extend to any person, corporation or association providing escort services, nude dancing, or other sexually oriented services not falling within the scope of massage therapy as defined in this article, irrespective of how long the person, corporation or association has been in operation.

§30-37-12. Termination of board.

The massage therapy licensure board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand one, unless sooner terminated, continued or reestablished pursuant to the provisions of such article.
AN ACT to amend and reenact sections two, fourteen, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the public employees retirement system; removing mental health centers from the public employees retirement system except for the purpose of continuing participation by current members; giving current members optional withdrawal without losing service credit; requiring mental health centers now participating in the public employees retirement system to provide private pension plans for current employees at their option and for future employees within a time certain; requiring mental health centers to provide to current members notice of their option to withdraw including comparative actuarial projections of individual accounts; clarifying calculation of retirement service credit for legislative employees; and purchase of retroactive service credit by legislative employees.

Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, seventeen and eighteen, article ten, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
§5-10-14. Service credit.
§5-10-17. Retirement system membership.
§5-10-18. Termination of membership; reentry.
§5-10-2. 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) "State" means the state of West Virginia;

(2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

(3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

(4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: Provided, That any mental health agency participating in the public employees retirement system before the first day of July, one thousand nine hundred ninety-seven, is considered a political subdivision solely for the purpose of permitting those employees who are members of the public employees retirement system to remain members and continue to participate in the retirement system at their option after the first day of July, one thousand nine hundred ninety-seven;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article is considered a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;
38 (6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate, employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, members of the legislative body of any political subdivision and judges of the state court of claims are considered to be employees, anything contained in this article to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

65 (7) "Member" means any person who is included in the membership of the retirement system;

67 (8) "Retirant" means any member who retires with an annuity payable by the retirement system;

69 (9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

72 (10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;
(11) "Prior service" means service rendered prior to
the first day of July, one thousand nine hundred sixty-one,
to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered
by a member within this state and for which the member
made contributions to a public retirement system account
of this state, to the extent credited him or her as provided
by this article. This revised definition is retroactive and
applicable to the first day of April, one thousand nine
hundred eighty-eight, and thereafter;

(13) "Credited service" means the sum of a
member’s prior service credit and contributing service
credit standing to his or her credit as provided in this
article;

(14) "Compensation" means the remuneration paid a
member by a participating public employer for personal
services rendered by him or her to the participating public
employer. In the event a member’s remuneration is not
all paid in money, his or her participating public employer
shall fix the value of the portion of his or her
remuneration which is not paid in money;

(15) "Final average salary" means either: (a) The
average of the highest annual compensation received by a
member (including a member of the Legislature who
participates in the retirement system in the year one
thousand nine hundred seventy-one or thereafter) during
any period of three consecutive years of his credited
service contained within his or her ten years of credited
service immediately preceding the date his or her
employment with a participating public employer last
terminated; or (b) if he or she has less than five years of
credited service, the average of the annual rate of
compensation received by him or her during his or her
total years of credited service; and in determining the
annual compensation, under either (a) or (b) of this
subdivision, of a member of the Legislature who
participates in the retirement system as a member of the
Legislature in the year one thousand nine hundred
seventy-one or in any year thereafter, his or her actual
legislative compensation (the total of all compensation
paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he or she receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: \textit{Provided}, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on the thirtieth day of November, one thousand nine hundred sixty-eight, or the thirtieth day of November, one thousand nine hundred sixty-nine, or the thirtieth day of November, one thousand nine hundred seventy, or on the thirtieth day of November in any one or more of those three years, and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (i) Either (notwithstanding the provisions of this subdivision preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the state of West Virginia; or (ii) “final average salary” determined in accordance with (a) or (b) of this subdivision, whichever computation shall produce the higher final average salary (and in determining the annual compensation under (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of one thousand five hundred dollars multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of one thousand five hundred dollars multiplied by eight, whichever computation as to the member produces the higher annual compensation); (16) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in
the members' deposit fund, together with regular interest on the contributions;

(17) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board of trustees adopts from time to time;

(18) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, using the upper cent for any fraction of a cent;

(19) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of such mortality and other tables of experience, and regular interest, as the board of trustees adopts from time to time;

(20) "Retirement" means a member's withdrawal from the employ of a participating public employer with an annuity payable by the retirement system; and

(21) "Actuarial equivalent" means a benefit of equal value computed upon the basis of such mortality table and regular interest as the board of trustees adopts from time to time.

§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon such rules as the board of trustees shall from time to time adopt and based upon the following:

(1) Ten or more days of service rendered by a member in any calendar month shall be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven
15 consecutive calendar years, service credit of one month shall be awarded for all or any part of each calendar month encompassed within a regular legislative session, notwithstanding that the actual number of days served in any one month of the regular session is less than ten days, and service credit of one month shall be awarded for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Ten or more months of service rendered in any calendar year shall be credited as a year of service;

(3) No more than one year of service may be credited to any member for all service rendered by him or her in any calendar year; and

(4) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the clerk of the House of Delegates and the clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers retirement system and shall require the transfer of the member’s contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member’s retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for time served in that capacity.
Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions may receive service credit for the time served in that capacity in accordance with the following. Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, as certified by the clerk of the house in which the employee served, shall receive service credit of six months for each regular session served as certified by the clerk of the house in which the employee served, and shall receive service credit of one month for each ten days served during the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit. Service credit awarded for legislative employment pursuant to this subsection shall be used for the purpose of calculating that member’s retirement annuity only, pursuant to section twenty-two of this article, and notwithstanding any other provision of this section. Service credit awarded for legislative service pursuant to this subsection shall not be used to determine when an employment period begins or ends, or to determine when the period of eligibility or filing for retirement begins to run. Certification of employment for a complete legislative session and for days of interim sessions shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes a presumption of service for a complete legislative session.

Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee’s pay. In the purchase of service credit for employment prior to the year one
93 thousand nine hundred eighty-nine in any department, including the Legislature, which operated from the general revenue fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state’s share of public employees' retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee's share. Other employees shall pay the state’s share and the employee’s share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee’s share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years he or she is purchasing retroactive credit for or had the employee attempted to contribute to the system during the years he or she is purchasing retroactive service credit for and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a member of the system or no later than the last day of December, one thousand nine hundred ninety-nine, whichever occurs last: Provided further, That once a legislative employee becomes a member of the retirement system, he or she may purchase retroactive service credit for any time he or she was employed by the Legislature and did not receive service credit.

§5-10-17. Retirement system membership.

The membership of the retirement system consists of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the
participating public employer on and after that date shall
become members of the retirement system; and all persons
who become employees of a participating public
employer on or after that date shall thereupon become
members of the system; except as provided in subdivisions
(b) and (c) of this section.

(b) The membership of the retirement system shall not
include any person who is a member of, or who has been
retired by, the state teachers retirement system, the judges
retirement system, the retirement system of the division of
public safety, or any municipal retirement system for
either, or both, policemen or firemen; and the bureau of
employment programs, by the commissioner of the
bureau, may elect whether its employees will accept
coverage under this article or be covered under the
authorization of a separate enactment: Provided, That the
exclusions of membership shall not apply to any member
of the state Legislature, the clerk of the House of
Delegates, the clerk of the state Senate or to any member
of the legislative body of any political subdivision
provided he or she once becomes a contributing member
of the retirement system: Provided, however, That any
retired member of the retirement system of the division of
public safety, and any retired member of any municipal
retirement system for either, or both, policemen or
firemen may on and after the effective date of this section
become a member of the retirement system as provided in
this article, without receiving credit for prior service as a
municipal policeman or fireman or as a member of the
division of public safety: Provided further, That the
membership of the retirement system does not include any
person who becomes employed by the Prestera center for
mental health services, valley comprehensive mental health
center, Westbrook health services or eastern panhandle
mental health center on or after the first day of July, one
thousand nine hundred ninety-seven.

(c) Any member of the state Legislature, the clerk of
the House of Delegates, the clerk of the state Senate and
any employee of the state Legislature whose employment
is otherwise classified as temporary and who is employed
to perform services required by the Legislature for its
regular sessions or during the interim between regular
sessions and who has been or is so employed during
regular sessions or during the interim between sessions in
seven consecutive calendar years, as certified by the clerk
of the house in which the employee served, or any
member of the legislative body of any other political
subdivision shall become a member of the retirement
system provided he or she notifies the retirement system in
writing of his or her intention to be a member of the
system and files a membership enrollment form as
prescribed by the board of trustees, and each person, upon
filing his or her written notice to participate in the
retirement system, shall by that act authorize the clerk of
the House of Delegates or the clerk of the state Senate or
such person or legislative agency as the legislative body of
any other political subdivision shall designate to deduct
the member’s contribution, as provided in subsection (b),
section twenty-nine of this article, and after the deductions
have been made from the member’s compensation, the
deductions shall be forwarded to the retirement system.

(d) If question arises regarding the membership status
of any employee, the board of trustees has the final power
to decide the question.

§5-10-18. Termination of membership; reentry.

(a) When a member of the retirement system retires or
dies, he or she ceases to be a member. When a member
leaves the employ of a participating public employer for
any other reason, he or she ceases to be a member and
forfeits service credited to him or her at that time. If he or
she becomes reemployed by a participating public
employer he or she shall be reinstated as a member of the
retirement system and his or her credited service last
forfeited by him or her shall be restored to his or her
credit: Provided, That he or she must be reemployed for
a period of one year or longer to have the service restored:
Provided, however, That he or she returns to the members’
deposit fund the amount, if any, he or she withdrew from
the fund, together with regular interest on the withdrawn
amount from the date of withdrawal to the date of
repayment, and that the repayment begins within two years
of the return to employment and that the full amount is
repaid within five years of the return to employment.
(b) Effective on the first day of July, one thousand nine hundred ninety-seven, and continuing through the first day of July, one thousand nine hundred ninety-eight, any employee of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center who is a member of the retirement system may elect to withdraw from membership without forfeiting service credited to him or her.

(c) The Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center, and their successors in interest, shall provide for their employees a pension plan in lieu of the public employees retirement system on or before the first day of July, one thousand nine hundred ninety-seven, and continuing thereafter during the existence of the named mental health centers and their successors in interest.

(d) The administrative bodies of the Prestera center for mental health services, valley comprehensive mental health center, Westbrook health services and eastern panhandle mental health center shall, on or before the first day of May, one thousand nine hundred ninety-seven, give written notice to each employee who is a member of the public employees retirement system of the option to withdraw from or remain in the system. The notice shall include a copy of this section and a statement explaining the member’s options regarding membership. The notice shall include a statement in plain language giving a full explanation and actuarial projection figures in support of the explanation regarding the individual member’s current account balance, vested and nonvested, and his or her projected return upon remaining in the public employees retirement system until retirement, disability or death, in comparison with the projected return upon withdrawing from the public employees retirement system and joining a private pension plan provided by the community mental health center and remaining therein until retirement, disability or death. The administrative bodies shall keep in their respective records a permanent record of each employee’s signature confirming receipt of the notice.
AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public service commission; removing from economic regulation jurisdiction motor vehicles preempted by federal statute.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter twenty-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. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

The provisions of this chapter, except where specifically otherwise provided, shall not apply to:

1. Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers; Provided, That such vehicles and their operators shall be subject to the safety rules promulgated by the commission;

2. Motor vehicles owned and operated by the United States of America, the state of West Virginia or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or other legitimate transportation for the schools as the commission may specifically authorize;

3. Motor vehicles used exclusively in the transportation of agricultural or horticultural products,
livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to farms or orchards to be used thereon;

(4) Motor vehicles used exclusively in the transportation of human or animal excreta;

(5) Motor vehicles used exclusively in ambulance service or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when the transportation is incidental to the business of selling said products: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission;

(9) Motor vehicles owned, leased by or leased to any person and used exclusively for the transportation of processed source-separated recycled materials, generated by commercial, institutional and industrial customers, transported free of charge from such customers to a facility for further processing: Provided, That the vehicles and their operators shall be subject to the safety rules promulgated by the commission; and

AN ACT to amend and reenact sections three, four, seven and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public service commission; allowing for the appointment of five public service district board members in consolidated or merged public service districts; requiring public service districts to notify the public service commission when a new board member is appointed; authorizing the county commission to determine public service district board members' compensation for regular and special board meetings; requiring public service districts to notify the public service commission if the district changes its corporate name; raising the amount of allowable expenditure before having to advertise for bids from five thousand dollars to ten thousand dollars for public service districts; and providing for a waiver of public service commission approval of contracts for engineering, design or feasibility studies under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

§16-13A-7. Acquisition and operation of district properties.

§16-13A-25. Borrowing and bond issuance; procedure.
§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district, who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or
materials to the district nor shall a former board member
be hired by the district in any capacity within a minimum
of twelve months after board member’s term has expired
or such board member has resigned from the district
board. The members shall be appointed in the following
manner:

Each city, incorporated town or other municipal
corporation having a population of more than three
thousand but less than eighteen thousand is entitled to
appoint one member of the board, and each city,
incorporated town or other municipal corporation having
a population in excess of eighteen thousand shall be
entitled to appoint one additional member of the board
for each additional eighteen thousand population. The
members of the board representing such cities,
incorporated towns or other municipal corporations shall
be residents thereof and shall be appointed by a resolution
of the governing bodies thereof and upon the filing of a
certified copy or copies of the resolution or resolutions in
the office of the clerk of the county commission which
entered the order creating the district, the persons so
appointed become members of the board without any
further act or proceedings. If the number of members of
the board so appointed by the governing bodies of cities,
incorporated towns or other municipal corporations
included in the district equals or exceeds three, then no
further members shall be appointed to the board and the
members so appointed are the board of the district except
in cases of merger or consolidation where the number of
board members may equal five.

If no city, incorporated town or other municipal
corporation having a population of more than three
thousand is included within the district, then the county
commission which entered the order creating the district
shall appoint three members of the board, who are persons
residing within the district and residing within the state of
West Virginia, which three members become members of
the board of the district without any further act or
proceedings except in cases of merger or consolidation
where the number of board members may equal five.
If the number of members of the board appointed by
the governing bodies of cities, incorporated towns or other
municipal corporations included within the district is less
than three, then the county commission which entered the
order creating the district shall appoint such additional
member or members of the board, who are persons
residing within the district, as is necessary to make the
number of members of the board equal three except in
cases of merger or consolidation where the number of
board members may equal five, and the member or
members appointed by the governing bodies of the cities,
incorporated towns or other municipal corporations
included within the district and the additional member or
members appointed by the county commission as
aforesaid, are the board of the district. A person may
serve as a member of the board in one or more public
service districts.

The population of any city, incorporated town or
other municipal corporation, for the purpose of
determining the number of members of the board, if any,
to be appointed by the governing body or bodies thereof,
is the population stated for such city, incorporated town or
other municipal corporation in the last official federal
census.

Notwithstanding any provision of this code to the
contrary, whenever a district is consolidated or merged
pursuant to section two of this article, the terms of office
of the existing board members shall end on the effective
date of the merger or consolidation. The county
commission shall appoint a new board according to rules
promulgated by the public service commission. Whenever
districts are consolidated or merged no provision of this
code prohibits the expansion of membership on the new
board to five.

The respective terms of office of the members of the
first board shall be fixed by the county commission and
shall be as equally divided as may be, that is
approximately one third of the members for a term of two
years, a like number for a term of four years, the term of
the remaining member or members for six years, from the
first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed. The district shall provide to the public service commission, within thirty days of the appointment, the following information: The new board member’s name, home address, home and office phone numbers, date of appointment, length of term, who the new member replaces and if the new appointee has previously served on the board. The public service commission shall notify each new board member of the legal obligation to attend training as prescribed in this section.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount
to be fixed by the board for the use and benefit of the
district.

The members of the board, and the chair, secretary
and treasurer thereof, shall make available to the county
commission, at all times, all of its books and records
pertaining to the district's operation, finances and affairs,
for inspection and audit. The board shall meet at least
monthly.

§16-13A-4. Board chairman; members' compensation; pro-
cedure; district name.

The chairman shall preside at all meetings of the
board and may vote as any other members of the board
but if he should be absent from any meeting, the
remaining members may select a temporary chairman and
if the member selected as chairman resigns as such or
ceases for any reason to be a member of the board, the
board shall select one of its members as chairman to serve
until the next annual organization meeting. Salaries of
each of its board members shall be as follows: For
districts with fewer than six hundred customers, each
board member may receive seventy-five dollars per
attendance at regular monthly meetings and fifty dollars
per attendance at additional special meetings, total salary
not to exceed fifteen hundred dollars per annum; for
districts with six hundred customers or more but fewer
than two thousand customers, each board member may
receive one hundred dollars per attendance at regular
monthly meetings and seventy-five dollars per attendance
at additional special meetings, total salary not to exceed
two thousand five hundred fifty dollars per annum; for
districts with two thousand customers or more, each board
member may receive one hundred twenty-five dollars per
attendance at regular monthly meetings and seventy-five
dollars per attendance at additional special meetings, total
salary not to exceed three thousand seven hundred fifty
dollars per annum; and for districts with four thousand or
more customers, each board member may receive one
hundred fifty dollars per attendance at regular monthly
meetings and one hundred dollars per attendance at
additional special meetings, total salary not to exceed five
thousand four hundred dollars per annum. The public
service district shall certify the number of customers
served to the public service commission beginning on the
first day of July, one thousand nine hundred eighty-six,
and continue each fiscal year thereafter. Board members
may be reimbursed for all reasonable and necessary
expenses actually incurred in the performance of their
duties as provided for by the rules of the board. The
board shall by resolution determine its own rules of
procedure, fix the time and place of its meetings and the
manner in which special meetings may be called. Public
notice of meetings shall be given in accordance with
section three, article nine-a, chapter six of this code.
Emergency meetings may be called as provided by said
section. A majority of the members constituting the board
also constitute a quorum to do business. The members of
the board are not personally liable or responsible for any
obligations of the district or the board but are answerable
only for willful misconduct in the performance of their
duties. At any time prior to the issuance of bonds as
hereinafter provided, the board may by resolution change
the official or corporate name of the public service district
and such change shall be effective from and after filing an
authenticated copy of such resolution with the clerk of the
county commission of each county in which the territory
embraced within such district or any part thereof is located
and with the public service commission. The official
name of any district created under the provisions of this
article may contain the name or names of any city,
in incorporated town or other municipal corporation
included therein or the name of any county or counties in
which it is located.

§16-13A-7. Acquisition and operation of district properties.

The board of such districts shall have the supervision
and control of all public service properties acquired or
constructed by the district, and shall have the power, and it
shall be its duty, to maintain, operate, extend and improve
the same. All contracts involving the expenditure by the
district of more than fifteen thousand dollars for
construction work or for the purchase of equipment and
improvements, extensions or replacements, shall be
entered into only after notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provision of article three, chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years.

§16-13A-25. Borrowing and bond issuance; procedure.

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the public service commission. The public service commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this
section stated in a letter directed to the commission with a brief description of the project, evidence of compliance with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to: (1) Experience with the same engineering firm in the past two years requiring engineering services; or (2) completion of a construction project within the past two years requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall prefile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an
estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission.

CHAPTER 160

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, lease or rental of water, sewer or gas systems by public service districts; requiring the approval of a majority of not less than sixty percent of the members of a public service board as a condition to the sale, lease or rental of any water, sewer or gas system owned by the public service district; publication of notice of a hearing as a Class I legal advertisement; and approval by county commission and public service commission.

Be it enacted by the Legislature of West Virginia:
That section eighteen-a, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.**

§16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately-owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission.
AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of actions and suits for liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; changing the expiration of any such lien obligation where the final maturity date is ascertainable; providing an expiration for any lien obligation where the final maturity date is not ascertainable; providing certain exceptions thereto; changing the expiration of any affidavit or extension agreement of such a lien obligation where the final maturity date is ascertainable; providing an expiration for any affidavit or extension agreement of such a lien obligation where the final maturity date is not ascertainable; providing requirements for future affidavits or extension agreements filed and method of recordation by the clerk of the county commission; providing that where a lien instrument secures an obligation in installments the time runs from the date of the final installment; providing a grace period for enforcement or recordation of liens reserved or created and in effect on the effective date; providing that the time shall be extended only as provided in this section; and providing that this section applies to all such liens, existing and hereafter reserved or created.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.
§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

(a) Any lien reserved by any conveyance of real estate or created by any deed of trust or mortgage on real estate expires after the following periods of time, unless suit to enforce the lien is instituted prior to expiration of the time period or unless the lien is extended as specified in subsections (b) or (e) of this section:

(1) If the final maturity date of the lien obligation is ascertainable from the record instrument, the lien expires five years after that date.

(2) If the final maturity date of the lien obligation is not ascertainable from the record instrument, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(b) If an affidavit or extension agreement executed by the secured party and the grantor or mortgagor to the lien obligation is recorded prior to expiration of the original period of limitation, as specified in subsection (a) of this section, the time is extended as follows:

(1) If the final maturity date of the lien obligation, as extended, secured by the lien is ascertainable from the record of the affidavit or extension agreement, the lien expires five years after the date of final maturity of the obligation, as extended.

(2) If the final maturity date of the lien obligation, as extended, secured by the lien is not ascertainable from the record of the affidavit or extension agreement, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.
(c) Any affidavit or extension agreement filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

(1) The unpaid balance of the debt and interest secured by the lien instrument;

(2) The final maturity date of the obligation of the lien, as extended; and

(3) The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit or extension agreement in the same manner as the original lien instrument and note that filing on the margin of the page where the original lien instrument is recorded.

(d) If the record instrument of the lien obligation shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.

(e) Nothing in this section extinguishes any lien obligation which was reserved or created and in effect prior to the effective date of this section: Provided, That if any such lien should be extinguished by this section, then any action to enforce such liens shall be brought or recordation of any extended lien obligation pursuant to subsection (b) of this section shall be made before the first day of July, one thousand nine hundred ninety-eight.

(f) The time shall be extended only as provided in this section and shall not be extended by any other method or by operation of law.

(g) Subject to the provisions of subsection (e) of this section, the provisions of this section apply with like effect to every such lien now existing as well as to every such lien hereafter reserved or created.
AN ACT to amend and reenact section six, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of the clerk of the county commission; declaring consideration or value; filing sales listing form; disposition and use of proceeds; and eliminating the requirement that the assessor note liens on the landbooks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-6. Duties of clerk; declaration of consideration or value; filing of sales listing form for tax commissioner; disposition and use of proceeds.

When any instrument on which the tax as herein provided is imposed is offered for recordation, the clerk of the county commission shall ascertain and compute the amount of the tax due thereon and shall ascertain if stamps in the proper amount are attached thereto as a prerequisite to acceptance of the instrument for recordation.

When offered for recording, each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby
conveyed. The declaration may be in the following language:

"DECLARATION OF CONSIDERATION OR VALUE

I hereby declare:

(a) The total consideration paid for the property conveyed by the document to which this declaration is appended is $______; or

(b) The true and actual value of the property transferred by the document to which this declaration is appended is, to the best of my knowledge and belief $______; or

(c) The proportion of all the property included in the document to which this declaration is appended which is real property located in West Virginia is _____%; the value of all the property $______; the value of real estate in West Virginia is $______; or

(d) This deed conveys real estate located in more than one county in West Virginia; the total consideration paid for, or actual cash value of, all the real estate located in West Virginia conveyed by this document is $______; and documentary stamps showing payment of all of the excise tax on all of said real estate are attached to an executed counterpart of this deed recorded in _____________ County.

Given under my hand this ___ day of ________, 19__.

Signed ___________________________ (Indicate whether grantor, grantee, or other interest in conveyance).

_______________________________ Address"

The declaration shall be considered by the clerk in ascertaining the correct number of stamps required, and if declaration (d) above is used, no stamps may be required on the duplicate deed to which it is attached and the duplicate deed shall be admitted to record, and when recorded shall have the same effect for all purposes as if stamps were attached thereto.
On or after the first day of July, one thousand nine hundred ninety-six, the clerk may not record any document with or without stamps affixed unless there is tendered with the document a completed and verified sales listing form for the benefit and use of the state tax commissioner. Preprinted forms for this purpose shall be provided to each clerk by the tax commissioner.

The forms shall require the following information:
1. If the last deed in the chain of title represents the last transfer of the property, the names of the grantor and grantee and the deedbook and page number; or
2. If the last transfer was not made by deed, the source of the grantor's title, if known; or
3. If the source of the grantor's title is unknown, a description of the property and the name of the person to whom real property taxes are assessed as set forth in the landbook prepared by the assessor. In all cases the forms shall require the tax map and parcel number of the property, the district or municipality in which the real property or the greater portion thereof lies, the address of the property, the consideration or value in money, including any other valuable goods or services, upon which the buyer and seller agree to consummate the sale, and any other financing arrangements affecting value. The sales listing form required by this paragraph is to be completed in addition to, and not in lieu of, the declaration required by this section: Provided, That the tax commissioner may design and provide a form which combines into one form the contents of the declaration and the sales listing form required herein and recordation and filing of that form may be used as an alternative to filing the sales listing form required herein: Provided, however, That the filing with the clerk of a duplicate deed containing the sales listing form information required by this section shall also satisfy the requirements of this section regarding the sales listing form. The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the county excise tax into the county general fund for use of the county.

On or before the tenth day of each month the clerk shall deliver to the tax commissioner, or a person
designated by the tax commissioner, the sales listing forms or other alternative forms as may be authorized by this section for documents recorded during the preceding month.

The sales listing form required by this section shall also include a portion thereof for the information required of a person claiming a lien against the real property described in the document who desires to file a statement pursuant to the provisions of subsection (a), section three, article three, chapter eleven-a of this code. Upon receipt of the form, the clerk shall, no later than the end of the business day upon which it was received, provide a copy of the statement to the assessor and a copy thereof to the sheriff. The assessor shall note any new owner of the real property indicated on the sales listing form upon the landbooks. The sheriff shall promptly compare the information contained in the sales listing form with his or her records and shall:

(1) Provide the lienholder such notice as the lienholder would thereafter otherwise be entitled to receive pursuant to the provisions of chapter eleven-a of this code had the lienholder provided the information in the form of a statement as permitted by the provisions of section three, article three of said chapter;

(2) Provide any other person listed on the sales listing form such notice as the person would thereafter otherwise be entitled to receive pursuant to the provisions of chapter eleven-a of this code as a result of the person's interest in the real property;

(3) Deliver to any person listed on the sales listing form as the new owner of the real property described in the document a copy of any subsequently issued tax ticket required to be sent by the provisions of section eight, article one, chapter eleven-a of this code; and

(4) Promptly notify any person listed on the sales listing form as the lienholder or the new owner of the real property of any due and unpaid taxes assessed against the property.
CHAPTER 163
(Com. Sub. for S. B. 349—Originating in the Committee on Health and Human Resources)

[Passed April 10, 1997; 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-n, relating to establishing a new licensure category for residential care communities; stating public policy; defining terms; setting forth powers and duties of the director of the division of health with regard to residential care communities; providing for administrative and inspection staff; authorizing and directing proposal of legislative rules; establishing minimum standards for residential care communities; requiring a license for operation; providing for application procedures and fees; providing for license expiration, renewal, revocation, suspension and limitation; requiring cost disclosure to potential residents; limiting liability for costs not disclosed; prohibiting management of residents’ personal funds; requiring compliance with fire code; setting forth provisions for inspections; prohibiting retaliation; requiring reports and plans of correction; classifying types of violations; providing for notice of violation or noncompliance; authorizing assessment of civil penalties, interest, attorneys fees and costs; providing for hearings of contested cases; providing for administrative appeals; providing for judicial review; providing for collection of unpaid penalties; authorizing judicial appointment of temporary management and specifying scope of authority; providing for automatic stay of certain actions; authorizing certain emergency rules; providing for legal counsel to the director; specifying unlawful acts; authorizing injunctive relief and private causes of action; setting forth damages which may be recovered; requiring that certain reports and records be made available; and providing for confidentiality of residents’ records.

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-n, to read as follows:

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-1. Purpose.

§16-5N-2. Definitions.

§16-5N-3. Powers, duties and rights of director.

§16-5N-4. Administrative and inspection staff.

§16-5N-5. Rules; minimum standards for residential care communities.

§16-5N-6. License required; application; fees; duration; renewal.

§16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.

§16-5N-8. Investigation of complaints.

§16-5N-9. Inspections.

§16-5N-10. Reports of inspections; plans of correction; assessment of penalties, fees and costs; use of funds derived therefrom; hearings.

§16-5N-11. License limitation, suspension and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

§16-5N-12. Administrative appeals from civil penalty assessment, license limitation, suspension or revocation.


§16-5N-14. Legal counsel and services for the director.

§16-5N-15. Unlawful acts; penalties; injunctions; private right of action.

§16-5N-16. Availability of reports and records.

§16-5N-1. Purpose.

1 It is the policy of this state to encourage and promote the development and utilization of quality residential communities for persons who desire to live independently in an apartment, who are or may be dependent upon the services of others by reason of physical or mental impairment, and who may require limited and intermittent nursing care and who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. This care and treatment requires a living environment for these persons which, to the extent practicable, approximates a normal home environment. To this end, it is the policy of this
state to encourage and promote the development and
maintenance of residential care communities.

The provisions of this article are remedial and shall be
liberally construed to effectuate its purposes and intents.
This article is intended to apply only to residential
communities in which apartments are rented on a month-
to-month basis. All residential care community rental
contracts shall specify in bold-faced type, under the
conspicuous caption "NOTICE TO RESIDENT", that
residents of the residential community must be capable of
self-preservation, or substantially similar words clearly
conveying the same meaning. This article may not be
construed to require that any person be required to vacate
any property in which that person has an ownership or a
leasehold interest, except for a month-to-month tenancy,
because that person is disabled and incapable of self-
preservation. Nothing in this article is intended to
supersede the provisions of article eleven-a, chapter five of
this code.

§16-5N-2. Definitions.

As used in this article, unless a different meaning
appears from the context:

(a) "Capable of self-preservation" means that a
person is, at a minimum, physically capable of removing
himself or herself from situations involving imminent
danger such as fire;

(b) "Deficiency" means a statement of the rule and
the fact that compliance has not been established and the
reasons therefor;

(c) "Department" means the state department of
health and human resources;

(d) "Director" means the director of the division of
health;

(e) "Division" means the division of health of the
state department of health and human resources;

(f) "Limited and intermittent nursing care" means
direct hands-on nursing care of a resident who needs no
more than two hours of nursing care per day for a period of time no longer than ninety consecutive days per episode, which care may be provided only when the need for it meets these requirements: (1) The resident requests that he or she remain in the residential care community; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for care results from a medical pathology or the normal aging process. Limited and intermittent nursing care may be provided only by or under the supervision of a registered professional nurse and in accordance with legislative rules proposed by the secretary;

(g) “Nursing care” means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require technical skills and knowledge beyond those that untrained persons possess, including, irrigations, catheterizations, special procedures that contribute to rehabilitation and administration of medication by any method involving a level of complexity and skill not possessed by untrained persons;

(h) “Person” means a natural person and every form of organization, whether incorporated or unincorporated, including partnerships, corporations, trusts, associations and political subdivisions of the state;

(i) “Personal assistance” means services of a personal nature, including help in walking, bathing, dressing, toileting, getting in or out of bed and supervision that is required because of the age or mental impairment of a resident;

(j) “Resident” means an individual who lives in a residential care community for the purpose of receiving personal assistance or limited and intermittent nursing services from the community;

(k) “Residential care community” means any group of seventeen or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained
or operated by an owner or manager, regardless of consideration or the absence thereof, for the express or implied purpose of providing residential accommodations, personal assistance and supervision on a monthly basis to seventeen or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. Each apartment in a residential care community shall be at least three hundred square feet in size, have doors capable of being locked and contain at least: (1) One bedroom; (2) one kitchenette that includes a sink and a refrigerator; and (3) one full bathroom that includes a bathing area, toilet and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator. Nothing contained in this article applies to hospitals, as defined under section one, article five-b of this chapter, state institutions, as defined under section three, article one, chapter twenty-five of this code or section six, article one, chapter twenty-seven of this code, residential care communities operated as continuing care retirement communities or housing programs operated under rules of the federal department of housing and urban development and/or the office of rural economic development, residential care communities operated by the federal government or the state government, institutions operated for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other similar places that furnish only room and board, or to homes or asylums operated by fraternal orders pursuant to article three, chapter thirty-five of this code;

(1) "Secretary" means the secretary of the state department of health and human resources or his or her designee; and

(m) "Substantial compliance" means a level of compliance with the rules promulgated hereunder that
identified deficiencies pose a risk to resident health or safety no greater than a potential for causing minimal harm.

The secretary may by rule define terms pertinent to this article which are not defined herein.

§16-5N-3. Powers, duties and rights of director.

In the administration of this article, the director has the following powers, duties and rights:

(a) To enforce rules and standards for residential care communities as adopted, proposed, amended or modified by the secretary;

(b) To exercise all powers granted herein relating to the issuance, suspension and revocation of licenses of residential care communities;

(c) To enforce rules governing the qualification of applicants for residential care community licenses, including, but not limited to, educational, financial, personal and ethical requirements, as adopted, proposed, amended or modified by the secretary;

(d) To receive and disburse federal funds and to take any lawful action that is necessary or appropriate to comply with the requirements and conditions for the receipt or expenditure of federal funds;

(e) To receive and disburse funds appropriated by the Legislature to the division for any authorized purpose;

(f) To receive and disburse funds obtained by the division by way of gift, grant, donation, bequest or devise, according to the terms thereof, funds derived from the division's operation, and funds from any other source, no matter how derived, for any authorized purpose;

(g) To negotiate and enter into contracts, and to execute all instruments necessary or convenient in carrying out the functions and duties of the position of director; and all of these contracts, agreements and instruments shall be executed by the director;
(h) To appoint officers, agents, employees and other personnel and establish the duties and fix the compensation thereof;

(i) To offer and sponsor education and training programs for residential care communities' administrative, managerial and operations personnel;

(j) To undertake survey, research and planning projects and programs relating to the administration and operation of residential care communities and to the health, care, treatment and service in general of residents of these communities;

(k) To establish by legislative rule in accordance with section ten of this article and to assess reasonable civil penalties for violations of residential care community standards;

(l) To inspect any residential care community and any of the records maintained therein, subject to the provisions of section ten of this article;

(m) To establish legislative rules in accordance with article three, chapter twenty-nine-a of this code, setting forth procedures for implementing the provisions of this article, including informal conferences, investigations and hearings, and for enforcing compliance with the provisions of this article and the rules promulgated hereunder;

(n) To subpoena witnesses and documents, administer oaths and affirmations and examine witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(o) To make a complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of the rules promulgated hereunder. An action may be taken by the director in the absence of concurrence or participation by the
prosecuting attorney of the county in which the proceedings are instituted. The circuit court of Kanawha County or the circuit court of the county in which the violation has occurred has jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable relief. In these cases, the court may not require that a bond be posted, nor may the director or any person acting under his or her authority be required to give security for costs;

(p) To delegate authority to his or her employees and agents in the performance of any power or duty granted in this article, except the issuance of final decisions in any adjudicatory matter; and

(q) To submit a report to the governor and the Legislature on or before the first day of December, one thousand nine hundred ninety-seven, and annually thereafter, which report shall review the residential care community licensing and investigatory activities of the division during the preceding year and the nature, scope and status of any other activities of the division. This report may include comment on the actions, policies, practices or procedures of any public or private agency that may affect the rights, health or welfare of residents of residential care communities. These annual reports shall also include a listing of all licensed residential care communities in the state together with the following information: Whether a community is proprietary or nonproprietary; how the community is or should be classified; the name of the owner or owners; the total number of apartments contained therein; the monthly costs for residents; the number and profession of full-time employees; the number and types of recreational programs available to residents; and other services and programs available to residents, and the costs thereof; and whether the residential care community listed accepted medicare or medicaid residents. These reports shall also contain the division's recommendations with regard to changes in law or policy which it considers necessary or proper for the protection of the rights, health or welfare of the residents of residential care communities within the state.
§16-5N-4. Administrative and inspection staff.

The director may, at any time he or she considers necessary, employ administrative employees, inspectors or other persons to properly implement the provisions of this article. Employees of the division shall be members of the state civil service system and shall enforce the provisions of this article and the rules promulgated hereunder. In discharging their official duties, employees of the division have the right of entry into any place maintained as a residential care community.

§16-5N-5. Rules; minimum standards for residential care communities.

(a) The secretary shall, by the first day of July, one thousand nine hundred ninety-eight, propose all rules that may be necessary or proper to implement or effectuate the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred herein. All rules authorized or required pursuant to this article shall be proposed by the secretary and promulgated in accordance with the provisions governing legislative rules, contained in article three, chapter twenty-nine-a of this code.

(b) The secretary shall propose rules establishing minimum standards for the operation of residential care communities, including, but not limited to, the following:

(1) Administrative policies, including: (i) An affirmative statement of the right of access to residential care communities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (ii) a statement of the rights and responsibilities of residents;

(2) Minimum numbers and qualifications of residential care community personnel according to the size, classification and health care needs of the residential care community;
(3) Safety requirements, except for those fire and life safety requirements under the jurisdiction of the state fire marshal;

(4) Sanitation requirements;

(5) Protective and personal services required to be provided;

(6) Dietary services required to be provided;

(7) Maintenance of health records, including confidentiality;

(8) Social and recreational activities required to be made available;

(9) Physical facilities;

(10) Requirements related to limited and intermittent nursing care; and

(11) Other items or considerations that the secretary considers appropriate to ensure the health, safety and welfare of residents of residential care communities.

(c) The secretary shall propose rules that include detailed specifications for each category of standards required under subsections (b) and (d) of this section, and shall classify these standards as follows:

(1) Class I standards, the violation of which presents either an imminent danger to the health, safety or welfare of a resident or a substantial probability that death or serious physical harm may result;

(2) Class II standards, the violation of which directly implicates the health, safety or welfare of a resident, but which does not present imminent danger thereto; and

(3) Class III standards, the violation of which has an indirect or potential impact on the health, safety or welfare of any resident.

(d) A residential care community shall attain substantial compliance in every category of standard enumerated in this section in order to be considered as
being in substantial compliance with the requirements of this article and the rules promulgated hereunder.

(e) Until such time as the secretary proposes rules governing residential care communities under this section, existing rules governing residential board and care homes shall apply to residential care communities and shall be construed so as to conform with the provisions of this article in their application to residential care communities:

Provided, That to the extent any provisions of the rule governing residential board and care homes conflict with the provisions of this article, the provisions of this article shall govern.

§16-5N-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer or advertise a residential care community within this state unless he or she first obtains a license therefor as provided in this article, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any residential care community which is being operated without a valid license from the director. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form prescribed by the director, containing information as may be necessary to show that the applicant is in compliance with the standards for residential care communities as established by this article and the rules promulgated hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation: (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant; (ii) of each officer and director of a corporate
applicant; (iii) of each trustee and beneficiary of an applicant which is a trust; and (iv) where a corporation has a proprietary interest of twenty-five percent or more in an applicant, the name, address and principal occupation of each officer and director of the corporation;

(3) The name and address of the owner of the premises of the residential care community or proposed residential care community, if different from the applicant, and if so, the name and address: (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the owner of the premises; (ii) of each officer and director of a corporate applicant; (iii) of each trustee and beneficiary of the owner if it is a trust; and (iv) where a corporation has a proprietary interest of twenty-five percent or more in the owner, the name and address of each officer and director of the corporation;

(4) Where the applicant is the lessee or the assignee of the residential care community or the premises of the proposed residential care community, a signed copy of the lease and any assignment thereof;

(5) The name and address of the residential care community or the premises of the proposed residential care community;

(6) The proposed number of apartments in the residential care community;

(7) (A) An organizational plan for the residential care community indicating the number of persons employed or to be employed, and the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) evidence of compliance with applicable laws and rules governing zoning, building, safety, fire prevention and sanitation, as the director may require; and

(8) Additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section and inspection of the applicant pursuant to section ten of
this article, the director shall issue a license if he or she finds:

(1) That an applicant which is an individual and every partner, trustee, officer, director and person with a controlling interest of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a residential care community by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department (if any) and a history of nonrevocation of a license during the five years immediately preceding the application;

(2) That the residential care community is under the supervision of an administrator qualified for that position by training and experience;

(3) That the residential care community is in substantial compliance with standards established pursuant to section five of this article, and other requirements as the secretary may establish by rule under this article.

Any license granted by the director shall state the maximum number of apartments for which it is granted, the date of issuance and the date of expiration. Residential care community licenses shall be issued for a period not to exceed one year: Provided, That any license which is unexpired, for which timely application for renewal has been made, together with payment of the proper fee, as required by the provisions of this article and the rules promulgated hereunder, continues in effect until:

(i) One year after the original expiration date of the license; (ii) the date that the license is revoked or suspended pursuant to the provisions of this article; or (iii) the date of issuance of a new license, whichever date first occurs. Each license issued is only for the premises and applicant named in the application and may not be transferred or assigned: Provided, however, That if the ownership of a residential care community with an unexpired license is transferred, the filing of an application for a license with the director by the new owner shall have the effect of licensing the operation of the residential care community under the new owner for a
period not to exceed three months. Every residential care community license shall be displayed in a conspicuous place at the facility for which it is issued so as to be accessible to and in plain view of residents and visitors.

(c) An original license may be renewed upon the timely filing of an application therefor, accompanied by the required fee and contingent upon the licensee's submission of evidence satisfactorily demonstrating compliance with the provisions of this article and the rules promulgated hereunder together with the following:

(1) A balance sheet as of the end of the residential care community's fiscal year, setting forth its assets and liabilities as of that date, including all capital, surplus, reserve, depreciation and similar accounts;

(2) A statement of operations of the residential care community as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) A statement of any changes in the name, address, management or ownership information on file with the director.

(d) In the case of an application for license renewal, if all the requirements of section five of this article are not met, the director may issue a provisional license, provided that care given in the residential care community is adequate for resident needs and the residential care community has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license: Provided, That a provisional license is effective for a period not to exceed one year, may not be renewed, and may not be issued to any residential care community with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of sixty-five dollars for an original residential care community license shall be paid at the time an application for license is made. The average cost of all direct costs for
initial licensure inspections of all residential care communities for the preceding year shall be assessed against and paid by the applicant to the director before an initial or amended license may be issued. The fee for license renewal shall be computed at the rate of four dollars per apartment in the community per year: Provided, That the rate per apartment may be assessed against applicants for whom a license is issued for a period of less than one year. The director may annually adjust licensure fees for inflation, based upon the consumer price index. All license fees are due and payable to the director, annually, in the manner set forth in the rules promulgated hereunder. The director shall retain each application and licensure fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.

§16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.

(a) Each residential care community shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them as residents of the community. Residents may not be held liable for any cost that was not disclosed.

(b) Residential care communities may not manage the personal finances or funds of its residents.

(c) A residential care community may be required to have registered nurses on its staff to the extent that it provides limited and intermittent nursing care.

(d) Residential care communities shall comply with the applicable provisions of the current edition of the life safety code as promulgated by the national fire protection association and adopted by the state fire commission.

§16-5N-8. Investigation of complaints.

The secretary shall by rule establish procedures for the prompt investigation of all complaints of alleged violations of applicable requirements of state law or rules by residential care communities, except those complaints
that the director determines are without any reasonable basis or are made with the sole intention to willfully harass a licensee. These procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person named in the complaint, and for promptly informing the complainant and the residential care community involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No residential care community may discharge or in any manner discriminate or retaliate against any employee or resident for filing a complaint or participating in any proceeding provided for in this article. Violation of this prohibition by any residential care community constitutes grounds for the suspension or revocation of its license as provided in section eleven of this article. Any type of adverse action taken by a residential care community against a resident who has submitted a complaint to the director or upon whose behalf a complaint has been submitted or who has instituted any proceeding under this article, if taken within one hundred twenty days of the filing of the complaint or the institution of the proceeding, shall raise a rebuttable presumption that the adverse action was taken in retaliation for filing the complaint or instituting the proceeding.

§16-5N-9. Inspections.

The director and any duly designated employee or agent thereof is authorized to enter upon and into the premises of any residential care community for which a license has been issued, for which an application for license has been filed, or which the director has reason to believe is being operated or maintained as a residential care community without a license. If entry is refused by the owner or person in charge of the residential care community, the director shall apply to the circuit court of the county in which the residential care community is located or the circuit court of Kanawha County for an
The director, by and through his or her agents or employees, shall conduct at least one inspection of a residential care community before issuing a license to it and shall conduct periodic unannounced inspections thereafter to determine if it is in compliance with all applicable statutory requirements and rules. All residential care communities shall comply with applicable rules of the state fire commission. The state fire marshal, by and through his or her agents or employees, shall make all fire, safety and similar inspections of residential care communities. The director may provide for other inspections he or she considers necessary to effectuate the intent and purpose of this article. If the director determines upon investigation that a complaint is substantiated and that an immediate and serious threat to health or safety exists at a residential care community, he or she may invoke any remedy available pursuant to section eleven of this article. Any residential care community aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in section twelve of this article.

§16-5N-10. Reports of inspections; plans of correction; assessment of penalties, fees and costs; use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the residential care community's compliance with the provisions of this article and the rules promulgated hereunder. The director shall send a copy of the report to the residential care community and shall specify a time within which the residential care community shall submit a plan for correction of any listed deficiencies, which plan shall be approved, rejected or modified by the director. Inspectors shall allow audio taping of the exit conference that follows a licensure or certification inspection, with all costs incurred as a result of the taping to be paid by the
residential care community. A copy of the audio tape shall be provided to the inspector.

(b) Upon the failure of a residential care community to submit a plan of correction as required or to correct any deficiency within the time specified, the director may assess a civil penalty or initiate other appropriate legal or disciplinary action, as provided by this article.

(c) Nothing in this section may be construed to require the director to afford a formal opportunity for a residential care community to correct a deficiency before initiating an enforcement action in either an administrative or judicial forum, where, in the opinion of the director, the deficiency jeopardizes the health or safety of the community’s residents or where the deficiency is the second or subsequent violation to occur within a twelve-month period.

(d) Civil penalties assessed against residential care communities shall be classified according to the nature of the violation, as provided in subsection (c), section five of this article and rules promulgated thereunder, consistent with the following: For each violation of a Class I standard, the civil penalty imposed shall be not less than fifty nor more than five hundred dollars; for each violation of a Class II standard, the civil penalty imposed shall be not less than twenty-five nor more than fifty dollars; for each violation of a Class III standard, the civil penalty imposed shall be not less than ten nor more than twenty-five dollars. Each day that a violation continues after the date of citation constitutes a separate violation. The date of the citation is the date the facility receives the written statement of deficiencies.

(e) The director shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies a residential care community, or causes it to be notified, in advance, of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director assesses a penalty under this section, he or she shall cause a notice of penalty to be delivered to the residential care community by personal service or by
certified mail. This notice shall state the amount of the penalty, the action, deficiency or other circumstance for which the penalty is assessed, the statutory requirement or rule which has been violated and the basis upon which the director determined the amount of the penalty.

(g) The director shall recover in a judicial proceeding any civil penalty which: (i) Remains uncontested and unpaid for thirty days after its receipt; or (ii) if contested, has been affirmed by the director and remains unappealed for thirty days after receipt of the director's final order; or (iii) if appealed, has been affirmed upon judicial review of the director's final order. All funds received in the form of civil penalties or interest thereon pursuant to this article shall be deposited in a special resident benefit account which is hereby established and applied by the director exclusively for the protection of the health or property of residents of residential care communities operated within this state that the director determines to be deficient, which may include payment of costs to relocate residents of a deficient residential care community to other facilities, operation costs of a residential care community pending correction of deficiencies or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on any action taken under this section is as provided in section twelve of this article. In addition to any other rights of appeal conferred upon a residential care community under this section, it may also request a hearing and seek judicial review pursuant to sections twelve and thirteen of this article to contest the director's citing of a deficiency in an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

§16-5N-11. License limitation, suspension and revocation; ban on admissions; closure, transfer of residents, appointment of temporary management; assessment of interest; hearing.

(a) The director shall by order impose a ban on the admission of additional residents or reduce the number of apartments permitted in a residential care community, or
any combination thereof, where it is determined upon
inspection that a licensee is not providing adequate care to
its residents under its existing quota and, further, that a
reduction in the quota or the imposition of a ban on
additional admissions, or a combination thereof, would
enable the licensee to render adequate care to its residents.
A notice to a licensee of a reduction in its quota or a ban
on additional admissions shall include the terms of the
order, the reasons therefor, and the date by which it must
comply.

(b) The director may suspend or revoke a license
issued under this article if it is determined upon inspection
that there has been a substantial failure to comply with the
provisions of this article or the standards or rules
promulgated hereunder.

(c) Whenever a license is limited, suspended or
revoked pursuant to this section, the director shall file an
administrative complaint stating facts constituting the
grounds therefor. Upon the filing of this administrative
complaint, the director shall notify the licensee in writing,
enclose a copy of the administrative complaint, and advise
the licensee of its opportunity for a hearing pursuant to
section twelve of this article. The notice and copy of the
administrative complaint shall be served on the licensee by
certified mail, return receipt requested.

(d) The suspension, revocation or expiration of a
license, or the withdrawal of an application for a license
after it has been filed with the director, may not deprive
the director of his or her authority to institute or continue
a disciplinary proceeding or to deny an application for a
license.

(e) In addition to other remedies provided in this
article, upon petition from the director, a circuit court may
determine that a residential care community's deficiencies
under this article constitute an emergency immediately
jeopardizing the health, safety, welfare or rights of its
residents, and issue an order to:

(1) Close the residential care community;
(2) Transfer residents of the residential care community to other facilities; or

(3) Appoint a temporary manager to oversee the operation of the residential care community and to assure the health, safety, welfare and rights of the residential care community's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the residential care community; or

(B) Corrections are made in order to bring the residential care community into compliance with all applicable requirements of this article and the rules promulgated hereunder.

If the director petitions a circuit court for the closure of a residential care community, for the transfer of residents, or for the appointment of a temporary manager, the circuit court shall hold a hearing no later than seven days thereafter, at which time the director and the licensee or operator of the residential care community may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential care community in favor of temporary management. The temporary management is accountable to the court and has those powers and duties that the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and rights of the residents, including, but not limited to, replacing managerial and other staff, hiring consultants, making necessary expenditures to close the residential care community or to repair or improve the residential care community so as to return it to compliance with applicable requirements, and receiving, conserving and expending funds, including making payments on behalf of the licensee or operator. Priority in making payments shall be given to expenditures for current direct resident care and the transfer of residents, if necessary.
The person charged with temporary management shall be an officer of the court and paid by the residential care community if resources are available; he or she may not be held liable in any capacity for conditions at the residential care community that originated or existed before his or her appointment nor may he or she be held personally liable for any act or omission, except those constituting gross negligence or intentional acts that result in injuries to persons or damage to property during his or her tenure as temporary manager.

It is unlawful for any person to impede the operation of temporary management as appointed by the court. For ninety days after the appointment of temporary management at a residential care community, any legal action that would interfere with its functioning or operation shall be automatically stayed. These actions include, but are not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the residential care community.

Temporary management appointed by the court for purposes of making improvements to bring a residential care community into compliance with applicable requirements may not be terminated until the court has determined that the residential care community has the management capability to ensure continued compliance with all applicable requirements: Provided, That if the court does not make such a determination within six months of the appointment of the temporary management, the temporary management terminates by operation of law at that time, and the residential care community shall be closed. After the termination of the temporary management, the person who was appointed as the temporary management shall make an accounting to the court, and after deducting the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, from receipts, the remainder, if any, shall be paid to the licensee or operator of the residential care community.
Assessments for civil penalties and costs of actions taken under this article, including attorney fees, shall accrue interest at the rate of five percent per annum, beginning on the thirtieth day after receipt of notice of the assessment or the thirtieth day after receipt of the director's final order following a hearing, whichever later occurs. All assessments against a residential care community that remain unpaid shall be added to its licensure fee next due and may be filed as a lien against the property of the licensee or operator of the residential care community. Funds received from these assessments shall be deposited in the same manner as are funds received pursuant to section ten of this article.

The secretary is authorized to propose emergency rules, if necessary, to expand the powers of the director beyond those provided in this article, to the extent required to comply with federal requirements: Provided, That the director's powers may be expanded only to the extent required by federal requirements. Emergency rules proposed pursuant to this subsection are subject to the provisions governing legislative rules contained in article three, chapter twenty-nine-a of this code.

The opportunity for a hearing on any action taken by the director under this section is as provided in section twelve of this article.

§16-5N-12. Administrative appeals from civil penalty assessment, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to section five, six, ten or eleven of this article shall, upon timely written request, be afforded an opportunity for a hearing by the director at which the order may be contested as contrary to law, unwarranted by the facts, or both. The provisions of article five, chapter twenty-nine-a of this code governing contested cases apply to and govern hearings conducted pursuant to this section and the administrative procedures in connection therewith. A licensee or applicant may also request an informal meeting with the director before requesting a hearing.
After a hearing conducted pursuant to this section, the director shall make and enter a written order either dismissing the complaint or taking whatever action is authorized and appropriate pursuant to this article. This written order shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested, accompanied by the director’s findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code. If the director suspends a residential care community’s license, the order directing the suspension shall specify the grounds for the suspension and the time by which the conditions or circumstances giving rise to the suspension must be corrected in order for the licensee to be entitled to reinstatement of its license. If the director revokes a license, he or she may stay the effective date of the revocation upon a showing that a delay is necessary to assure appropriate placement of the licensee’s residents: Provided, That the effective date of revocation may not be stayed for more than ninety days. The director’s order is final unless it is vacated, reversed or modified by the court upon judicial review in accordance with the provisions of section thirteen of this article.

(b) In addition to all other powers granted by this chapter, the director may take a case under advisement and make a recommendation as to requirements to be met by a licensee in order to avoid suspension or revocation of its license. In these cases, the director shall enter an appropriate order and notify the licensee and its attorney of record, if any, by certified mail, return receipt requested. If the licensee meets the requirements of this order, the director shall enter a subsequent order taking notice of the licensee’s satisfactory compliance and dismissing the complaint. This order shall also be delivered to the licensee and its attorney of record, if any, by certified mail, return receipt requested.


Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of section twelve of this article is entitled to
judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern these proceedings with like effect as if those provisions were set forth in extenso herein.

The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-5N-14. Legal counsel and services for the director.

(a) Legal counsel and legal services for the director in all administrative hearings and all proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants, an attorney employed by the director or, in proceedings in any circuit court, by the prosecuting attorney of the county wherein the action is instituted, all without additional compensation.

(b) The governor may appoint counsel for the director, who shall perform legal services in representing the interests of residents in residential care communities in matters under the jurisdiction of the director, as the governor shall direct. It is the duty of counsel so appointed to appear for the residents in all cases where they are not represented by counsel. The compensation of counsel so appointed shall be fixed by the governor.

§16-5N-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a residential care community without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by confinement in the regional or county jail for a period of not more than ninety days, or both, in the discretion of the court. For a second or subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with
confinement in the regional or county jail for a period of not more than ninety days, or both, in the discretion of the court. Each day that a violation continues after conviction therefor constitutes a separate offense.

(b) The director may bring an action to enforce compliance with this article, any rule promulgated hereunder, or order issued hereunder, whenever it appears to the director that a person has engaged in or is engaging in an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director that a person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring has jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director has refused to grant or renew a license, revoked a license that is required to operate a residential care community, or ordered a person to refrain from actions that violate the rules promulgated pursuant to this article, and the person has appealed the action of the director, the court may, during the pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the residential care community or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the residential care community. Should a person who appeals an order of the director fail to appear or should the appeal be decided in favor of the director, the court shall issue a permanent injunction upon proof that the person is operating or conducting a residential care community without a license as required by law, or has continued to violate the rules promulgated pursuant to this article.

(c) Any residential care community that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, any state statute or rule, or by any applicable federal statute or regulation, is liable to that resident in a civil action for any injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of a right or benefit and suffered an injury thereby, compensatory damages shall be assessed in an
amount sufficient to compensate the resident for the injury, unless there is a finding that the residential care community exercised due care reasonably necessary to prevent and limit the deprivation and injury to the resident. In addition, if the deprivation by a residential care community of a right or benefit is found to have been willful or in reckless disregard, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of available administrative remedies may not be required prior to commencing an action hereunder.

The amount of damages recovered by a resident in an action brought pursuant to this section is exempt for purposes of determining initial or continuing eligibility for medical assistance under article four, chapter nine of this code, and may not be taken into consideration or required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is null and void as contrary to public policy.

(d) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

§16-5N-16. Availability of reports and records.

The director shall make available for public inspection and provide copies at a nominal cost of all inspection reports and other reports of residential care communities filed with or issued by the director. Nothing contained in this section may be construed to allow the public disclosure of confidential medical, social, personal or financial records of any resident. The secretary shall adopt rules that are reasonably necessary to effectuate the provisions of this section and preserve the confidentiality of medical, social, personal or financial records of residents.
AN ACT to amend and reenact section four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting relicensure upon transfer of existing salvage yards in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. SALVAGE YARDS.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

On and after the effective date of this article: (1) No license shall be issued to establish a salvage yard or any part thereof within one thousand feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems: Provided, That this limitation shall not apply to landfills established and maintained by the state or any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and
(2) no license shall be issued to establish a salvage yard or any part thereof within five hundred feet of the nearest edge of the right-of-way of any state local service road, unless the view thereof from such state local service road shall be effectively screened and obscured by fences: Provided, however, That this limitation shall not apply to landfills established and maintained by the state or any county or municipality if such landfill is effectively screened and obscured by natural objects, plantings, fences or other appropriate means so as not to be visible from the main traveled way of the system; and (3) no license may be issued allowing a salvage yard within one thousand feet of the nearest occupied private residence, unless waived by the owner of such residence, or within five thousand feet of the nearest occupied private residence which is part of a residential community. The provisions of this paragraph, as amended, shall apply only to salvage yards licensed after the first day of April, one thousand nine hundred eighty-eight.

The license of any salvage yard duly issued under the former provisions of this article, which salvage yard or any part thereof on the effective date of this article, is: (1) Within one thousand feet of the nearest edge of the right-of-way of any road within the state road system designated and classified or redesignated and reclassified as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and reclassified for purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) within five hundred feet of the nearest edge of the right-of-way of any state local service road; or is (3) within one thousand feet of the nearest occupied private residence or within five thousand feet of the nearest occupied private residence which is part of a residential community, may be renewed only if the view of the said salvage yard and all parts thereof are effectively screened from the adjacent road by natural objects, plantings, fences or other appropriate means or a waiver is obtained from the owner of an occupied private residence. The provisions of this paragraph, as amended, shall apply
only to salvage yards licensed after the first day of April, one thousand nine hundred eighty-eight.

Any salvage yard which, on the effective date of this article, is duly licensed under the former provisions of this article may be established or continue to be operated and maintained without screening by natural objects, plantings, fences or other appropriate means so long as any part of such salvage yard is: (1) Not located within one thousand feet of any road within the state road system designated and classified or redesignated as expressway, trunkline or feeder, or any road within the state road system designated and classified or redesignated and redesignated for the purposes of allocation of federal highway funds as part of the federal-aid interstate or primary systems; or is (2) not located within five hundred feet of the nearest edge of the right-of-way of any state local service road; or is (3) not located within one thousand feet of the nearest residence or within five thousand feet of the nearest occupied private residence which is part of a residential community. Notwithstanding any other provision of this section to the contrary, ownership of a salvage yard duly licensed under the former provisions of this article and continuously maintained and licensed since the first day of July, one thousand nine hundred eighty-eight, may be sold or otherwise transferred, and the salvage yard shall be eligible for relicensure and may continue to be operated under the same legal requirements that would have been applicable had the change in ownership not occurred.

On or after the first day of July, one thousand nine hundred eighty-four, any owner or operator establishing, operating or maintaining a salvage yard for which a license is required under the provisions of this article is hereby required to first obtain an approval permit from the county planning commission, or if the county does not have a county planning commission, from an appropriate office or agency designated by the county commission, in which the salvage yard is located. The county planning commission or designated agency or office shall promulgate such reasonable rules including, but not limited to, determining the effect of the proposed salvage
97 yard on residential, business or commercial property
98 investment and values, establishing a quota for the number
99 of salvage yards in the county, and the social, economic
100 and environmental impact on community growth and
101 development in utilities, health, education, recreation,
102 safety, welfare and convenience, if any, before issuing
103 such approval permit. These rules shall conform to
104 guidelines established in rules promulgated by the
105 commissioner. The fee for the approval permit shall be
106 twenty-five dollars, payable upon the filing of the
107 application on forms to be designated and approved by
108 the county planning commission or designated office or
109 agency.

110 Upon the granting of an approval permit by the
111 county planning commission, the owner or operator shall
112 then apply to the commissioner for a license to operate.
113 The commissioner may issue a license to the applicant, but
114 only after an approval permit has issued in the first
115 instance and the location of the salvage yard is in
116 compliance with the location requirements of section four
117 of this article. The approval permit requirement of this
118 section does not apply to any owner or operator who has
119 established, or is operating or maintaining, a salvage yard
120 prior to the first day of July, one thousand nine hundred
121 eighty-four.

CHAPTER 165

(Com. Sub. for H. B. 2671—By Delegate Michael)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]
twelve and thirteen, article four, chapter thirty-three of said code; to amend and reenact sections twenty-one-a of said code; to amend and reenact sections nine and fourteen, article nineteen, chapter twenty-nine of said code; to amend and reenact section seven, article two, chapter twenty-nine-a of said code; to amend and reenact sections three and six, article eighteen, chapter thirty of said code; to amend and reenact sections fifteen and fifty-six, article one, chapter thirty-one of said code; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; to amend and reenact sections twelve and thirteen, article four, chapter thirty-three of said code; to amend and reenact section eight, article one-a, chapter thirty-eight of said code; to amend and reenact section five, article five-a of said chapter; to amend and reenact sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a of said code; to amend and reenact section four, article nine, chapter forty-seven of said code; to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating generally to the secretary of state; fees and charges for services of the secretary of state, filing a change of officers for a corporation or other business entity and designation of the secretary of state as attorney in fact for service of process; providing for distribution of the rule monitor to subscribers of the code of state rules; and providing for an increase in fees.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article twelve-c, chapter eleven of said code be amended and reenacted; that section seventeen-c, article five, chapter twenty-one-a of said code be amended and reenacted; that sections nine and fourteen, article nineteen, chapter twenty-nine of said code be amended and reenacted; that sections nine and fourteen, article nineteen, chapter twenty-nine-a of said code be amended and reenacted; that sections three and six, article eighteen, chapter thirty of said code be amended and reenacted; that sections three and six, article eighteen, chapter thirty of said code be amended and reenacted; that sections fifteen and fifty-six, article
one, chapter thirty-one of said code be amended and reenacted; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; that sections twelve and thirteen, article four, chapter thirty-three of said code be amended and reenacted; that section eight, article one-a, chapter thirty-eight of said code be amended and reenacted; that section five, article five-a of said chapter be amended and reenacted; that sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code be amended and reenacted; that section one hundred thirty-seven, article two, chapter forty-six-a of said code be amended and reenacted; that section four, article nine, chapter forty-seven of said code be amended and reenacted; that sections thirty-one and thirty-three, article three, chapter fifty-six of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter 3. Elections.
   11. Taxation.
   21A. Unemployment Compensation.
   29A. State Administrative Procedures Act.
   30. Professions and Occupations.
   33. Insurance.
   38. Liens.
   46. Uniform Commercial Code.
   46A. West Virginia Consumer Credit and Protection Act.
   47. Regulation of Trade.
   56. Pleading and Practice.
   59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.
Every person who becomes a candidate for nomination for or election to office in any primary election, shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States senator, for member of the United States House of Representatives, for governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces;

(b) A candidate for the office of judge of a circuit court and judge of any court of record of limited jurisdiction shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(c) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office, and a candidate for state senator shall pay a fee of one percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces. A candidate for county board of education shall pay a fee of twenty-five dollars. A candidate for any other county office shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(f) Candidates for members of political executive committees and other political committees shall pay the following filing fees:
A candidate for member of a state executive committee of any political party shall pay a fee of twenty dollars; a candidate for member of a county executive committee of any political party shall pay a fee of ten dollars; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the circuit court, and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the secretary of state at the time of filing their certificates of announcement, and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by such clerk from such fees shall be credited to the general county fund. Moneys received by the secretary of state from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him to the several counties on the basis of population, and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

Every domestic and foreign corporation, and every domestic and foreign limited partnership shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such corporation or limited partnership, which fee shall be due and payable at the same time and with the same return, collected by the same officers, and accounted for in the same way, as the annual license tax imposed on corporations under this article. The tax commissioner shall pay over to the secretary of
state all attorney-in-fact fees collected under this section, and such fees shall be used to offset the costs of the secretary of state for his or her services as attorney-in-fact.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-17c. Service of process on nonresident employer.

If an employer is not a resident of West Virginia, was a resident but has left the state of West Virginia or is a corporation not authorized to do business in this state and for which employer services are performed in insured work within the state of West Virginia and liability for payment of unemployment compensation contributions is due and payable to this state under the provisions of the West Virginia unemployment compensation law, such employer shall be deemed to appoint the secretary of state of West Virginia, or his successor in office, to be the employer's true and lawful attorney upon whom may be served all lawful process in any action or any proceeding for all purposes under this chapter and when served as hereinafter provided such service shall have the same force, effect and validity as if said nonresident employer were personally served with summons and complaint in this state.

Service shall be made by leaving the original and two copies of both the summons and complaint, and the fee required by section two, article one, chapter fifty-nine of this code, with the secretary of state, or in his office, and said service shall be sufficient upon said nonresident. In the event any such summons and complaint is so served on the secretary of state he shall immediately cause one of the copies of the summons and complaint to be sent by registered or certified mail, return receipt requested, to the employer at the latter's last known or reasonably ascertainable address. The employer's return receipt or, if such registered or certified mail is returned to the secretary of state refused by the addressee or for any other reason is undelivered, such mail showing thereon the stamp of the post-office department that delivery has been refused, or other reason for nondelivery, shall be
appended to the original summons and complaint, and filed by the secretary of state in the clerk's office of the court from which said process issued.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article, unless he or she has first registered with the secretary of state. Applications for such registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as he or she may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of one hundred dollars. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application.

(b) The applicant shall, at the time of the making of an application, file with and have approved by the secretary of state a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars and which shall have one or more sureties satisfactory to the
secretary of state, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the state for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the secretary of state and the payment of the fee prescribed herein.

(d) The secretary of state or his or her designate shall examine each application, and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and regulations and the registrant has complied with the requirements of this article and all relevant rules and regulations, he or she shall approve the registration.

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.

Any charitable organization or professional fund-raising counsel or professional solicitor having its or his or her principal place of business without the state, or organized under and by virtue of the laws of a foreign state, which or who shall solicit contributions from people in this state, is subject to the provisions of this article and shall be deemed to have irrevocably appointed the secretary of state as its or his or her agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor or any partner, principal officer or
director thereof in any action or proceeding brought
under the provisions of this article. Service of such process
upon the secretary of state shall be made by personally
delivering to and leaving with him a copy thereof along
with the fee required by section two, article one, chapter
fifty-nine of this code, and such service shall be sufficient
service: Provided, That notice of such service and a copy
of such process are forthwith sent by the secretary of state
to such charitable organization or professional fund-
raising counsel or professional solicitor by registered or
certified mail with return receipt requested at its or his or
her office, as set forth in the registration form required to
be filed with the secretary of state pursuant to this article
or in default of the filing of such form, at the last address
known to the secretary of state.

CHAPTER 29A. STATE ADMINISTRATIVE
PROCEDURES ACT.

ARTICLE 2. STATE REGISTER.


(a) The Legislature intends that the secretary of state
offer to the public convenient and efficient access to
copies of the state register or parts thereof desired by the
citizens. The provisions of this section are enacted in order
to provide a means of doing so pending any other means
provided by law or legislative rule.

(b) All materials filed in the state register shall be
indexed daily in chronological order of filing with a brief
description of the item filed and a columnar cross index to
(1) agency and (2) section, article and chapter of the code
to which it relates and by which it is filed in the state
register and (3) such other information in the description
or cross index as the secretary of state believes will aid a
citizen in using the chronological index.

(c) To give users of the code of state rules a means to
know whether the rule is being superseded by a version of
the rule that has become effective, but not yet been final-
filed, prepared, proofed and distributed, or may be
superseded by a rule which is being proposed and
promulgated pursuant to article three but not yet become
final, the secretary of state shall provide with each update
of the code of state rules, a copy of the rule monitor and
its cross index which shows the rules that have become
effective but not yet distributed and the rules which may
be superseded by a rule which is being proposed. The
copy of the rule monitor distributed with the updates of
the code of state rules shall state plainly that this version of
the rule monitor only shows the status of the promulgation
of rules as of the date of distribution of the update of the
code of state rules, and that to obtain the most recent status
of the rules, the user should consult the rule monitor in the
most recent publication of the state register. With the first
distribution to the loose leaf version of the code of state
rules the secretary of state shall also distribute a divider
where the current rule monitor shall be maintained. With
the first distribution, the secretary of state shall also
include instructions, with a copy for insertion in or on the
front of each volume of the loose-leaf versions of the code
of state rules, to users on how the rule monitor can be
utilized to determine whether the version of the rule in the
code of state rules is currently in effect. This subsection is
not to be construed to require that subscribers to the
updates of the code of state rules receive a subscription to
the state register.

(d) The secretary of state shall cause to be duplicated
in such number as shall be required, on white paper with
two punches suitable for fastening in two-ring binders, the
permanent biennial state register, the chronological index
and other materials filed in the register, or any part by
agency or section, article or chapter for subscription at a
cost including labor, paper and postage, sufficient in his
judgment to defray the expense of such duplication. The
secretary of state shall also offer, at least at monthly
intervals, supplements to the published materials listed
above. Any subscription for monthly supplements shall be
offered annually and shall include the chronological
index and materials related to such agency or agencies, or
section, article or chapter of the code as a person may
designate. A person may limit the request to notices only,
to notices and rules, or to notices and proposed rules, or
any combination thereof.

(e) Every two years, the secretary of state shall offer
for purchase succeeding biennial permanent state registers
which shall consist of all rules effective on the date of
publication selected by the secretary of state, which date
shall be at least two years from the last such publication
date, and materials filed in the state register relating
thereto. The cost of the succeeding biennial permanent
state register and for the portion relating to any agency or
any section, article or chapter of the code which may be
designated by a person purchasing the same shall be fixed
in the same manner specified in section eleven of this
article.

(f) The secretary of state may omit from any
duplication made pursuant to subsection (e) of this section
any rules the duplication of which would be unduly
cumbersome, expensive or otherwise inexpedient, if a
copy of such rules is made available from the original
filing of such rule, at a price not exceeding the cost of
duplication, and if the volume from which such rule is
omitted includes a notice in that portion of the publication
in which the rule would have been located, stating (1) the
general subject matter of the omitted rule, (2) each section,
article and chapter of this code to which the omitted rule
relates, and (3) the means by which a copy of the omitted
rule may be obtained.

(g) The secretary of state may propose changes to the
procedures outlined in the section above by proposing a
legislative rule under the provisions of section nine, article
three of this chapter, but may promulgate no rules
containing those changes unless authorized by the
Legislature pursuant to article three of this chapter.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-3. Application requirements for a license to conduct the private
investigation business.
§30-18-6. Application requirements for a license to conduct security guard business.

§30-18-3. Application requirements for a license to conduct the private investigation business.

(a) To be licensed to be a private detective, a private investigator or to operate a private detective or investigative firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

(b) On the application each applicant shall provide the following information: The applicant's name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this article.

(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president, and verified by the secretary or treasurer of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and otherwise such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information must be provided in addition to that required to be provided by the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; and
(3) Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

To qualify for a firm license, the applicant shall provide such information for each person who will be authorized to conduct the private investigation business and for each officer, member or partner of the firm.

(e) As part of the application, each applicant shall give the secretary of state permission to review the records held by the division of public safety for any convictions that may be on record for the applicant.

(f) For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent full-face photograph and one complete set of the person’s fingerprints.

(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct the private investigation business; and

(2) A nonrefundable application processing service charge of fifty dollars, which shall be payable to the secretary of state to offset the cost of license review and criminal investigation background report from the department of public safety, along with a license fee of one hundred dollars if the applicant is an individual, or two hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a nonresident of West Virginia or a foreign corporation or business entity. The license fee shall be deposited to the general revenue fund, and shall be refunded only if the license is denied.

(h) All applicants for private detective or private investigator licenses or for private investigation firm
licenses shall file in the office of secretary of state a surety bond. Such bond shall:

(1) Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the insurance commissioner of West Virginia and approved by the attorney general of West Virginia with respect to its form;

(3) Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

(i) Any person claiming against the bond required by subsection (h) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall be liable only for damages awarded under section twelve of this article and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

§30-18-6. Application requirements for a license to conduct security guard business.

(a) To be licensed as a security guard or to operate a security guard firm, each applicant shall complete and file a written application, under oath, with the secretary of state and in such form as the secretary may prescribe.

(b) On the application, each applicant shall provide the following information: The applicant’s name, birth date, citizenship, physical description, military service, current residence, residences for the preceding seven years, qualifying education or experience, the location of each of his or her offices in this state and any other information requested by the secretary of state in order to comply with the requirements of this article.
(c) In the case of a corporation that is seeking a firm license, the application shall be signed by the president, and verified by the secretary or treasurer of such corporation and shall specify the name of the corporation, the date and place of its incorporation, the names and titles of all officers, the location of its principal place of business, and the name of the city, town or village, stating the street and number, and otherwise such apt description as will reasonably indicate the location. If the corporation has been incorporated in a state other than West Virginia, a certificate of good standing from the state of incorporation must accompany the application. This information shall be provided in addition to that required to be provided the applicant.

(d) The applicant shall provide:

(1) Information in the application about whether the applicant has ever been arrested for or convicted of any crime or wrongs, either done or threatened, against the government of the United States;

(2) Information about offenses against the laws of West Virginia or any state; and

(3) Any facts as may be required by the secretary of state to show the good character, competency and integrity of the applicant.

To qualify for a firm license, the applicant shall provide such information for each person who would be authorized to conduct security guard business under the applicant's firm license and for each officer, member or partner in the firm.

(e) As part of the application, each applicant shall give the secretary of state permission to review the records held by the department of public safety for any convictions that may be on record for the applicant.

(f) For each applicant for a license and for each officer, member and partner of the firm applying for a license, the application shall be accompanied by one recent full-face photograph and one complete set of the person's fingerprints.
(g) For each applicant, the application shall be accompanied by:

(1) Character references from at least five reputable citizens. Each reference must have known the applicant for at least five years preceding the application. No reference may be connected to the applicant by blood or marriage. All references must have been written for the purpose of the application for a license to conduct security guard business; and

(2) A nonrefundable application processing service charge of fifty dollars, which shall be payable to the secretary of state to offset the cost of license review and criminal investigation background report from the department of public safety, along with a license fee of one hundred dollars if the applicant is an individual, or two hundred dollars if the applicant is a firm, or five hundred dollars if the applicant is a nonresident of West Virginia or a foreign corporation or business entity. The license fee shall be deposited to the general revenue fund, and shall be refunded only if the license is denied.

(h) All applicants for security guard licenses or security guard firm licenses shall file in the office of secretary of state a surety bond. Such bond shall:

(1) Be in the sum of two thousand five hundred dollars and conditioned upon the faithful and honest conduct of such business by such applicant;

(2) Be written by a company recognized and approved by the insurance commissioner of West Virginia and approved by the attorney general of West Virginia with respect to its form;

(3) Be in favor of the state of West Virginia for any person who is damaged by any violation of this article. The bond must also be in favor of any person damaged by such a violation.

(i) Any person claiming against the bond required by subsection (h) of this section for a violation of this article may maintain an action at law against any licensed individual or firm and against the surety. The surety shall
be liable only for damages awarded under section twelve of this article and not the punitive damages permitted under that section. The aggregate liability of the surety to all persons damaged by a person or firm licensed under this article may not exceed the amount of the bond.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

§31-1-56. Appointment of person to whom notice or process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every corporation created by virtue of the laws of this state and every foreign corporation authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such corporation and upon whom service of notice and process may be made in this state for and upon every such corporation. No act of such corporation appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service, or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail,
21 return receipt requested, to the person to whom notice and
22 process shall be sent, whose name and address were last
23 furnished to the state officer at the time authorized by
24 statute to accept service of notice and process and upon
25 whom notice and process may be served; and if no such
26 person has been named, to the principal office of the
27 corporation at the address last furnished to the state officer
28 at the time authorized by statute to accept service of
29 process and upon whom process may be served, as
30 required by law. No process or notice shall be served on
31 the secretary of state or accepted by him less than ten days
32 before the return day thereof. Such corporation shall pay
33 the annual fee prescribed by article twelve, chapter eleven
34 of this code for the services of the secretary of state as its
35 attorney-in-fact.
36
37 Any foreign corporation which shall conduct affairs or
38 do or transact business in this state without having been
39 authorized so to do pursuant to the provisions of this
40 article shall be conclusively presumed to have appointed
41 the secretary of state as its attorney-in-fact with authority
42 to accept service of notice and process on behalf of such
43 corporation and upon whom service of notice and process
44 may be made in this state for and upon every such
45 corporation in any action or proceeding described in the
46 next following paragraph of this section. No act of such
47 corporation appointing the secretary of state as such
48 attorney-in-fact shall be necessary. Immediately after
49 being served with or accepting any such process or notice,
50 of which process or notice two copies for each defendant
51 shall be furnished the secretary of state with the original
52 notice or process, together with the fee required by section
53 two, article one, chapter fifty-nine of this code, the
54 secretary of state shall file in his office a copy of such
55 process or notice, with a note thereon endorsed of the time
56 of service or acceptance, as the case may be, and transmit
57 one copy of such process or notice by registered or
58 certified mail, return receipt requested, to such corporation
59 at the address of its principal office, which address shall be
60 stated in such process or notice. Such service or
61 acceptance of such process or notice shall be sufficient if
62 such return receipt shall be signed by an agent or
employee of such corporation, or the registered or certified mail so sent by the secretary of state is refused by the addressee and the registered or certified mail is returned to the secretary of state, or to his office, showing thereon the stamp of the United States postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign corporation not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein (a) if such corporation makes a contract to be performed, in whole or in part, by any party thereto, in this state, (b) if such corporation commits a tort, in whole or in part, in this state, or (c) if such corporation manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such corporation had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as hereinabove described shall be deemed to be the agreement of such corporation that any notice or process served upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such corporation arising from, or growing out of, such contract, tort, or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such corporation in this state.
§31-1-56. Appointment of person to whom notice or process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

(a) A corporation may at any time appoint a person other than the corporation to whom notice or process served upon the secretary of state or service of which is accepted by the secretary of state may be sent, as required by section fifteen of this article, by filing with the secretary of state a statement setting forth:

(1) The name of the corporation and the state of its incorporation.

(2) The present address of its principal office.

(3) Express appointment of and the name and address of the person to whom notice or process shall be sent by the secretary of state under section fifteen of this article.

(4) Express authority to the secretary of state to send to such person at the address given, all notices and process served upon the secretary of state or service of which is accepted by the secretary of state.

(5) That such appointment was duly authorized by the board of directors of the corporation.

Such statement shall be signed by the president or a vice president or secretary or an assistant secretary, of the corporation, verified by the signer and delivered to the secretary of state, and upon receipt thereof shall be filed by the secretary of state in his office.

(b) A corporation may at any time change the address of its principal office; or the name and address, or the address, of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state. Such change shall become effective as the name and address or address last furnished to the secretary of state for the purposes of section fifteen of this article only when such corporation has filed in the office of the secretary of state a statement setting forth:

(1) The name of the corporation.
(2) The state under whose laws it was incorporated.

(3) If the address of the principal office is changed, then the address of the former or present principal office and the address to which it is changed or to be changed.

(4) If the name and address or address only of the person to whom notice or process is to be sent is to be changed, then the name and address of such person to be used from and after the filing of the statement required by this section.

(5) That such change was duly authorized by the board of directors.

(c) The corporation may file a record of the election or appointment of new corporate officers, setting forth:

(1) The name and principal office address of the corporation.

(2) The name, address and office of each new officer.

(3) That the officers were duly elected or appointed.

Such statement shall be signed by the president, vice president, secretary or assistant secretary of the corporation and verified by him. The fee for filing any notice of a change of agent, officers and/or principal office address shall be as required by section two, article one, chapter fifty-nine of this code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for
service of process in this state or the agent for service of
process cannot with reasonable diligence be found at the
agent’s address, the secretary of state is an agent of the
company upon whom process, notice or demand may be
served.

(c) Service of any process, notice or demand on the
secretary of state may be made by delivering to and
leaving with the secretary of state, the assistant secretary of
state or clerk having charge of the limited liability
company department of the secretary of state, the original
process, notice or demand and two copies thereof for each
defendant, along with the fee required by section two,
article one, chapter fifty-nine of this code. No process,
notice or demand may be served on or accepted by the
secretary of state less than ten days before the return day
thereof. If the process, notice or demand is served on the
secretary of state, the secretary of state shall forward one
of the copies by registered or certified mail, return receipt
requested, to the company at its designated office and
shall file in his or her office a copy of such process, notice
or demand, with a note thereon endorsed of the time of
service, or acceptance, as the case may be. Such service or
acceptance of such process, notice or demand is sufficient
if such return receipt is signed by an agent or employee of
such company, or the registered or certified mail so sent
by the secretary of state is refused by the addressee and
the registered or certified mail is returned to the secretary
of state, showing thereon the stamp of the United States
postal service that delivery thereof has been refused, and
such return receipt or registered or certified mail is
appended to the original process, notice or demand and
filed therewith in the clerk’s office of the court from
which such process, notice or demand was issued.

(d) The secretary of state shall keep a record of all
processes, notices and demands served pursuant to this
section and record the time of and the action taken
regarding the service.

(e) This section does not affect the right to serve
process, notice or demand in any manner otherwise
provided by law.
CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-12. Service of process on licensed insurers.

§33-4-13. Service of process on unlicensed insurers.

§33-4-12. Service of process on licensed insurers.

1 The secretary of state shall be, and is hereby constituted, the attorney-in-fact of every licensed insurer, domestic, foreign, or alien, transacting insurance in this state, upon whom all legal process in any action, suit or proceeding against it shall be served, and he may accept service of such process. Such process shall be served upon the secretary of state, or accepted by him, in the same manner as provided for service of process upon unlicensed insurers under subdivisions (2) and (3) of subsection (b) of section thirteen of this article. Each licensed insurer shall pay to the secretary of state an annual fee of ten dollars for services as authorized agent for service of process, which shall be used to offset the costs of the secretary of state for his or her services as attorney-in-fact.

§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the insurance commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the insurance commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not licensed to transact insurance in this state,
thus presenting to such residents the often insuperable
obstacle of resorting to distant fora for the purpose of
asserting legal rights under such policies. In furtherance
of such state interest, the Legislature herein provides a
method of substituted service of process upon such
insurers and declares that in so doing it exercises its
powers to protect its residents and to define, for the
purpose of this section, what constitutes transacting
insurance in this state, and also exercises powers and
privileges available to the state by virtue of public law
number fifteen, seventy-ninth Congress of the United
States, chapter twenty, first session, Senate number three
hundred forty, as amended, which declares that the
business of insurance and every person engaged therein
shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected
by mail or otherwise, by an unlicensed foreign or alien
insurer: (i) The issuance or delivery of contracts of
insurance to residents of this state or to corporations
authorized to do business therein, (ii) the solicitation of
applications for such contracts, (iii) the collection of
premiums, membership fees, assessments or other
considerations for such contracts, or (iv) any other
transaction of business, is equivalent to and shall constitute
an appointment by such insurer of the secretary of state
and his or her successor in office, to be its true and lawful
attorney, upon whom may be served all lawful process in
any action, suit or proceeding instituted by or on behalf of
an insured or beneficiary arising out of any such contract
of insurance, and in any action, suit or proceeding which
may be instituted by the insurance commissioner in the
name of any such insured or beneficiary or in the name of
the state of West Virginia, and in any administrative
proceeding before the commissioner, and any such act
shall be signification of its agreement that such service of
process is of the same legal force and validity as personal
service of process in this state upon such insurer.

(2) Such service of process upon any such insurer or
upon an insurer pursuant to section twenty-two, article
three of this chapter in any such action or proceeding in
any court of competent jurisdiction of this state, or in any
administrative proceeding before the commissioner, may
be made by serving the secretary of state or his or her
chief clerk with two copies and an original thereof and the
payment to him or her of the fee required by section two,
average one, chapter fifty-nine of this code. The secretary
of state shall forward a copy of such process by registered
or certified mail to the defendant at its last-known
principal place of business and shall keep a record of all
process so served upon him or her. Such service of
process is sufficient, provided notice of such service and a
copy of the process are sent within ten days thereafter by
or on behalf of the plaintiff or moving party to the
defendant, or responding party, at its last-known principal
place of business by registered or certified mail with
return receipt requested. The plaintiff or moving party
shall file with the clerk of the court in which the action is
pending, or with the judge or magistrate of such court in
case there be no clerk, or in the official records of the
commissioner if an administrative proceeding before the
commissioner, an affidavit of compliance herewith, a copy
of the process and either a return receipt purporting to be
signed by the defendant or responding party or a person
qualified to receive its registered or certified mail in
accordance with the rules and customs of the post-office
department; or, if acceptance was refused by the defendant
or responding party or an agent thereof, the original
envelope bearing a notation by the postal authorities that
receipt was refused. Service of process so made shall be
deemed to have been made within the territorial
jurisdiction of any court in this state.

(3) Service of process in any such action, suit or
proceeding shall in addition to the manner provided in
subdivision (2) of this subsection (b) be valid if served
upon any person within this state who, in this state on
behalf of such insurer, is

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of
insurance, or

(C) Collecting or receiving any premium, membership
fee, assessment or other consideration for insurance:
Provided, That notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff or moving party to the defendant or responding party at the last-known principal place of business of the defendant or responding party, by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party, or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of this subsection (b) shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff or moving party. Service of process shall be complete ten days after such process and the accompanying papers are filed in accordance with this section.

(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(c)(1) Before any unauthorized or unlicensed foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, or any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against such insurer, such unauthorized or unlicensed insurer shall either: (i) Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in an administrative proceeding before the
commissioner, cash or securities or file with such clerk or
the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding: Provided, That the court or the commissioner may in its, his or her respective discretion make an order dispensing with such deposit or bond where the auditor of the state shall have certified to such court or commissioner that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (ii) procure a license to transact insurance in this state.

(2) The court or the commissioner in any action, suit or proceeding in which service is made in the manner provided in subdivision (2) or (3), subsection (b) of this section may, in its, his or her respective discretion, order such postponement as may be necessary to afford the defendant or responding party reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (c) and to defend such action or proceeding.

(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unauthorized or unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in subdivision (2) or (3), subsection (b) of this section on the grounds that such insurer has not done any of the acts enumerated in subdivision (1), subsection (b) of this section, or in section twenty-two, article three of this chapter.

(d) In any action against an unauthorized or unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and
without reasonable cause, the court may allow to the plaintiff a reasonable attorney’s fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

CHAPTER 38. LIENS.

Article
1A. Trustees of Security Trusts.
5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.
§38-1A-8. How service of process or notice made.

Service of such process or notice shall be made by mailing or delivering to the office of said secretary of state three copies of such process or notice, with a notation thereon of the residence address of the trustee upon whom service is being had, as stated in the security trust; if the address of the trustee be not stated in the security trust, the notation shall state the address of the beneficiary of such trust as given in the security trust; and service thereof shall be complete upon the receipt in said office of such notice or process bearing such notation and accompanied by the fee required by section two, article one, chapter fifty-nine of this code, which shall be taxed as costs in the suit, action or proceeding. The secretary of state shall pay into the state treasury all funds so coming into his hands, and shall keep one copy of all such process and notices, with a record of the day and hour of service thereof.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for
failure or refusal to pay; payments to be made
every ninety days.

(a) Service of a suggestee execution against salary or
wages may be made by the clerk of the circuit court or the
magistrate court clerk, as the case may be, by sending a
copy of the suggestee execution to the suggestee by
certified mail, return receipt requested, with delivery
restricted to the addressee. If the registered mail is
unclaimed, or otherwise is not accepted or is refused by
the suggestee, then service of the suggestee execution shall
be made in the same manner as a summons commencing
an action is served, in accordance with the rules of civil
procedure for trial courts of record: Provided, That if the
suggestee is located in a county other than the county
where the suggestee execution issues, the clerk may mail
the suggestee execution by first class mail to the sheriff of
the other county for such service. If the service is made on
a corporation, limited liability company, or other person
or entity through the secretary of state, it shall be
submitted along with the fee required by section two,
article one, chapter fifty-nine of this code.

(b) If the suggestee served with the execution is
indebted or will in the future become indebted to the
judgment debtor for salary or wages, then during the time
the execution remains a lien on any indebtedness for
salary and wages, the suggestee is required to pay over to
the officer serving the same or to the judgment creditor
the percentage of the indebtedness required by section
three of this article, until the execution is wholly satisfied.
The suggestee shall deduct the amounts paid from the
amounts payable to the judgment debtor as salary or
wages, and the deduction of these amounts is a bar to any
further action by the judgment creditor against the wages
or salary of the judgment debtor.

(c) Once every ninety days during the life of such
execution and any renewal execution, the suggestee upon
whom the execution or any renewal execution is served
shall pay over to the officer who served the same or to the
judgment creditor the full amount of money held or
retained pursuant to such execution or renewal execution during the preceding ninety days.

If the suggestee upon whom the execution is served fails or refuses to pay over to the officer serving the execution or to the judgment creditor the required percentage of the indebtedness, as aforesaid, he or she shall be liable to an action therefor by the judgment creditor named in the execution and the amount recovered in the action shall be applied in satisfaction of the execution.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPERS.

§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.


§46-9-405. Assignment of security interest; duties of filing officer; fees.

§46-9-406. Release of collateral; duties of filing officer; fees.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) or in subsection (8), a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period, unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it
is deemed to have been unperfected as against a person
who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the
secured party within six months prior to the expiration of
the five-year period specified in subsection (2). Any such
continuation statement must be signed by the secured
party, identify the original statement by file number and
state that the original statement is still effective. A
continuation statement signed by a person other than the
secured party of record must be accompanied by a
separate written statement of assignment signed by the
secured party of record and complying with subsection
(2), section four hundred five of this article, including
payment of the required fee. Upon timely filing of the
continuation statement, the effectiveness of the original
statement is continued for five years after the last date to
which the filing was effective whereupon it lapses in the
same manner as provided in subsection (2) unless another
continuation statement is filed prior to such lapse.
Succeeding continuation statements may be filed in the
same manner to continue the effectiveness of the original
statement. Unless a statute on disposition of public
records provides otherwise, the filing officer may remove
a lapsed statement from the files and destroy it
immediately if he has retained a microfilm or other
photographic record, or in other cases after one year after
the lapse. The filing officer shall so arrange matters by
physical annexation of financing statements to
continuation statements or other related filings, or by
other means, that if he physically destroys the financing
statements of a period more than five years past, those
which have been continued by a continuation statement or
which are still effective under subsection (6) shall be
retained.

(4) Except as provided in subsection (7), a filing
officer shall mark each statement with a file number and
with the date and hour of filing and shall hold the
statement or a microfilm or other photographic copy
thereof for public inspection. In addition the filing
officer shall index the statements according to the name of
the debtor and shall note in the index the file number and
the address of the debtor given in the statement.
(5) The uniform fee for filing and indexing and for
stamping a copy furnished by the secured party to show
the date and place of filing for an original financing
statement or for a continuation statement shall be ten
dollars. The secured party may at his option show a trade
name for any person.

(6) If the debtor is a transmitting utility (subsection
(5), section four hundred one of this article) and a filed
financing statement so states, it is effective until a
termination statement is filed. A real estate mortgage
which is effective as a fixture filing under subsection (6),
section four hundred two of this article remains effective
as a fixture filing until the mortgage is released or satisfied
of record or its effectiveness otherwise terminates as to the
real estate.

(7) When a financing statement covers timber to be cut
or covers minerals or the like (including oil and gas) or
accounts subject to subsection (5), section one hundred
three of this article, or is filed as a fixture filing, it shall be
filed for record and the filing officer shall index it under
the names of the debtor and any owner of record shown
on the financing statement in the same fashion as if they
were the mortgagors in a mortgage of the real estate
described, and, to the extent that the law of this state
provides for indexing of mortgages under the name of the
mortgagor, under the name of the secured party as if he
were the mortgagor thereunder, or where indexing is by
description in the same fashion as if the financing
statement were a mortgage of the real estate described.

(8) Notwithstanding any provision of this code to the
contrary, a filed financing statement on public bond issues
of counties, municipalities or public service districts of this
state shall be effective for the life of such bond issues
without the need for filing continuation statements.

(1) If a financing statement covering consumer goods
is filed on or after the first day of July, 1975, then within
one month or within ten days following written demand
by the debtor after there is no outstanding secured
obligation and no commitment to make advances, in the
obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2), section four hundred five of this article, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be ten dollars.
§46-9-405. Assignment of security interest; duties of filing officer; fees.

1 (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in subsection (4), section four hundred three of this article. The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be ten dollars.

2 (2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5), section one hundred three of this article, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be ten dollars. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing
(subsection (6), section four hundred two of this article) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

§46-9-406. Release of collateral; duties of filing officer; fees.

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2), section four hundred five of this article, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be ten dollars.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the secretary of state shall issue his certificate showing whether there is on file in his office on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if
there is, giving the date and hour of filing of each such
statement and the names and addresses of each secured
party therein. The uniform fee for such a certificate shall
be five dollars plus fifty cents for each financing statement
and for each statement of assignment reported therein.
Upon request the filing officer shall furnish a copy of any
filed financing statement or statement of assignment for a
uniform fee of fifty cents per page.

(3) The secretary of state shall develop and implement
a central indexing system containing the information filed
with his office pursuant to subsection four, section three
hundred seven of this article. Under this system, the
secretary shall record the date and time of filing and
compile the information into a master list organized
according to farm products. The list shall be organized
within each farm product category in alphabetical order
according to the last name of the borrower, or in the case
of borrowers doing business other than as individuals, the
first word in the name of such borrower in numerical
order according to the social security or taxpayer
identification number of the borrower, geographically by
county and by crop year. The master list shall also contain
the name and address of the secured party, the name and
address of the borrower, a description of the farm
products, including amount where applicable, subject to
the security interest, and a reasonable description of the
real estate, including the county where or upon which the
farm products are located.

(4) The secretary of state shall maintain a list of all
buyers of farm products, commission merchants and
selling agents who register with the secretary of state
indicating an interest in receiving the lists described in
subsection (5) of this section.

(5) The secretary of state shall distribute on a regular
basis as determined by the secretary of state to each buyer,
commission merchant and selling agent registered under
subsection (4), a copy in written or printed form of those
portions of the master list which the buyer, commission
merchant or selling agent has indicated an interest in
receiving.
(6) Upon the request of any person, the secretary of state shall provide within twenty-four hours an oral confirmation of the filing of the form described in subsection (4), section three hundred seven of this article, followed by a written confirmation.

(7) All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state in a separate fund in the state treasury and shall be expended solely for the purposes of this article, unless otherwise provided by appropriation or other action of the Legislature.

(8) The secretary of state shall, pursuant to the provisions of article three, chapter twenty-nine-a of this code, promulgate rules and set fees, not otherwise provided for by general law, to carry out the duties associated with this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who takes or holds any negotiable instrument, nonnegotiable instrument, or contract or other writing, arising from a consumer credit sale or consumer lease which is subject to the provisions of this article, other than a sale or lease primarily for an agricultural purpose, or who is a lender subject to the provisions of section one hundred three of this article, shall be conclusively presumed to have appointed the secretary of state as his attorney-in-fact with authority to accept service of notice and process in any action or proceeding brought against him arising out of such consumer credit sale, consumer lease or consumer loan. A person shall be considered a nonresident hereunder if he is a nonresident at the time such service of notice and process is sought. No act of such person appointing the secretary of state shall be
necessary. Immediately after being served with or
accepting any such process or notice, of which process or
notice two copies for each defendant shall be furnished
the secretary of state with the original notice or process,
together with the fee required by section two, article one,
chapter fifty-nine of this code, the secretary of state shall
file in his office a copy of such process or notice, with a
note thereon endorsed of the time of service or
acceptance, as the case may be, and transmit one copy of
such process or notice by registered or certified mail,
return receipt requested, to such person at his address,
which address shall be stated in such process or notice:
Provided, That such return receipt shall be signed by such
person or an agent or employee of such person if a
corporation, or the registered or certified mail so sent by
said secretary of state is refused by the addressee and the
registered or certified mail is returned to said secretary of
state, or to his office, showing thereon the stamp of the
United States postal service that delivery thereof has been
refused, and such return receipt or registered or certified
mail is appended to the original process or notice and
filed therewith in the clerk’s office of the court from
which such process or notice was issued. But no process
or notice shall be served on the secretary of state or
accepted fewer than ten days before the return date
thereof. The court may order such continuances as may
be reasonable to afford each defendant opportunity to
defend the action or proceeding.

The provisions for service of process or notice herein
are cumulative and nothing herein contained shall be
construed as a bar to the plaintiff in any action from
having process or notice in such action served in any other
mode and manner provided by law.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of state constituted attorney-in-fact for all
limited partnerships; manner of acceptance or
service of notice and process upon secretary of
state; what constitutes conducting affairs or doing
or transacting business in this state for purposes of this section.

The secretary of state is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the secretary of state such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the secretary of state with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the secretary of state shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law. No process or notice shall be served on the secretary of state or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the secretary of state as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions
of this article shall be conclusively presumed to have
appointed the secretary of state as its attorney-in-fact with
authority to accept service of notice and process on behalf
of such limited partnership and upon whom service of
notice and process may be made in this state for and upon
every such limited partnership in any action or proceeding
described in the next following paragraph of this section.
No act of such limited partnership appointing the
secretary of state as such attorney-in-fact shall be
necessary. Immediately after being served with or
accepting any such process or notice, of which process or
notice two copies for each defendant shall be furnished
the secretary of state with the original notice or process,
together with the fee required by section two, article one,
chapter fifty-nine of this code, the secretary of state shall
file in his office a copy of such process or notice, with a
note thereon endorsed of the time of service or
acceptance, as the case may be, and transmit one copy of
such process or notice by registered or certified mail,
return receipt requested, to such limited partnership at the
address of its principal office, which address shall be stated
in such process or notice. Such service or acceptance of
such process or notice shall be sufficient if such return
receipt shall be signed by an agent or employee of such
limited partnership, or the registered or certified mail so
sent by the secretary of state is refused by the addressee
and the registered or certified mail is returned to the
secretary of state, or to his office, showing thereon the
stamp of the United States postal service that delivery
thereof has been refused, and such return receipt or
registered or certified mail is appended to the original
process or notice and filed therewith in the clerk's office
of the court from which such process or notice was issued.
No process or notice shall be served on the secretary of
state or accepted by him less than ten days before the
return date thereof. The court may order such
continuances as may be reasonable to afford each
defendant opportunity to defend the action or
proceedings.

For the purpose of this section, a foreign limited
partnership not authorized to conduct affairs or do or
transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein (a) if such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state, (b) if such limited partnership commits a tort, in whole or in part, in this state, or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as hereinabove described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or accepted by, the secretary of state pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

§56-3-31. Actions by or against nonresident operators of motor vehicles involved in highway accidents; appointment of secretary of state, insurance company, as agents; service of process.

(a) Every nonresident, for the privilege of operating a motor vehicle on a public street, road or highway of this state, either personally or through an agent, appoints the
secretary of state, or his or her successor in office, to be his or her agent or attorney-in-fact upon whom may be served all lawful process in any action or proceeding against him or her in any court of record in this state arising out of any accident or collision occurring in the state of West Virginia in which such nonresident may be involved: Provided, That in the event process against a nonresident defendant cannot be effected through the secretary of state, as provided by this section, for the purpose only of service of process, such nonresident motorist shall be deemed to have appointed as his or her agent or attorney-in-fact any insurance company which has a contract of automobile or liability insurance with said nonresident defendant.

(b) For purposes of service of process as provided in this section, every insurance company shall be deemed the agent or attorney-in-fact of every nonresident motorist insured by such company if the insured nonresident motorist is involved in any accident or collision in this state and service of process cannot be effected upon said nonresident through the office of the secretary of state. Upon receipt of process as hereinafter provided, the insurance company may, within thirty days, file an answer or other pleading or take any action allowed by law on behalf of the defendant.

(c) A nonresident operating a motor vehicle in this state, either personally or through an agent, is deemed to acknowledge the appointment of the secretary of state, or, as the case may be, his or her automobile insurance company, as his or her agent or attorney-in-fact, or the agent or attorney-in-fact of his or her administrator, administratrix, executor or executrix in the event the nonresident dies, and furthermore is deemed to agree that any process against him or her or against his or her administrator, administratrix, executor or executrix, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though said nonresident or his or her administrator, administratrix, executor or executrix were personally served with a summons and complaint within this state.
Any action or proceeding may be instituted, continued
or maintained on behalf of or against the administrator,
administratrix, executor or executrix of any nonresident
who dies during or subsequent to an accident or collision
resulting from the operation of a motor vehicle in this
state by the nonresident or his or her duly authorized
agent.

(d) At the time of filing a complaint against a
nonresident motorist who has been involved in an accident
or collision in the state of West Virginia and before a
summons is issued thereon, the plaintiff, or someone for
him or her, shall execute a bond in the sum of one
hundred dollars before the clerk of the court in which the
action is filed, with surety to be approved by said clerk,
conditioned that on failure of the plaintiff to prevail in the
action he or she will reimburse the defendant, or cause the
defendant to be reimbursed, the necessary expense
incurred in the defense of the action in this state. Upon
the issue of a summons the clerk will certify thereon that
the bond has been given and approved.

(e) Service of process upon a nonresident defendant
shall be made by leaving the original and two copies of
both the summons and complaint, together with the bond
certificate of the clerk, and the fee required by section two,
article one, chapter fifty-nine of this code with the
secretary of state, or in his or her office, and said service
shall be sufficient upon the nonresident defendant or, if a
natural person, his or her administrator, administratrix,
executor or executrix: Provided, That notice of service
and a copy of the summons and complaint shall be sent
by registered or certified mail, return receipt requested, by
the secretary of state to the nonresident defendant. The
return receipt signed by the defendant or his or her duly
authorized agent shall be attached to the original
summons and complaint and filed in the office of the
clerk of the court from which process is issued. In the
event the registered or certified mail sent by the secretary
of state is refused or unclaimed by the addressee or if the
addressee has moved without any forwarding address, the
registered or certified mail returned to the secretary of
state, or to his or her office, showing thereon the stamp of
the post-office department that delivery has been refused
or not claimed or that the addressee has moved without
any forwarding address, shall be appended to the original
summons and complaint and filed in the clerk's office of
the court from which process issued. The court may order
such continuances as may be reasonable to afford the
defendant opportunity to defend the action.

(f) The fee remitted to the secretary of state at the time
of service, shall be taxed in the costs of the proceeding
and the secretary of state shall pay into the state treasury
all funds so coming into his or her hands from such
service. The secretary of state shall keep a record in his or
her office of all service of process and the day and hour
of service thereof.

(g) In the event service of process upon a nonresident
defendant cannot be effected through the secretary of
state as provided by this section, service may be made
upon the defendant's insurance company. The plaintiff
must file with the clerk of the circuit court an affidavit
alleging that the defendant is not a resident of this state;
that process directed to the secretary of state was sent by
registered or certified mail, return receipt requested; that
the registered or certified mail was returned to the office
of the secretary of state showing the stamp of the post-
office department that delivery was refused or that the
notice was unclaimed or that the defendant addressee
moved without any forwarding address; and that the
secretary of state has complied with the provisions of
subsection (e) herein. Upon receipt of process the
insurance company may, within thirty days, file an answer
or other pleading and take any action allowed by law in
the name of the defendant.

(h) The following words and phrases, when used in this
article, shall, for the purpose of this article and unless a
different intent on the part of the Legislature is apparent
from the context, have the following meanings:

(1) "Duly authorized agent" means and includes,
among others, a person who operates a motor vehicle in
this state for a nonresident as defined in this section and
chapter, in pursuit of business, pleasure or otherwise, or
who comes into this state and operates a motor vehicle for, or with the knowledge or acquiescence of, a nonresident; and includes, among others, a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and acknowledges receipt for mail addressed to the nonresident.

(2) "Motor vehicle" means and includes any self-propelled vehicle, including motorcycle, tractor and trailer, not operated exclusively upon stationary tracks.

(3) "Nonresident" means any person who is not a resident of this state or a resident who has moved from the state subsequent to an accident or collision, and among others includes a nonresident firm, partnership, corporation or voluntary association, or a firm, partnership, corporation or voluntary association that has moved from the state subsequent to an accident or collision.

(4) "Nonresident plaintiff or plaintiffs" means a nonresident who institutes an action in a court in this state having jurisdiction against a nonresident in pursuance of the provisions of this article.

(5) "Nonresident defendant or defendants" means a nonresident motorist who, either personally or through his or her agent, operated a motor vehicle on a public street, highway or road in this state and was involved in an accident or collision which has given rise to a civil action filed in any court in this state.

(6) "Street", "road" or "highway" means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular traffic.

(7) "Insurance company" means any firm, corporation, partnership or other organization which issues automobile insurance.

(i) The provision for service of process herein is cumulative and nothing herein contained shall be
construed as a bar to the plaintiff in any action from having process in such action served in any other mode and manner provided by law.

§56-3-33. Actions by or against nonresident persons having certain contracts with this state; authorizing secretary of state to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7) of this subsection shall be deemed equivalent to an appointment by such nonresident of the secretary of state, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him, in any circuit court in this state, including an action or proceeding brought by a nonresident plaintiff or plaintiffs, for a cause of action arising from or growing out of such act or acts, and the engaging in such act or acts shall be a signification of such nonresident's agreement that any such process against him, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have
expected such person to use, consume or be affected by
the goods in this state: Provided, That he also regularly
does or solicits business, or engages in any other persistent
course of conduct, or derives substantial revenue from
goods used or consumed or services rendered in this state;

(6) Having an interest in, using or possessing real
property in this state; or

(7) Contracting to insure any person, property or risk
located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based
solely upon the provisions of this section, only a cause of
action arising from or growing out of one or more of the
acts specified in subdivisions (1) through (7), subsection
(a) of this section may be asserted against him.

(c) At the time of filing a complaint and before a
summons is issued thereon, the plaintiff, or someone for
him, shall execute a bond in the sum of one hundred
dollars before the clerk of the court, with surety to be
approved by said clerk, conditioned that on failure of the
plaintiff to prevail in the action or proceeding that he will
reimburse the defendant, or cause him to be reimbursed,
the necessary taxable costs incurred by him in and about
the defense of the action or proceeding in this state, and
upon the issuance of a summons, the clerk shall certify
thereon that such bond has been given and approved.
Service shall be made by leaving the original and two
copies of both the summons and the complaint with the
certificate aforesaid of the clerk thereon, and the fee
required by section two, article one, chapter fifty-nine of
this code with the secretary of state, or in his office, and
such service shall be sufficient upon such nonresident:
Provided, That notice of such service and a copy of the
summons and complaint shall forthwith be sent by
registered or certified mail, return receipt requested, by the
secretary of state to the defendant and the defendant’s
return receipt signed by himself or his duly authorized
agent or the registered or certified mail so sent by the
secretary of state which is refused by the addressee and
which registered or certified mail is returned to the
secretary of state, or to his office, showing thereon the
stamp of the post-office department that delivery has been refused, shall be appended to the original summons and complaint and filed therewith in the clerk's office of the court from which process issued. If any defendant served with summons and complaint fails to appear and defend within thirty days of service, judgment by default may be rendered against him at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding.

(d) The fee remitted to the secretary of state at the time of service shall be taxed in the costs of the action or proceeding and the secretary of state shall pay into the state treasury all funds so coming into his hands from such service. The secretary of state shall keep a record in his office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of such nonresident or a person who, at the residence, place of business or post office of such nonresident, usually receives and receipts for mail addressed to such nonresident.

(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership or corporation or a firm, partnership or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or
proceeding in a circuit court in this state having
jurisdiction against a nonresident of this state pursuant to
the provisions of this section.

(f) The provision for service of process herein is
cumulative and nothing herein contained shall be
construed as a bar to the plaintiff in any action or
proceeding from having process in such action served in
any other mode or manner provided by the law of this
state or by the law of the place in which the service is
made for service in that place in an action in any of its
courts of general jurisdiction.

(g) This section shall not be retroactive and the
provisions hereof shall not be available to a plaintiff in a
cause of action arising from or growing out of any of said
acts occurring prior to the effective date of this section.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

Except as may be otherwise provided in this code, the
secretary of state shall charge for services rendered in his
office the following fees to be paid by the person to whom
the service is rendered at the time it is done:

For filing, recording, indexing, preserving a record of
and issuing a certificate relating to the formation,
amendment, change of name, registration of trade name,
merger, consolidation, conversion, renewal, dissolution,
termination, cancellation, withdrawal revocation and
reinstatement of business entities organized within the
state, as follows:

Articles of incorporation of for-profit corporation ......................... 50.00
Articles of incorporation of nonprofit corporation ........................ 25.00
Agreement of a general partnership ................................. 50.00
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Certificate of a limited partnership</td>
<td>$100.00</td>
</tr>
<tr>
<td>18</td>
<td>Agreement of a voluntary association</td>
<td>$50.00</td>
</tr>
<tr>
<td>19</td>
<td>Articles of organization of a business trust</td>
<td>$50.00</td>
</tr>
<tr>
<td>20</td>
<td>Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax</td>
<td>$25.00</td>
</tr>
<tr>
<td>24</td>
<td>Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company, or of certificate of limited partnership or agreement of voluntary association</td>
<td>$25.00</td>
</tr>
<tr>
<td>30</td>
<td>Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association, or articles of organization of limited liability partnership, limited liability company or professional limited liability company, or business trust</td>
<td>$25.00</td>
</tr>
<tr>
<td>36</td>
<td>Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law</td>
<td>$25.00</td>
</tr>
<tr>
<td>40</td>
<td>Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations, or business trusts</td>
<td>$25.00</td>
</tr>
<tr>
<td>44</td>
<td>Plus for each additional party to the merger in excess of two</td>
<td>$15.00</td>
</tr>
<tr>
<td>46</td>
<td>Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity</td>
<td>$25.00</td>
</tr>
<tr>
<td>50</td>
<td>Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership</td>
<td>$25.00</td>
</tr>
</tbody>
</table>
Revocation of voluntary dissolution of a corporation, voluntary association or business trust ............. 15.00

Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership ........... 25.00

Reinstatement of a limited liability company or professional limited liability company after administrative dissolution ........................................... 25.00

For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:

Certificate of authority of for-profit corporation ........................................ 100.00

Certificate of authority of nonprofit corporation ..................................... 50.00

Certificate of exemption from certificate of authority ...................................... 25.00

Registration of a general partnership ........................................... 50.00

Registration of a limited partnership ........................................... 150.00

Registration of a limited liability partnership for two-year term ...................... 500.00

Registration of a voluntary association ........................................... 50.00

Registration of a trust or business trust ........................................... 50.00

Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax ........................................... 25.00

Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association, or business trust ............. 25.00
Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law ........................................ 25.00

Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association, or business trust .......................... 25.00

Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations, or business trusts ............... 25.00

Plus for each additional party to the merger in excess of two ........................................ 5.00

Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate articles or certificate to organize the surviving entity ........................................ 25.00

Certificate of withdrawal or cancellation of a corporation, limited partnership, limited liability partnership, limited liability company, voluntary association or business trust .......................... 25.00

For receiving, filing and recording a change of the principal or designated office, change of the agent of process and/or change of officers, directors, partners, members or managers, as the case may be, of a corporation, limited partnership, limited liability partnership, limited liability company or other business entity as provided by law ........................................ 15.00

For receiving, filing and preserving a reservation of a name for each 120 days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership, or limited liability company ........................................ 15.00

For issuing a certificate relating to a corporation or other business entity, as follows:
Certificate of good standing of a domestic or foreign corporation ........................................ 10.00
Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company ......................................................... 10.00
Certificate of existence of any business entity, trademark or service mark registered with the secretary of state ................................................................. 10.00
Certified copy of corporate charter or comparable organizing documents for other business entities .... 15.00
Plus, for each additional amendment, restatement or other additional document ........................ 5.00
Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership, or limited liability partnership ........................................ 25.00
And for the annual renewal of the name registration .......................................................... 10.00
Any other certificate not herein specified .......... 10.00
For issuing a certificate other than those relating to business entities as provided above, as follows:
Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions ............................................... 10.00
Any other certificate not herein specified .......... 10.00
For acceptance, indexing, recordation and execution of service of process by certified or registered mail upon any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law ............................. 15.00
For a search of records of the office conducted by employees of or at the expense of the secretary of state upon request, as follows:
For any search of archival records maintained at sites other than the office of the secretary of state,
no less than ........................................ 10.00

For searches of archival records maintained at sites
other than the office of the secretary of state which require
more than one hour, for each hour or fraction thereof
consumed in making such search .......................... 10.00

For any search of records maintained on site for the
purpose of obtaining copies of documents or printouts of
data .......................................................... 5.00

For any search of records maintained in electronic
format which requires special programming to be
performed by the state information services agency or
other vendor, any actual cost, but not less than ...... 25.00

The cost of the search shall be in addition to the cost
of any copies or printouts prepared or any certificate
issued pursuant thereto or based thereon.

For recording any paper for which no specific fee is
prescribed .................................................... 5.00

For producing and providing photocopies or printouts
of electronic data of specific records upon request, as
follows:

For a copy of any paper or printout of electronic data,
if one sheet .............................................. 1.00

For each sheet after the first ............................. .50

For sending the copies or lists by fax
transmission ................................................ 5.00

For producing and providing photocopies of lists,
reports, guidelines and other documents produced in
multiple copies for general public use, a publication price
to be established by the secretary of state at a rate
approximating 2.00 plus .10 per page, and rounded to the
nearest dollar.

For electronic copies of records obtained in data
format on disk, the cost of the record in the least
expensive available printed format, plus, for each required
disk, which shall be provided by the secretary of
state ............................................................. 5.00
The secretary of state may promulgate legislative rules for charges for on-line electronic access to database information or other information maintained by the secretary of state.

For any other work or service not herein enumerated, such fee as may be elsewhere prescribed.

The records maintained by the secretary of state are prepared and indexed at the expense of the state, and those records shall not be obtained for commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

The secretary of state may provide printed or electronic information free of charge as he or she deems necessary and efficient for the purpose of informing the general public or the news media.

CHAPTER 166

(Com. Sub. for S. B. 317—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; and to amend chapter sixteen of said code by adding thereto a new article, designated article five-p, all relating to abolishing the state commission on aging and creating the bureau of senior services; making technical changes, deletions and corrections to the structure of the executive branch and listing of executive agencies; providing a purpose, short title and definitions; providing for appointment of a commissioner of the bureau and providing for qualifications, oath, offices, compensation and expenses; powers and duties of
commissioner; creating the council on aging; composition of council and terms of members; officers; meetings; expenses; providing programs and services for the aging; prevention of crimes against the elderly; designating the bureau as the state agency for handling federal programs; providing for donations, records, rules and reports; and continuation of bureau.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5F. Reorganization of the Executive Branch of State Government.


CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;
(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;

(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code;

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code; and

(12) The child support enforcement division designated in chapter forty-eight-a of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and
(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

(iii) Mine inspectors' examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which shall include:

(i) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(ii) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(iii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;
(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code;

(3) Bureau of environment:

(A) Air quality board provided for in article two, chapter twenty-two-b of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;

(E) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors' examining board provided for in article seven, chapter twenty-two-c of this code;

(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(H) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;
(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau of public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and
(8) The child support enforcement division designated in chapter forty-eight-a of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans' affairs and veterans' council provided for in article one, chapter nine-a of this code.
(f) The following agencies and boards, including all of
the allied, advisory, affiliated or related entities and funds
associated with any such agency or board, are hereby
transferred to and incorporated in and shall be
administered as a part of the department of tax and
revenue:

(1) Tax division provided for in article one, chapter
eleven of this code;

(2) Racing commission provided for in article twenty-
three, chapter nineteen of this code;

(3) Lottery commission and position of lottery
director provided for in article twenty-two, chapter twenty-
nine of this code;

(4) Agency of insurance commissioner provided for
in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner
provided for in article sixteen, chapter eleven of this code
and article two, chapter sixty of this code;

(6) Board of banking and financial institutions
provided for in article three, chapter thirty-one-a of this
code;

(7) Lending and credit rate board provided for in
chapter forty-seven-a of this code;

(8) Division of banking provided for in article two,
chapter thirty-one-a of this code; and

(9) The child support enforcement division as
designated in chapter forty-eight-a of this code.

(g) The following agencies and boards, including all
of the allied, advisory, affiliated or related entities and
funds associated with any such agency or board, are
hereby transferred to and incorporated in and shall be
administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a,
chapter seventeen of this code;
(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the
appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-1. Purpose of article.
§16-5P-2. Short title.
§16-5P-3. Definitions.
§16-5P-1. Purpose of article.

The purpose of this article is to create a bureau in state government which promotes services to enhance the health, safety and welfare of West Virginia's senior population and serves as the primary agency within state government to provide services to the senior population.

§16-5P-2. Short title.

This article may be cited as the “Senior Services Act of 1997”.

§16-5P-3. Definitions.

(a) “Bureau” means the bureau of senior services.

(b) “Care management” means the planning, arrangement for and coordination of appropriate community-based, in-home services and alternative living arrangements for the frail elderly, disabled or terminally ill.

(c) “Care services” means housekeeping, personal care, chore, escort/transportation, meals, in-home nursing, day care and/or respite services.

(d) “Commissioner” means the commissioner of the bureau of senior services.

(e) “Community care” means a system of community-based, in-home services and alternative living
arrangements which provide a full range of preventive, maintenance and restorative services for the frail elderly, disabled or terminally ill.

(f) "Comprehensive assessment" means the assessment of needs, counseling in the development of a case plan, arrangements for services and on-going monitoring of the frail elderly, disabled or terminally ill.

(g) "Continuum of care" means a system of services which has a primary emphasis on in-home care and community service and which includes services such as nursing, medical, transportation and other health and social services available to an individual in an appropriate setting over an extended period of time.

(h) "Council" means the West Virginia council on aging.

(i) "Disabled" for the purposes of this act means a person who has temporary or permanent impairments which require services within the continuum of care.

(j) "Frail elderly" for the purposes of this act means any person sixty years of age or older, with limitations which restrict the person's ability to perform the normal activities of daily living.

(k) "Senior", "Elderly" or "Aging" means any person sixty years of age or older as defined by the term "older individual" in the Older American's Act of 1965 as amended.

(l) "Sliding fee scale" means a fee for services provided based on an individual client's ability to pay.

§16-5P-4. Appointment of commissioner; term of office; reporting; qualifications; oath.

(a) There is hereby established the bureau of senior services. As of the effective date of this article, all references to the commission on aging shall be construed to mean the bureau of senior services.

(b) The bureau shall be under the supervision of a commissioner of the bureau of senior services. The
commissioner shall be appointed by the governor, with the advice and consent of the Senate, and shall hold office subject to the will and pleasure of the governor. The commissioner shall be selected with consideration to training and experience in senior issues.

(c) The commissioner shall devote his or her entire time to the duties of his or her office, and may not be a candidate for nor hold any other public office or trust nor be a member of a political committee.

(d) The commissioner, before entering upon the duties of office, shall take and subscribe to the oath prescribed by article IV, section five of the state constitution. The oath shall be filed with the secretary of state.

(e) The commissioner shall report directly to the governor or the governor's designee.

§16-SP-5. Compensation; traveling expenses.

Notwithstanding the provisions of section two-a, article seven, chapter six of this code, the commissioner of the bureau of senior services shall receive a yearly salary of sixty-five thousand dollars and the necessary traveling expenses incident to the performance of his or her duties. Requisition for traveling expenses shall be accompanied by a sworn itemized statement which shall be filed with the auditor and preserved as a public record.

§16-SP-6. Powers and duties generally.

The commissioner shall be the executive and administrative head of the bureau and shall have the power and duty to:

(a) Exercise general supervision of the bureau;

(b) Propose legislative rules for the effective and expeditious performance and discharge of the duties and responsibilities placed upon the commissioner by law;

(c) Conduct and coordinate studies of the problems of the state's older people;
(d) Encourage and promote the establishment of local programs and services for the aging;
(e) Conduct programs of public education on the problems of the aging;
(f) Review state programs for the aging, and annually make recommendations to the governor and the Legislature;
(g) Encourage and assist governmental and private agencies to coordinate effective efforts on behalf of the aging;
(h) Coordinate statewide local and voluntary efforts to serve the aging and develop programs at the local level;
(i) Supervise fiscal management and responsibilities of the bureau;
(j) Keep an accurate and complete record of all bureau proceedings, record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the bureau;
(k) Submit an annual report to the governor on the condition, operation and functioning of the bureau;
(l) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;
(m) Standardize administration, expedite bureau business, revise rules and promote the efficiency of the service;
(n) Provide a program of continuing professional, technical and specialized instruction for the personnel of the bureau and local service providers; and
(o) Receive on behalf of the state any grant or gift and accept the same, so that the title shall pass to the state. All moneys from grants or gifts shall be deposited with the state treasurer in a special fund and shall be used for the purposes set forth in the grant or gift.
§16-SP-7. Creation and composition of the West Virginia council on aging; terms of citizen representative; vacancies; officers; meetings.

(a) There is hereby created the West Virginia council on aging, which shall be composed of five government members and ten citizen members, and shall serve as an advisory board to the commissioner.

(b) The five government members shall be: (1) The director of the division of health; (2) the director of the bureau of medical services; (3) one administrator designated by the secretary of the department of health and human resources; (4) one administrator designated by the superintendent of the West Virginia state police; and (5) the director of the division of rehabilitation services.

(c) The citizen members shall be appointed by the governor with the advice and consent of the Senate. No more than five of the citizen members shall belong to the same political party, and no more than six members shall be of the same gender. The members shall be selected in a manner to provide balanced geographical distribution.

(d) The designated administrators and the citizen representatives of the council shall be appointed for terms of four years each, and shall serve until their successors are appointed and qualified. The citizen representatives appointed to staggered terms pursuant to section two, article fourteen, chapter twenty-nine of this code to the state commission on aging shall continue to serve the remainder of their term or until their successors are appointed and qualified.

(e) A majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect a chair, a vice-chair, and such other officers as it deems necessary. The council shall meet at least two times each year. Each government representative shall designate a person with the authority to attend meetings and act on behalf of the government representative, who shall be considered a member of the
council for the purpose of obtaining a quorum for the
transaction of business.

§16-5P-8. Expenses of citizen representatives.

Each citizen representative is entitled to receive travel
and other necessary expenses actually incurred in the
performance of official duties under the provisions of this
article. Requisition for such expenses shall be
accompanied by a sworn and itemized statement which
shall be filed with the auditor.

§16-5P-9. Programs and services for the aging.

(a) The bureau may establish local programs of
services for the aging as needed throughout the state.
Insofar as possible, services shall be designed to foster
continued participation of older people in family and
community life and to avoid or postpone the onset of
dependency and the need for long-term care.

(b) Any allocations by the bureau of appropriations
for local programs may be made contingent upon local
appropriations or gifts in money or in kind for the
support of such programs. The county commission of
any county or governing body of any municipality in this
state may appropriate and expend money for establishing
and maintaining programs. Funds appropriated by the
county commission or by the governing body of any
municipality in this state may be contributed from time to
time to any committee or organization approved by the
bureau for the purposes authorized by this section.

(c) The bureau as provided hereunder may receive
and expend funding, including the state's share of federal
funds, designated for the construction, acquisition and
renovation of senior centers.

(d) The Legislature may appropriate funds on a
matching basis or funds from any other source to be used
for the purposes stated in this section.

§16-5P-10. Community care services.
The bureau shall, within available funds, administer programs, including care management, comprehensive assessment and community and in-home care services, based on a sliding fee scale.

§16-SP-11. Prevention of crimes against the elderly.

(a) It is the intent of the Legislature that all state agencies cooperate with the bureau and the state police in carrying out the provisions of this section.

(b) In planning and developing programs and recommendations relating to the prevention of crime and the fear of crime, including fraud, against elderly persons, the bureau shall, within existing appropriations, evaluate the need for new or improved programs, including:

(1) Public education and awareness;

(2) Community coordination in areas of social services and criminal justice;

(3) Voluntary involvement of elderly persons and retired professionals in the criminal justice system;

(4) Victim and witness assistance;

(5) Reduction of the economic and physical consequences of crime against the elderly; and

(6) Reduction of isolation of the elderly in the community.

(c) State agencies shall cooperate with and assist the bureau, within their available resources, in gathering statistical data and implementing programs which have the potential to prevent crime against elderly persons.

§16-SP-12. Designated state agency for handling federal programs.

The bureau shall constitute the designated state agency for handling all programs of the federal government relating to the aging requiring action within the state,
which are not the specific responsibility of another state agency under the provisions of federal law or which have not been specifically entrusted to another state agency by the Legislature. The bureau shall be empowered to comply with all regulations and requirements to qualify for federal grants and to administer such federal funds.

§16-5P-13. Records and files, existing programs and contracts; rules.

(a) All records, files and other property belonging to the West Virginia commission on aging pursuant to article fourteen, chapter twenty-nine of this code shall be turned over to the bureau herein created and shall be continued as part of the records, files and other property thereof.

(b) All contracts, programs and agreements entered into or offered by the state commission on aging prior to the effective date of this statute shall continue in legal force and effect under the bureau of senior services.

(c) All existing rules promulgated by the state commission on aging shall remain in effect and be administered and interpreted by the commissioner until such time as they are revoked or modified.

§16-5P-14. Reports.

The bureau shall submit a report on the condition, operation and functioning of the bureau to the governor and to the members of the Legislature on or before the first day of January of each year, in addition to such other recommendations, studies and plans as it may submit from time to time.

§16-5P-15. Continuation of bureau.

Pursuant to the provisions of article ten, chapter four of this code, the bureau of senior services shall continue to exist until the first day of July, two thousand one.
AN ACT to amend and reenact section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting the superintendent the right of subrogation for medical expenses incurred against persons injuring an officer during the performance of his or her duties; limiting medical expenditures to an amount specified by the bureau of employment programs; and directing the payment of funds received by subrogation to a special revenue account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

(a) The standard uniform to be used by the West Virginia state police after the effective date of this article shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap, one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the department; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state
police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer's uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumscribed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant, one gold shoulder bar for second lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which shall be authorized for use by members of the department, and shall provide for periodic inspection of such weapons and equipment. He shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the department with suitable arms and weapons, and, when he deems it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance, to be used by the West Virginia state police, the governor, and other officers and executives in the discretion of the governor, in times of flood, disaster and other emergencies, for traffic study and control, criminal and safety work, and in other matters of official business. He shall also provide the standard uniforms for all members of the department, for officers, noncommissioned officers and troopers herein provided for. All uniforms and all arms, weapons and other property furnished the members of the department by the state of West Virginia shall be and remain the property of the state.

(d) The superintendent is authorized to purchase and maintain on behalf of members group life insurance not to exceed the amount of five thousand dollars on behalf of each member.

(e) The superintendent is authorized to contract and furnish at department expense medical and hospital services for treatment of illness or injury of a member.
which shall be determined by the superintendent to have been incurred by such member while engaged in the performance of duty and from causes beyond control of such members. Notwithstanding any other provision of this code, the superintendent shall have the right of subrogation in any civil action or settlement brought by or on behalf of a member in relation to any act by another which results in the illness, injury or death of a member. To this end, the superintendent is hereby authorized to initiate such an action on behalf of the department in order to recover the costs incurred in providing medical and hospital services for the treatment of a member resulting from injury or illness originating in the performance of official duties. This subsection shall not affect the power of a court to apply ordinary equitable defenses to the right of subrogation.

The superintendent is further empowered to consult with the commissioner of the bureau of employment programs in an effort to defray the cost of medical and hospital services. In no case will the compensation rendered to health care providers for medical and hospital services exceed the then current rate schedule in use by the bureau of employment programs, workers' compensation division.

Third-party reimbursements received by the superintendent after the expiration of the fiscal year in which the injury, illness or death occurred will be deposited to a nonexpiring special revenue account. Funds deposited to this account may be used solely for defraying the costs of medical or hospital services rendered to any sworn members as a direct result of an illness, injury or death resulting from the performance of official duties.

(f) The superintendent shall establish and maintain local headquarters at such places in West Virginia as are in his judgment suitable and proper to render the West Virginia state police most efficient for the purpose of preserving the peace, protecting property, preventing crime, apprehending criminals and carrying into effect all other provisions of this article. The superintendent shall provide, by lease or otherwise, for housing and quarters for the accommodation of the members of the West Virginia state police, and shall provide all equipment and supplies necessary for them to perform their duties.
AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to giving the superintendent of the West Virginia state police the right of setoff against any unpaid benefits when a member fails to return assigned clothing or equipment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10a. Duty to return assigned items; superintendent’s right of setoff.

(a) Whenever any member of the department of public safety retires, resigns or is terminated from employment, he or she shall surrender, in good condition, considering reasonable wear and tear from proper use, all items of equipment and clothing assigned to such member as set forth in section ten of this article: Provided, That this section shall not apply to any member awarded his or her service revolver pursuant to the provisions of section forty-three of this article.

(b) Notwithstanding any provision of this code to the contrary, the superintendent of the department of public safety shall have a setoff against any West Virginia state
police retirement benefits, salary owed, sick leave benefits or vacation day benefits owed such retired, resigning or terminated member in an amount equal to the value of any equipment and clothing not returned. Notwithstanding the fact that a retired, resigning or terminated member is no longer employed by the department of public safety, the member may file a grievance for the sole purpose of protesting the application of the setoff. Such a grievance shall be processed, considered and decided pursuant to the provisions of section six of this article and rules promulgated thereunder. Prior to applying any setoff under this subsection, the superintendent will notify the retired, resigning or terminated member of his or her opportunity to file a grievance.

CHAPTER 169

(H. B. 2546 — By Delegates Pettit, Kuhn and Williams)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia steel futures program; legislative intent; purpose and administration; steel advisory commission; membership; appointments; terms; quorum; general powers of the commission; steel futures program; program goals; financial and technical assistance; projects eligible for assistance; and continuation of steel advisory commission and steel futures program.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and five, article sixteen, chapter thirty-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 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

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

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

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

(a) There is hereby created the West Virginia steel advisory commission within the bureau of commerce, which shall consist of fifteen members. The governor or his or her designee shall be a member of the commission and shall serve as its chairperson. Ten members shall be appointed by the governor with the advice and consent of the Senate. At least four of the members appointed by the governor shall be senior management representatives of
steel manufacturing companies that employ over fifty people. At least two of the members appointed by the governor shall be representatives of organized labor. One of the members appointed by the governor shall be a member of the United Steelworkers of America. One of the members appointed by the governor shall be a member of the independent steelworkers union. One member shall be appointed by the university of West Virginia board of trustees and one member shall be appointed by the board of directors of the state college system. Of the remaining members, the president of the Senate and the speaker of the House of Delegates shall each appoint one member from their respective houses who shall serve as ex officio nonvoting members. No more than seven of the governor's appointees shall be of the same political party.

Prior to making the appointments, the governor shall solicit recommendations from individuals representing the steel industry and labor organizations representing steelworkers. The governor shall make appointments based upon the knowledge and experience of the individual in the steel industry.

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

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

(d) Seven members constitute a quorum and an affir-
mative vote of a majority of those members present is
necessary to transact business of the commission. In the
event of the absence of a member appointed by the presi-
dent of the Senate or by the speaker of the House of Dele-
gates, the president of the Senate or the speaker of the
House of Delegates may become a member, as the case
may be, or may designate an alternative member of the
commission.

(e) Before entering upon the duties of office, each
member shall take the oath of office prescribed by the
constitution of West Virginia.

(f) Members of the commission shall receive no com-
pensation but shall be reimbursed for their necessary and
actual expenses incurred in the course of duties as mem-
bers of the commission.

(g) The commission shall provide for the election of
officers. The commission shall meet at least three times
annually or upon the call of the chairperson or upon the
request of five or more members.

(h) The West Virginia development office, as requested
by the commission, shall provide the commission with
meeting space and staff services and other technical assis-
tance. The West Virginia development office shall assist
the commission with the costs of production and distribu-
tion of commission reports. If the commission deter-
mines, by a majority vote, to have any study conducted by
a third party, the funds for the study shall be derived from
contributions from the steel industry or other interested
parties.

§31-16-3. General powers of the commission.

The West Virginia steel industry advisory commission
shall have and may exercise all powers necessary or ap-
propriate to carry out the purposes of this article, includ-
ing the power:
(a) To conduct an examination of existing federal and state laws which currently affect the production and consumption of West Virginia steel;

(b) To study problems which the West Virginia steel and steel-related industries currently face including unfair competition from foreign industries, the economic factors affecting the West Virginia steel industry, and other matters relevant to the future of the steel and steel-related industries in this state;

(c) To facilitate and provide technical assistance in the creation of public-private partnerships that use incentive packaging as a means to encourage economic growth and the creation of value-added, better paying jobs;

(d) To develop a steel futures program;

(e) To identify training and educational opportunities that enhance the job skills of the workforce of the steel and steel-related industries;

(f) To identify and encourage partnering opportunities between the college and university systems of West Virginia and the steel and steel-related industries that provide education and training support to the growth and stability of those industries in this state;

(g) To recommend that the West Virginia development office enter into contractual agreements that promote the interests of the West Virginia steel and steel-related industries.

§31-16-4. Steel futures program.

(a) The commission shall develop and recommend a strategy for financial and technical assistance to steel and steel-related industries in the state. The strategy shall include investment policies with regard to these industries. In administering the program, the commission shall consult with appropriate representatives of steel, and steel-related industries, appropriate representatives of any union that represents workers in these industries, and any other persons with expert knowledge of these industries. The commission shall consult with the chairman of the public service commission to foster the development of public
and private cooperative efforts that would result in energy
savings and reduced energy costs for steel and
steel-related industries. The commission shall consult with
the division of environmental protection and other agen-
cies with which the steel and steel-related industries must
interact to assist the steel and steel-related industries in
adhering to regulations in a manner conducive to eco-

(1) The undertaking of projects by the steel and steel-
related industries will benefit the people of the state by
creating or preserving jobs and employment opportuni-

(2) The undertaking of projects by the steel and steel-
related industries will allow them to compete more effec-

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

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

(2) Employee training;

(3) Labor and management relations; and

(4) Technology-driven capital investment.

(c) Financial and technical assistance may be in the
form and conditioned upon terms as stipulated by each
enterprise assistance program administered by the West
Virginia development office. No later than the thirtieth
day of June, one thousand nine hundred ninety-four, and
no later than the thirtieth day of June of each year thereaf-

the commission shall submit a report to the governor
and Legislature describing projects of the steel futures
program, results obtained from completed projects of the
program and program projects for the next fiscal year.
§31-16-5. Continuation of program.

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

CHAPTER 170

(H. B. 2881—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five and twelve, article ten, chapter four 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 four-a, five-a, ten-a and eleven-a, all relating to changing termination dates for agencies pursuant to the West Virginia sunset law; defining compliance monitoring and further inquiry update; changing termination dates of agencies following full performance evaluations, preliminary performance reviews and compliance monitoring and further inquiry updates; specifying duties of joint committee on government operations in conducting compliance monitoring and further inquiry updates; and changing one type of recommendation that may be made by the joint committee on government operations in its annual report.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-3. Definitions.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

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

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-10a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed full performance evaluation.

§4-10-11a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed preliminary performance review.

§4-10-12. Annual report by the committee.

§4-10-3. Definitions.

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

2 (1) "Agency" means any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity, however designated, in the state of West Virginia.

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

4 (3) "Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten of this article. References in this code to
performance audit or full performance audit shall be taken as and shall mean full performance evaluation.

(4) "Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of section eleven of this article.

(5) "Compliance monitoring and further inquiry update" means to determine for an agency whether or not the agency has complied with recommendations contained in a completed full performance evaluation or a completed preliminary performance review conducted pursuant to this article and that further inquiry into the operation of the agency may be conducted pursuant to the provisions of sections ten-a and eleven-a of this article.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a full performance evaluation has been conducted upon such agency:

(1) On the first day of July, one thousand nine hundred ninety-eight: Workers' compensation; office of judges of workers' compensation; department of health and human resources; purchasing division within the department of administration.

(2) On the first day of July, one thousand nine hundred ninety-nine: Division of environmental protection; West Virginia parkways, economic development and tourism authority.

(3) On the first day of July, two thousand: Division of corrections.

(4) On the first day of July, two thousand one: Division of natural resources.

(5) On the first day of July, two thousand two: Division of highways; division of labor.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

(1) On the first day of July, one thousand nine hundred ninety-eight: Division of personnel; division of rehabilitation services.

(2) On the first day of July, one thousand nine hundred ninety-nine: Tourism functions within the West Virginia development office.

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

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

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Oil and gas conservation commission; public employees insurance agency advisory board; cable television advisory board.

(3) On the first day of July, one thousand nine hundred ninety-eight: Women’s commission; state lottery commission; meat inspection program of the department of agriculture; soil conservation committee of the department of agriculture; state board of risk and insurance management; board of examiners of land surveyors; commission on uniform state laws; West Virginia’s membership in the interstate commission on the
Potomac River Basin; family law masters system; board of examiners in speech pathology and audiology; board of social work examiners; child support enforcement division; West Virginia lending and credit rate board; public defender services.

(4) On the first day of July, one thousand nine hundred ninety-nine: Public service commission; tree fruit industry self improvement assessment program; capitol building commission; board of banking and financial institutions; state building commission; West Virginia state police.

(5) On the first day of July, two thousand: Family protection services board; environmental quality board; West Virginia’s membership in the Ohio River valley water sanitation commission; ethics commission; oil and gas inspector’s examining board; veterans’ council; West Virginia’s membership in the southern regional education board; board of respiratory care practitioners; board of examiners in counseling; educational broadcasting authority; West Virginia state rail authority.

(6) On the first day of July, two thousand one: Real estate commission; marketing and development division of the department of agriculture; board of architects; public employees insurance agency; public employees insurance agency finance board; center for professional development; rural health advisory panel.

(7) On the first day of July, two thousand two: Whitewater commission within the division of natural resources; state geological and economic survey; unemployment compensation; West Virginia contractor licensing board.

(8) On the first day of July, two thousand three: Driver’s licensing advisory board; West Virginia commission for national and community service.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
The following agencies shall be terminated on the date indicated, but no agency may be terminated under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, one thousand nine hundred ninety-eight: Board of investments; emergency medical services advisory council; human rights commission; parks section and parks functions of the division of natural resources.

(2) On the first day of July, one thousand nine hundred ninety-nine: Office of water resources of the division of environmental protection; office of environmental advocate of the division of environmental protection; governor's cabinet on children and families; West Virginia health care cost review authority.

§4-10-10a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed full performance evaluation.

It shall be the duty of the committee to conduct a compliance monitoring and further inquiry update of every agency scheduled for termination under section four-a of this article.

In conducting such compliance monitoring and further inquiry update, the committee shall determine to what extent the agency has complied with recommendations contained in the completed full performance evaluation. The committee may direct that further inquiry into the operation of the agency be undertaken as part of the compliance monitoring and further inquiry update.

§4-10-11a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed preliminary performance review.

It shall be the duty of the committee to conduct a compliance monitoring and further inquiry update of...
every agency scheduled for termination under section five-a of this article.

In conducting such compliance monitoring and further inquiry update, the committee shall determine to what extent the agency has complied with recommendations contained in the completed preliminary performance review. The committee may direct that further inquiry into the operation of the agency be undertaken as part of the compliance monitoring and further inquiry update.

§4-10-12. Annual report by the committee.

The committee shall complete its deliberations with respect to agencies scheduled for termination and make an annual report thereon to the Legislature not later than ten days after the Legislature convenes in regular session in the year of the scheduled termination for the agency: Provided, That any such annual report required in the year one thousand nine hundred ninety-seven, and every fourth year thereafter, shall be made not later than ten days after the Legislature convenes on the second Wednesday in February. The annual report shall consist of an analysis of the agency including matters as are expressly mandated to be considered by the committee as set forth in this article, together with the recommendations of the committee. The committee shall make one of five recommendations: (1) The agency be terminated as scheduled; (2) the agency be continued and reestablished; (3) the agency be continued and reestablished, and the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices and procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other agencies, unwarranted exercise of authority either in law or in fact or any other deficiencies; (4) a full performance evaluation be performed on an agency on which a preliminary review has been completed; or (5) the agency be continued for a period of time not to exceed one year for the purpose of completing a compliance monitoring and further inquiry update.
In the event the committee makes recommendations concerning the continuation or reestablishment of agencies pursuant to this article, the annual report shall include draft bills effectuating the recommendations.

Copies of the annual reports shall be made available to all members of the Legislature, to the agency that is the subject of the report and to the public generally. A copy of the annual report shall be formally filed immediately by the committee with the clerk of each house.

CHAPTER 171

(H. B. 2238—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the state building commission until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

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

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

Pursuant to the provisions of article ten, chapter four of this code, the state building commission shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 172

(S. B. 83—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia human rights commission until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-4. Human rights commission continued; status, powers and objects.

The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public
accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

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

CHAPTER 173

(H. B. 2498—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the governor's cabinet on children and families until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

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

§5-26-8. Termination date.

Pursuant to the provisions of article ten, chapter four of this code, the governor's cabinet on children and families shall continue to exist until the first day of July, one thousand nine hundred ninety-nine: Provided, That the cabinet shall prepare an annual progress report and
shall present the report to the joint committee on
government operations. The report shall detail the
cabinet’s compliance with its purposes, duties and
responsibilities as set forth in sections one, three and four
of this article, together with proposed plans for future
compliance and proposed programs for the following
year.

CHAPTER 174

(S. B. 90—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six-a,
chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the
West Virginia commission for national and community
service until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. WEST VIRGINIA COMMISSION FOR NATIONAL
AND COMMUNITY SERVICE.

§5-26A-6. Termination date.

Pursuant to the provisions of article ten, chapter four
of this code, the West Virginia commission for national
and community service shall continue to exist until the
first day of July, two thousand three.
AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the purchasing division within the department of administration until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

There is hereby created the purchasing division of the department of administration for the purpose of establishing centralized offices to provide purchasing, travel and leasing services to the various state agencies.

No person shall be appointed director of the purchasing division unless that person is, at the time of appointment, a graduate of an accredited college or university and shall have spent a minimum of ten of the fifteen years immediately preceding his appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

The provisions of this article shall apply to all of the spending units of state government, except as is otherwise provided by this article or by law: Provided, That the provisions of this article shall not apply to the legislative branch unless otherwise provided or the Legislature or
18 either house thereof requests the director to render
19 specific services under the provisions of this chapter, nor
20 to purchases of stock made by the alcohol beverage
21 control commissioner, nor to purchases of textbooks for
22 the state board of education.

23 Pursuant to the provisions of article ten, chapter four
24 of this code, the purchasing division within the department
25 of administration shall continue to exist until the first day
26 of July, one thousand nine hundred ninety-eight.

CHAPTER 176

(H. B. 2767—By Delegates Everson, Fantasia, Butcher,
Varner, Willison and Azinger)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two,
chapter five-b of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, continuing the tourism
commission until the first day of July, one thousand nine
hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-13. Continuation.

1 Pursuant to the provisions of chapter four, article ten
2 of this code, the tourism commission shall continue to
3 exist until the first day of July, one thousand nine hundred
4 ninety-nine.
AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the department of health and human resources and providing for continuation of the division of human services and its statutory functions within that department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed department of human services; continuation of the department of health and human resources and the division of human services.

The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but effective the twenty-nine day of May, one thousand nine hundred eighty-three, its name shall be the division of human services. All references in the code to the department of welfare shall mean the division of human services, and all references to the commissioner of the department of welfare shall mean the commissioner of the division of human services and for all other legal
purposes the department of welfare shall continue as the 
division of human services.

The department of health and human resources and 
the division of human services within that department shall 
be charged with the administration of this chapter. The 
department of health and human resources shall continue 
to exist and the division of human services shall continue 
to exist within the department of health and human 
resources until the first day of July, one thousand nine 
hundred ninety-eight, to permit a review of their functions 
to be undertaken by the joint committee on government 
operations as part of the full performance evaluation of 
the department of health and human resources scheduled 
to continue during the interim of the Legislature in the 
year one thousand nine hundred ninety-seven.

CHAPTER 178

(H. B. 2877—By Delegates H. White, Kuhn, Thompson, 
Heck, Willis, Capito and Harrison)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter 
ten of the code of West Virginia, one thousand nine hundred 
three-one, as amended, continuing the educational 
broadcasting authority until the first day of July, two 
thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.
§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses; termination date.

The West Virginia educational broadcasting authority, heretofore created, is hereby continued as a public benefit corporation. It shall consist of eleven voting members, who shall be residents of the state, of whom one shall be the state superintendent of schools, one shall be a member of the West Virginia board of education to be selected by it annually, one shall be a member of the university of West Virginia board of trustees to be selected by it annually, and one shall be a member of the board of directors of the state college system to be selected by it annually. The other seven members shall be appointed by the governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year, except that the appointment to fill the membership position for the term expiring in the year one thousand nine hundred eighty-three, shall be for a term of six years. Not less than one appointive member shall come from each congressional district. Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the authority. The present members of the authority shall continue to serve out the terms to which they were appointed. Any vacancy among the appointive members shall be filled by the governor by appointment for the unexpired term.

The chairperson and vice chairperson of the authority as of the effective date of this section shall continue in their respective offices until their successors are elected. Thereafter, at its annual meeting in each year the authority shall elect one of its members as chairperson and one as vice chairperson. The authority is authorized to select an executive director and such other personnel as may be necessary to perform its duties and to fix the compensation of such personnel to be paid out of moneys appropriated for this purpose. The executive director shall keep a record of the proceedings of the authority and shall perform such other duties as it may prescribe. The authority is authorized to establish such office or offices as may be necessary for the proper performance of its duties.
The authority shall hold an annual meeting and may meet at such other times and places as may be necessary, such meetings to be held upon its own resolution or at the call of the chairperson of the authority. The members shall serve without compensation but may be reimbursed for actual expenses incident to the performance of their duties upon presentation to the chairperson of an itemized sworn statement thereof.

Pursuant to the provisions of article ten, chapter four of this code, the educational broadcasting authority shall continue to exist until the first day of July, two thousand.

CHAPTER 179

(S. B. 85—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of investments until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-18. West Virginia board of investments continued.

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

*Clerk’s Note: This section was repealed by S. B. 563 (Chapter 95), which passed subsequent to this act.
AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the West Virginia state police until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

1 The department of public safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia state police. Wherever the words "department of public safety" or "division of public safety" appear in this code, they shall mean the West Virginia state police. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. Notwithstanding any provision of this code to the contrary, the superintendent shall be paid an annual salary of sixty thousand dollars. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a
bond in the penalty of ten thousand dollars, payable to the
state of West Virginia and conditioned upon the faithful
performance of his or her duties. Such bond both as to
form and security shall be approved as to form by the
attorney general, and to sufficiency by the governor.

Before entering upon the duties of his or her office
the superintendent shall subscribe to the oath hereinafter
provided. The headquarters of the department shall be
located in Kanawha County.

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

CHAPTER 181

(S. B. 84—Originating in the Committee on Government Organization)

[Passed March 28, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the emergency medical services advisory council until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§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 shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.

Pursuant to 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-eight.
AN ACT to amend and reenact section twenty-eight, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the health care cost review authority until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section twenty-eight, 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-28. Termination date.

1 Pursuant to the provisions of article ten, chapter four of this code, the health care cost review authority shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

*Clerk’s Note: This section was also amended by S. B. 458 (Chapter 102), which passed subsequent to this act.
CHAPTER 183
(S. B. 86—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia parkways, economic development and tourism authority until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.

1 On and after the first day of June, one thousand nine hundred eighty-nine, the West Virginia turnpike commission is hereby abolished in all respects, and there is hereby created the "West Virginia Parkways, Economic Development and Tourism Authority", and by that name the parkways authority may sue and be sued and plead and be impleaded. The parkways authority is hereby constituted an agency of the state, and the exercise by the parkways authority of the powers conferred by this article in the construction, reconstruction, improvement, operation and maintenance of parkway, economic development and tourism projects shall be deemed and held to be an essential governmental function of the state.
The West Virginia parkways, economic development and tourism authority shall consist of seven members, including the transportation secretary, who shall serve as chairman of the parkways authority, and six members, including no less than one from each of the counties which have land bordering parkway projects, appointed by the governor, by and with the advice and consent of the Senate. The appointed members shall be residents of the state, and shall have been qualified electors therein for a period of at least one year next preceding their appointment. Upon the effective date of this legislation, the governor shall forthwith appoint six members of the parkways authority for staggered terms. The terms of the parkways authority members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, one at the end of the first year, one at the end of the second year, one at the end of the third year, one at the end of the fifth year, one at the end of the sixth year and one at the end of the seventh year, after the first day of June, one thousand nine hundred eighty-nine. As these original appointments expire, each subsequent appointment shall be for a full eight-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. The term of any person serving as a member of the West Virginia turnpike commission immediately preceding the effective date of this legislation shall cease and otherwise expire upon such effective date: Provided, That any such member shall be eligible for reappointment. Each appointed member of the parkways authority before entering upon his duties shall take an oath as provided by section five, article IV of the constitution of the state of West Virginia.

The parkways authority shall elect one of the appointed members as vice chairman, and shall also elect a secretary and treasurer who need not be members of the parkways authority. Four members of the parkways
authority shall constitute a quorum and the vote of a majority of members present shall be necessary for any action taken by the parkways authority. No vacancy in the membership of the parkways authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the parkways authority. The parkways authority shall meet at least monthly and either the chairman or any four members shall be empowered to call special meetings for any purpose or purposes: Provided, That notice of any such meeting shall be given to all members of the parkways authority not less than ten days prior to said special meetings.

Before the issuance of any parkway revenue bonds or revenue refunding bonds under the provisions of this article, each appointed member of the parkways authority shall execute a surety bond in the penal sum of twenty-five thousand dollars and the secretary and treasurer shall execute a surety bond in the penal sum of fifty thousand dollars, each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the state of West Virginia as surety and to be approved by the governor and filed in the office of the secretary of state.

The members of the parkways authority shall not be entitled to compensation for their services, but each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the parkways authority hereunder beyond the extent to which moneys shall have been provided under the authority of this article.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia parkways, economic development and tourism authority shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the driver's licensing advisory board until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

1 The driver's licensing advisory board is hereby reestablished. The board shall consist of five members to be appointed by the governor, by and with the advice and consent of the Senate, for terms of three years, except that as to the members first appointed, two shall be appointed for a term of three years, two shall be appointed for a term of two years, and one shall be appointed for a term of one year, all from the first day of July, one thousand nine hundred seventy-four. All vacancies occurring on the board shall be filled by the governor, by and with the advice and consent of the Senate. One member of the board shall be an optometrist duly registered to practice optometry in this state and the other four members of the board shall be physicians or surgeons duly licensed to practice medicine or surgery in this state. The governor shall appoint persons qualified to serve on the board who, in his opinion, will best serve the work and function of the board.
The board shall advise the commissioner of motor vehicles as to vision standards and all other medical criteria of whatever kind or nature relevant to the licensing of persons to operate motor vehicles under the provisions of this chapter. The board shall, upon request, advise the commissioner of motor vehicles as to the mental or physical fitness of an applicant for, or the holder of, a license to operate a motor vehicle. The board shall furnish the commissioner with all such medical standards, statistics, data, professional information and advice as he may reasonably request.

The members of the board shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.

Pursuant to the provisions of article ten, chapter four of this code, the driver's licensing advisory board shall continue to exist until the first day of July, two thousand three.

CHAPTER 185

(H. B. 2499 —By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the school building authority until the first day of July, two thousand three.
Be it enacted by the Legislature of West Virginia:

That section eighteen, article nine-d, 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 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-18. Continuation.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the school building authority shall continue
3 to exist until the first day of July, two thousand three.

CHAPTER 186

(S. B. 78—Originating in the Committee on Government Organization)

[Passed March 21, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter
eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to continuing the
division of rehabilitation services until the first day of July,
one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

§18-10A-2. Division of rehabilitation services.

1 The division of rehabilitation services is hereby
2 transferred to the department of education and the arts
3 created in article one, chapter five-f of this code. The
4 secretary shall appoint any such board, commission or
5 council over the division to the extent required by federal
6 law to qualify for federal funds for providing rehabili-
References in this article or article ten-b of this chapter to the state board of vocational education, the state board of rehabilitation or the state board as the governing board of vocational or other rehabilitation services or facilities means the secretary of education and the arts. All references in the code to the division of vocational rehabilitation means the division of rehabilitation services and all references to the director of the division of vocational rehabilitation means the director of the division of rehabilitation services.

Pursuant to the provisions of article ten, chapter four of this code, the division of rehabilitation services shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 187

(H. B. 2867—By Delegates Douglas, Collins, Varner, Everson, Thompson, H. White and Stalnaker)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources until the first day of July, one thousand nine hundred ninety-eight.

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

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

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

Pursuant to the provisions of article ten, chapter four of this code, the division of natural resources shall continue to exist until the first day of July, two thousand one.

Pursuant to the provisions of article ten, chapter four of this code, the parks section and parks functions of the division of natural resources, transferred to the division of natural resources pursuant to the provisions of section twelve, article one, chapter five-b of this code, shall continue to exist within the division of natural resources until the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 188

(S. B. 87—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the contractor licensing board until the first day of July, two thousand two.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


The West Virginia contractor licensing board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand two.

CHAPTER 189

(H. B. 2287—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of environmental protection until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§22-1-4. Division of environmental protection continued.

Pursuant to the provisions of article ten, chapter four of this code, the division of environmental protection shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.
AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the office of water resources until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§22-1-7. Offices within division; continuation of the office of water resources.

1 Consistent with the provisions of this article the
director shall, at a minimum, maintain the following
offices within the division:

4 (1) The office of abandoned mine lands and
reclamation, which is charged, at a minimum, with
administering and enforcing, under the supervision of the
director, the provisions of article two of this chapter;

8 (2) The office of mining and reclamation, which is
charged, at a minimum, with administering and enforcing,
under the supervision of the director, the provisions of
articles three and four of this chapter;

12 (3) The office of air quality, which is charged, at a
minimum, with administering and enforcing, under the
supervision of the director, the provisions of article five of
this chapter;
(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter; and

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.

Pursuant to the provisions of article ten, chapter four of this code, the office of water resources within the division of environmental protection shall continue to exist until the first day of July, one thousand nine hundred ninety-nine.

CHAPTER 191

(H. B. 2289—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Flanigan and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the position of environmental advocate within the division of environmental protection until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:
That section one, article twenty, 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 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

The director of the division of environmental protection shall appoint a person to serve as the environmental advocate within the division of environmental protection, and shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate. The environmental advocate shall serve at the will and pleasure of the director, who shall also set the salary of the environmental advocate. All funding for the office of environmental advocate shall be from existing funds of the division of environmental protection. The director shall provide an office and secretarial and support staff as needed. The position of environmental advocate shall continue to exist until the first day of July, one thousand nine hundred ninety-nine, pursuant to article ten, chapter four of this code.

CHAPTER 192

(S. B. 80—Originating in the Committee on Government Organization)

[Passed March 21, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the authority of the commissioner of the bureau of employment programs to administer workers' compensation until the first day of July, one thousand nine hundred ninety-eight.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.

(a) The commissioner of the bureau of employment programs appointed under the provisions of section one, article two, chapter twenty-one-a of this code, has the sole responsibility for the administration of this chapter except for such matters as are entrusted to the compensation programs performance council created pursuant to section one, article three, chapter twenty-one-a of this code. In the administration of this chapter, the commissioner shall exercise all the powers and duties described in this chapter and in article two, chapter twenty-one-a of this code.

(b) The commissioner is authorized to promulgate rules and regulations to implement the provisions of this chapter.

(c) The commissioner shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Commissioner of Employment Programs" and such other design as the commissioner may prescribe. The courts in this state shall take judicial notice of the seal of the commissioner and in all cases copies of orders, proceedings or records in the office of the West Virginia commissioner of employment programs shall be equal to the original in evidence.

(d) Pursuant to the provisions of article ten, chapter four of this code, the commissioner of the bureau of employment programs shall continue to administer this chapter until the first day of July, one thousand nine hundred ninety-eight.
(e) The attorney general shall perform all legal services required by the commissioner under the provisions of this chapter: Provided, That in any case in which an application for review is prosecuted from any final decision of the workers' compensation appeal board to the supreme court of appeals, as provided by section four, article five of this chapter, or in any court proceeding before the workers' compensation appeal board, or in any proceedings before the office of judges, or in any case in which a petition for an extraordinary writ is filed in the supreme court of appeals or in any circuit court, in which such representation shall appear to the commissioner to be desirable, the commissioner may designate a regular employee of this office, qualified to practice before such court to represent the commissioner upon such appeal or proceeding, and in no case shall the person so appearing for the commissioner before the court receive remuneration therefor other than such person's regular salary.

CHAPTER 193

(S.B. 79—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of judges of the workers' compensation system until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 5. REVIEW.

§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, one thousand nine hundred ninety, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The office of judges shall be under the supervision of a chief administrative law judge who shall be appointed by the governor, with the advice and consent of the Senate. The previously appointed incumbent of that position who was serving on the second day of February, one thousand nine hundred ninety-five, shall continue to serve in that capacity unless subsequently removed as provided for in subsection (b) of this section.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the compensation programs performance council created in section one, article three, chapter twenty-one-a of this code. Said salary shall be within the salary range for comparable chief administrative law judges as determined by the state personnel board created by section six, article six, chapter twenty-nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the compensation programs performance council and shall not be removed except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance and then only after he or she has been presented in writing with the reasons for his or her removal and is given opportunity to respond and to present evidence. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any
appointed official or employee shall be applicable to the
chief administrative law judge.

(c) By and with the consent of the commissioner, the
chief administrative law judge shall employ administrative
law judges and other personnel as are necessary for the
proper conduct of a system of administrative review of
orders issued by the workers’ compensation division
which orders have been objected to by a party, and all
such employees shall be in the classified service of the
state. Qualifications, compensation and personnel practice
relating to the employees of the office of judges, other
than the chief administrative law judge, shall be governed
by the provisions of the statutes, rules and regulations of
the classified service pursuant to article six, chapter
twenty-nine of this code. All such additional adminis-
trative law judges shall be persons who have been admitted
to the practice of law in this state and shall also have had at
least two years of experience as an attorney. The chief
administrative law judge shall supervise the other
administrative law judges and other personnel which
collectively shall be referred to in this chapter as the office
of judges.

(d) The administrative expense of the office of judges
shall be included within the annual budget of the workers’
compensation division.

(e) Subject to the approval of the compensation
programs performance council pursuant to subdivisions
(b) and (c), section seven, article three, chapter
twenty-one-a of this code, the office of judges shall from
time to time promulgate rules of practice and procedure
for the hearing and determination of all objections to
findings or orders of the workers’ compensation division
pursuant to section one of this article. The office of
judges shall not have the power to initiate or to
promulgate legislative rules as that phrase is defined in
article three, chapter twenty-nine-a of this code.

(f) The chief administrative law judge shall continue to
have the power to hear and determine all disputed claims
in accordance with the provisions of this article, establish a
procedure for the hearing of disputed claims, take oaths,
examine witnesses, issue subpoenas, establish the amount
of witness fees, keep such records and make such reports
as are necessary for disputed claims, and exercise such
additional powers, including the delegation of such powers
to administrative law judges or hearing examiners as may
be necessary for the proper conduct of a system of
administrative review of disputed claims. The chief
administrative law judge shall make such reports as may
be requested of him or her by the compensation programs
performance council.

(g) Pursuant to the provisions of article ten, chapter
te of this code, the office of judges shall continue to
exist until the first day of July, one thousand nine hundred
ninety-eight.

CHAPTER 194

(S. B. 91—Originating in the Committee on Government Organization)

[Passed March 14, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter
twenty-five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to making technical
corrections changing the termination date of the division of
corrections pursuant to the provisions of article ten, chapter
four of this code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

Pursuant to the provisions of article ten, chapter four
of this code, the division of corrections shall continue to
exist until the first day of July, two thousand.
CHAPTER 195

(S. B. 77—Originating in the Committee on Government Organization)

[Passed March 14, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of culture and history until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1b. Continuation date.

1 The division of culture and history, together with its citizen's commissions, shall continue to exist until the first day of July, two thousand three, pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 196

(H. B. 2407—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of personnel until the first day of July, one thousand nine hundred ninety-eight.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-5a. Termination of division.

1 Pursuant to the provisions of article ten, chapter four of this code, the division of personnel shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 197

(H. B. 2876—By Delegates Fantasia, Kuhn, H. White, Thompson, Heck, Willison and Given)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state rail authority until the first day of July, two thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.
The West Virginia railroad maintenance authority, heretofore created, is hereby continued and redesignated the West Virginia state rail authority. References in this code to the West Virginia railroad maintenance authority shall be understood and taken to mean the West Virginia state rail authority. Nothing in this article is intended to invalidate any action or obligation of the West Virginia railroad maintenance authority undertaken prior to the effective date of this article. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall consist of seven members. The secretary of the department of transportation shall be a member ex officio. The other six members shall be appointed by the governor, by and with the advice and consent of the Senate, for a term of six years. Of the members of the authority first appointed, two shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred seventy-seven, two shall be appointed for a term ending two years thereafter and two shall be appointed for a term ending four years thereafter. A person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each authority member shall serve until the appointment and qualification of his successor. No more than three of the appointed authority members shall at any one time belong to the same political party. Appointed authority members may be reappointed to serve additional terms.

All members of the authority shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in
the manner provided in article two, chapter six of this code. The governor may remove any authority member for cause as provided in article six, chapter six of this code.

Annually the authority shall elect one of its members as chairman and another as vice chairman, and shall appoint a secretary-treasurer, who need not be a member of the authority. Four members of the authority shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by vote of the authority. No vacancy in the membership of the authority shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the authority. The person appointed as secretary-treasurer, including an authority member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The secretary of the department of transportation shall not receive any compensation for serving as an authority member. Each of the six appointed members of the authority shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the authority.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia state rail authority shall continue to exist until the first day of July, two thousand.
CHAPTER 198

(H. B. 2875—By Delegates Kuhn, H. White, Thompson, Heck, Flanigan, Willison and Azinger)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing public defender services until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems, and recommend improvements. The agency shall maintain its office at the state capital.

Pursuant to the provisions of article ten, chapter four of this code, public defender services shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.
CHAPTER 199

(S. B. 82—Originating in the Committee on Government Organization)

[Passed March 24, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of examiners in counseling until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.

1 Pursuant to article ten, chapter four of this code, the West Virginia board of examiners in counseling shall continue to exist until the first day of July, two thousand.

CHAPTER 200

(H. B. 2766—By Delegates Douglas, Varner, Davis, Heck, Willis, Stainaker and Collins)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty one, as amended, by adding thereto a new section, designated section seventeen, placing the board of respiratory care practitioners under sunset review.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-17. Termination.

1 The board provided for in this article shall terminate pursuant to the provisions of article ten, chapter four of this code, on the first day of July, two thousand, unless continued pursuant to the provisions of that article by legislation enacted prior to the termination date.

CHAPTER 201

(S. B. 92—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter forty-seven-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. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; continuation.

1 (a) The Legislature hereby finds and declares that:
(1) Changes in the permissible charges on loans, credit sales or transactions, forbearance or other similar transactions require specialized knowledge of the needs of the citizens of West Virginia for credit for personal and commercial purposes and knowledge of the availability of such credit at reasonable rates to the citizens of this state while affording a competitive return to persons extending such credit;

(2) Maximum charges on loans, credit sales or transactions, forbearance or other similar transactions executed in this state should be prescribed from time to time to reflect changed economic conditions, current interest rates and finance charges throughout the United States and the availability of credit within the state in order to promote the making of such loans in this state; and

(3) The prescribing of such maximum interest rates and finance charges can be accomplished most effectively and flexibly by a board comprised of the heads of designated government agencies, university schools of business and administration and members of the public.

(b) In view of the foregoing findings, it is the purpose of this section to establish the West Virginia lending and credit rate board and authorize said board to prescribe semiannually the maximum interest rates and finance charges on loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders, sellers and other creditors to charge up to the maximum interest rates or finance charges so fixed. The rates prescribed by the board are alternative rates and any creditor may utilize either the rate or rates set by the board or any other rate or rates which the creditor is permitted to charge under any other provision of this code.

(c) The West Virginia lending and credit rate board shall be comprised of:

(1) The director of the governor's office of economic and community development;
(2) The West Virginia state treasurer;

(3) The West Virginia banking commissioner;

(4) The deans of the schools of business and administration at Marshall university and West Virginia university;

(5) The director of the division of consumer protection of the attorney general's office; and

(6) Three members of the public appointed by the governor with the advice and consent of the Senate. The members of the public shall be appointed for terms of six years each, and until their successors are appointed and qualified; except that of the members first appointed, one shall be appointed for a term of two years, one for a term of four years, and one for a term of six years. A member who has served one full term of six years shall be ineligible for appointment for the next succeeding term. Vacancies shall be filled by appointment of the governor with the advice and consent of the Senate, or if any vacancy remains unfilled for three months, by a majority vote of the board. The West Virginia banking commissioner shall serve as chairperson of the board and the rate or rates set by the board shall be determined by a majority vote of those members of the board in attendance at the respective board meeting.

(d) The West Virginia lending and credit rate board is hereby authorized and directed to meet after the thirty-first day of December, one thousand nine hundred eighty-three, on the first Tuesday of April and on the first Tuesday of October of each year or more or less frequently as required by the circumstances and to prescribe by order a maximum rate of interest and finance charge for the next succeeding six months, effective on the first day of June and on the first day of December, for any loans, credit sales or transactions, forbearance or similar transactions made pursuant to this section. In fixing said maximum rates of interest and finance charge, the board shall take into consideration prevailing economic conditions, including the monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional
commercial short-term loans and notes throughout West
Virginia and throughout the United States and on
corporate interest-bearing securities of high quality, the
availability of credit at reasonable rates to the citizens of
this state which afford a competitive return to persons
extending such credit and such other factors as the board
may determine.

(e) Any petition proposing a change in the prescribed
maximum rates of interest and finance charges must be
filed in the office of the banking commissioner no later
than the fifteenth day of February in order to be voted on
at the board meeting on the first Tuesday of April and no
later than the fifteenth day of August in order to be voted
on at the board meeting on the first Tuesday of October.
Whenever any change in the prescribed maximum rates of
interest and finance charges is proposed the board shall
schedule a hearing, at least fifteen days prior to the board
meeting at which the proposed rates of interest and
finance charge will be voted on by the members of the
board, and shall give all interested parties the opportunity
to testify and to submit information at such public hearing
that is relevant. Notice of the scheduled public hearing
shall be issued and disseminated to the public at least
twenty days prior to the scheduled date of the hearing.

(f) The board shall prescribe by order issued not later
than the twentieth day of April and not later than the
twentieth day of October, in accordance with the
provisions of subsection (d) of this section the maximum
rates of interest and finance charge for the next
succeeding six months for any loan, credit sale,
forbearance or similar transaction made pursuant to this
section and shall cause such maximum rate of interest and
finance charge to be issued and disseminated to the public,
such maximum rate of interest and finance charge to be
effective on the first day of June and the first day of
December for the next succeeding six months.

(g) Notwithstanding the other provisions of this
chapter, the West Virginia lending and credit rate board
shall not be required to meet if no petition has been filed
with the board requesting a hearing and interest rates and
economic conditions have not changed sufficiently to
indicate that any change in the existing rate order would
be required, and there are not at least two board members who concur that a meeting of the board is necessary. If the board does not meet, the maximum rates of interest and finance charges prescribed by the board in the existing rate order shall remain in full force and effect until the next time the board meets and prescribes different maximum rates of interest and finance charges.

(h) If circumstances and economic conditions require, the chairperson or any three board members, at any time, may call an emergency interim meeting of the West Virginia lending and credit rate board, at which time the chairperson shall give ten days' notice of the scheduled emergency meeting to the public. All interested parties shall have the opportunity to be heard and to submit information at such emergency meeting that is relevant. Any and all emergency rate board orders shall be effective within thirty days from the date of such emergency meeting:

(i) Each member of the board, except those whose regular salary is paid by the state of West Virginia, shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party the members shall not be reimbursed by the state. The reimbursement shall be paid out of the revolving fund established by section two of this article upon a requisition upon the state auditor, properly certified by the banking commissioner.

(j) In setting the maximum interest rates and finance charges, the board may set varying rates based on the type of credit transaction, the term of transaction, the type of debtor, the type of creditor and other factors relevant to determination of such rates. In addition, the board may set varying rates for ranges of principal balances within a single category of credit transactions.

(k) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia lending and credit rate board shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact section twelve, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the child support enforcement division until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-12. Establishment of the child support enforcement division; cooperation with the division of human services; continuation.

(a) Effective the first day of July, one thousand nine hundred ninety-five, there is hereby established in the department of health and human resources the child support enforcement division. The division is under the immediate supervision of the director, who is responsible for the exercise of the duties and powers assigned to the division under the provisions of this chapter. The division is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate with the child support enforcement division. At a minimum, such cooperation shall require that the division of human services:
(1) Notify the child support enforcement division when the division of human services proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the child support enforcement division.

(c) Pursuant to the provisions of article ten, chapter four of this code, the child support enforcement division shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

CHAPTER 203

(S. B. 350—By Senators Tomblin, Mr. President, and Buckalew) [By Request of the Executive]

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the state tax division; increasing salary of tax commissioner; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPERVISION.

§11-1-1. Office of tax commissioner continued and designated the state tax division; appointment, term, oath, bond and compensation of commissioner; powers
and duties generally; sections of division; assistant
tax commissioner; assistant attorneys general to assist commissioner.

(a) The office of the tax commissioner shall be
continued in all respects as heretofore constituted in the
state government, but is hereby designated as the state tax
division of the department of tax and revenue.

(b) The tax commissioner shall be the chief executive
officer of the state tax division and shall be appointed by
the governor, by and with the advice and consent of the
Senate, to serve at the will and pleasure of the governor for
the term for which the governor was elected and until a
successor has been appointed and has qualified.

(c) The tax commissioner, before entering upon the
duties of office, shall take the oath or affirmation
prescribed by section 5, article IV of the constitution. The
tax commissioner shall give bond with good security, to be
approved by the governor, in the penalty of fifteen
thousand dollars. The salary of the tax commissioner
shall be sixty-five thousand dollars a year or the amount
specified in section two-a, article seven, chapter six of this
code, whichever amount is greater. The tax commissioner
shall be repaid his or her actual disbursements for
traveling expenses. The tax commissioner shall be
provided with an office in the capitol and with furniture,
office equipment and clerical assistance as shall be
necessary.

(d) The tax commissioner shall have control and
supervision of the state tax division and shall be
responsible for the work of each of its sections or other
subunits. Each section or bureau shall be headed by a
director appointed by the tax commissioner and who shall
be responsible to the tax commissioner for the work of his
or her section or bureau. The tax commissioner may
create such sections or bureaus and employ staff or
employees as may be necessary to administer the state tax
laws for which the tax commissioner or tax division is
responsible, within the amount of expenditures
appropriated for operation of the tax division by the
Legislature. The tax commissioner shall have authority to
appoint an assistant tax commissioner who shall be his or her principal assistant. The powers and duties vested in the tax commissioner by this chapter and any other provisions of law may be delegated by the tax commissioner to the assistant or other employees, but the tax commissioner shall be responsible for all official acts of such delegates.

(e) The tax commissioner, if he or she deems such action necessary, may request the attorney general to appoint assistant attorneys general who shall perform duties as may be required by the tax commissioner. The attorney general, in pursuance of such request, may select and appoint assistant attorneys general, with the consent of the tax commissioner, to serve during the will and pleasure of the attorney general, and the assistants shall be paid out of any funds made available for that purpose by the Legislature to the state tax division.

CHAPTER 204

(Com. Sub. for H. B. 2590—By Mr. Speaker, Mr. Kiss, and Delegate Faircloth)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and one-b; to amend and reenact sections twelve, fourteen and fourteen-a, article three of said chapter; to further amend said article by adding thereto a new section, designated section seven-a; to amend and reenact section three, article four of said chapter; and to amend and reenact section three, article five of said chapter, all relating generally to ad valorem property taxes; phasing out tax on intangibles over a five-year period beginning with tax year one thousand nine hundred ninety-eight; defining chattel interests in real property to be real property for tax purposes; defining
chattel interests in tangible personal property to be tangible personal property for tax purposes; providing for tangible personal property of banks and savings and loan associations to be taxed beginning with tax year one thousand nine hundred ninety-eight; allowing banks and savings and loan associations an adjustment to value of shares for value of tangible personal property; and providing for banks and savings and loan associations to be taxed like other businesses beginning tax year one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

Article
1C. Fair and Equitable Property Valuation.
3. Assessments Generally.
4. Assessment of Real Property.
5. Assessment of Personal Property.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

§11-1C-1b. Phase-out of taxation of intangible personal property.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

1 (a) The Legislature hereby finds that:

2 (1) The voters of this state, in the general election held in the year one thousand nine hundred eighty-four, ratified amendment five to the constitution of West
Virginia which essentially provides that once the first statewide reappraisal of property pursuant to section one-b, article ten of the constitution is implemented and first employed to fix values for ad valorem property tax purposes, no intangible personal property shall be subject to ad valorem property taxation except as provided by general law enacted after ratification of amendment five;

(2) In ratifying amendment five, the voters intended for intangible personal property to become exempt from ad valorem property tax at some point after ratification, except as provided in general legislation enacted subsequent to ratification of amendment five;

(3) Due to numerous problems, actual or perceived, with the results of the first statewide reappraisal under section one-b, article ten of the constitution, and the public’s lack of confidence in those results, the first statewide reappraisal was never implemented and results were never employed to fix values for ad valorem property tax purposes;

(4) The Legislature responded to these problems, actual or perceived, by enacting this article which, as its primary purpose, resulted in the making of the second statewide reappraisal of property for ad valorem property tax purposes, which now results in all property being assessed and taxed at sixty percent of its market value, except as otherwise provided by general law; and

(5) The intent and objective of the voters in causing the first statewide reappraisal to be made under section one-b, article ten of the constitution, has now been achieved, although not in the manner originally intended by the voters when they ratified amendment five, and that the will and objective of the people in ratifying amendment five will unintentionally be circumvented unless the Legislature acts to prevent such a result.

(b) The Legislature, therefore, does hereby declare that:
(1) It has the power and authority under the constitution and these circumstances to implement amendment five;

(2) The provisions of amendment five shall be implemented beginning tax year one thousand nine hundred ninety-eight and thereafter, notwithstanding any other provision in this article other than section one-b;

(3) Chattel interests in real or tangible personal property are tangible property for ad valorem property tax purposes, which shall be assessed and taxed in the levy classification in which the underlying real or tangible personal property is taxed for ad valorem property tax purposes, notwithstanding any other provision in this chapter; and

(4) The property of banks and savings and loans shall be assessed and taxed like that of other corporations beginning tax year one thousand nine hundred ninety-eight.

§11-1C-1b. Phase-out of taxation of intangible personal property.

Notwithstanding anything in this code to the contrary, intangible personal property with tax situs in this state that would have been taxable prior to the effective date of this act shall be exempt from ad valorem property tax beginning tax year one thousand nine hundred ninety-eight: Provided, That such property shall be subject to ad valorem property tax and taxed at fifty percent of assessed value for tax year one thousand nine hundred ninety-eight; at forty percent of assessed value for the tax year one thousand nine hundred ninety-nine; at thirty percent of assessed value for the tax year two thousand; at twenty percent of the assessed value for the tax year two thousand one; at ten percent of the assessed value for the tax year two thousand two and eliminated completely for the tax year two thousand three and thereafter.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-7a. Chattel interests in real and tangible personal property.
§11-3-12. Assessment of corporate property; reports to assessors by corporations.


§11-3-14a. Taxation of building and loan associations and federal savings and loan associations.

§11-3-7a. Chattel interests in real and tangible personal property.

For ad valorem property tax purposes, chattel interests in real property and chattel interest in tangible personal property are hereby defined to be an interest in real or tangible personal property and are to be assessed and taxed like real or tangible personal property is taxed. As so defined, chattel interest in real property and chattel interests in tangible personal property are not intangible personal property for property tax purposes.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

(a) Each incorporated company, banking institution, and national banking association, foreign or domestic, having its principal office or chief place of business in this state, owning property subject to taxation in this state, except railroad, telegraph and express companies, telephone companies, pipeline, car line companies and other public utility companies, shall annually, between the first day of the assessment year and the first day of October, make a written report, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated or in which such property subject to taxation in this state is located if such corporation does not have a principal office or chief place of business in this state, showing the following items, viz: (1) The amount of capital authorized to be employed by it; (2) the amount of cash capital paid on each share of stock; (3) the amount of credits and investments other than its own capital stock held by it on said date, with their fair market value; (4) the quantity, location and fair market value of all of its real estate, and tax district or districts in which it is located; and
(5) the kinds, quantity and fair market value of all its tangible property in each tax district in which it is located.

(b) The oath required for this section shall be substantially as follows, viz:

State of West Virginia, County ............., ss:

I, ..........., president (treasurer or manager) of (here insert name of corporation), do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and said corporation has not, to my knowledge, during the sixty-day period immediately prior to the first day of the assessment year converted any of its assets into nontaxable securities or notes or other evidence of indebtedness for the purposes of evading the assessment of taxes thereon; so help me, God.

The officer administering such oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by .............. this the ............ day of ................., 19......

(c) The amendments to this section enacted in the year one thousand nine hundred ninety-seven shall be effective beginning tax year one thousand nine hundred ninety-eight and thereafter.


(a) Shares of stock in a banking institution, national banking association or industrial loan company shall be assessed at their true and actual value, according to the
rules prescribed in this chapter, to the several holders of such stock in the county, district and town where such bank, company or association is located, and not elsewhere, whether such holders reside there or not. The real and actual value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made by such bank, company or association to any officer of the state or the United States, from actual sales of the stock, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The cashier, secretary or principal accounting officer of every such bank, company or association shall cause to be kept a correct list of the names and residences of all the shareholders therein, and number of shares held by each, which list shall be open to the inspection of the assessors of the county, and of the tax commissioner or assistants; and such cashier, secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such list, and concerning the value of such shares, and shall be subject to the same penalties, for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes so assessed upon the shares of any such bank, company, or association shall be paid by the cashier, secretary or proper accounting officer thereof, and in the same manner and at the same time as other taxes are required to be paid in such county, district and town. In default of such payment such cashier, secretary or accounting officer as well as such bank, company or association shall be liable for such taxes, and in addition, for a sum equal to ten percent thereof. Any taxes so paid upon any such share may, with interest thereon, be recovered from the owners thereof by the bank, company, association or officer paying them, or may be deducted from the dividends accruing on such shares. The real estate of any such bank, company or association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of the shares. The tangible personal property of any such bank,
company, or association shall be assessed as in other cases and a proportional share of such assessed value shall be deducted in ascertaining the market value of the shares for tax years as follows: Such deduction shall be sixteen and sixty-six one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-eight; thirty-three and thirty-two one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-nine; forty-nine and ninety-eight one hundredth percent of the assessed value of the tangible personal property for the tax year two thousand; sixty-six and sixty-four one hundredth percent of the assessed value of the tangible personal property for the tax year two thousand one; eighty-three and twenty-one hundredth percent for the tax year two thousand two with such personal property tax deduction being eliminated entirely for the tax year two thousand three and thereafter. And if such tangible personal property or if the title to the building in which any such bank, company or association does its business and the land on which such building stands is held by separate corporation in which such bank, company or association alone or together with another such bank or banks, company or companies, association or associations owns stock, and such tangible personal property or building and land be assessed to such separate corporation, a proportionate share of the assessed value of such tangible personal property or real estate of such separate company shall be deducted in ascertaining the market value of the shares of such bank, company or association. The return shall be made as of the first day of the assessment year.

(b) This section shall become inoperative beginning tax year two thousand three and thereafter.

§11-3-14a. Taxation of building and loan associations and federal savings and loan associations.

(a) The capital of every building and loan association and federal savings and loan association shall include all of its assets and shall be assessed at its true and actual
value according to the rules prescribed by this chapter, to
such building and loan association or federal savings and
loan association in the county, district and town where
such association is located: *Provided*, That investment
shares and investment share accounts in such associations
representing money withdrawable therefrom are hereby
defined as money for purposes of taxation under this
section and, as such, shall not be taxed but shall be
deducted by the assessor in determining the true and
actual value of the capital of any such association. The
real and actual value of such capital shall be ascertained
according to the best information which the assessor may
be able to obtain, whether from any return made by such
association to any officer of this state, or the United States,
or from answers to questions by the assessor, as hereinafter
provided, or from other trustworthy sources.

The secretary or principal accounting officer of every
such building and loan association and federal savings and
loan association shall cause to be kept a complete
accounting record, including a complete record of all such
investment shares and investment share accounts, which
shall be open to the inspection of the assessors of the
counties, and the tax commissioner or his assistants, and
such secretary or officer shall answer under oath such
questions as the assessor may ask him concerning the
matters shown by such records and accounts, and shall be
subject to the same penalties for failure to do so, which are
imposed by law upon individuals failing to answer
questions which the assessor is authorized to ask. The tax
levied and assessed upon the capital of every such
building and loan association and federal savings and loan
association shall be paid by such association in the manner
and at the same time as other taxes are required to be paid
in such county, district and town.

The real estate of any such building and loan
association or federal savings and loan association shall be
assessed as in other cases, and a proportionate share of
such assessed value shall be deducted in ascertaining the
value of such capital. The tangible personal property of
any such building and loan association or federal savings
and loan association shall be assessed as in other cases and a proportional share of such assessed value shall be deducted in ascertaining the value of the capital for tax years as follows: Such deduction shall be sixteen and sixty-six one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-eight; thirty-three and thirty-two one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-nine; forty-nine and ninety-eight hundredth percent of the assessed value of the tangible personal property for the tax year two thousand; sixty-six and sixty-four hundredth percent of the assessed value of the tangible personal property for the tax year two thousand one; eighty-three and twenty one hundredth percent for the tax year two thousand two with such personal property tax deduction being eliminated entirely for the tax year two thousand three and thereafter.

If the title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or banking company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the value of the capital of such association. Every such association shall make a return to the assessor as of the first day of the assessment year.

(b) This section shall become inoperative beginning tax year two thousand three and thereafter.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

For the purpose of giving effect to the "Tax Limitations Amendment", this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

"Owner" means the person, as defined in section ten, article two, chapter two of this code, who is possessed of
the freehold, whether in fee or for life. A person seized or
entitled in fee subject to a mortgage or deed of trust
securing a debt or liability is considered the owner until
the mortgagee or trustee takes possession, after which the
mortgagee or trustee shall be considered the owner. A
person who has an equitable estate of freehold, or is a
purchaser of a freehold estate who is in possession before
transfer of legal title is also considered the owner.

"Used and occupied by the owner thereof
exclusively for residential purpose" means actual
habitation by the owner of all or a portion of a parcel of
real property as a place of abode to the exclusion of any
commercial use: Provided, That if the parcel of real
property was unoccupied at the time of assessment and
either (a) was used and occupied by the owner thereof
exclusively for residential purposes on the first day of July
of the previous year or (b) was unimproved on the first of
July of the previous year but a building improvement for
residential purposes was subsequently constructed thereon
between that date and the time of assessment, the property
shall be considered "used and occupied by the owner
thereof exclusively for residential purpose": Provided,
however, That nothing herein contained shall permit an
unoccupied or unimproved property to be considered
"used and occupied by the owner thereof exclusively for
residential purposes" for more than one year. If a license
is required for an activity on the premises or if an activity
is conducted thereon which involves the use of equipment
of a character not commonly employed solely for
domestic as distinguished from commercial purposes, the
use may not be considered to be exclusively residential.

"Farm" means a tract or contiguous tracts of land
used for agriculture, horticulture or grazing and includes
all real property designated as "wetlands" by the United
States army corps of engineers or the United States fish
and wildlife service.

"Occupied and cultivated" means subjected as a unit
to farm purposes, whether used for habitation or not, and
although parts may be lying fallow, in timber or in
wastelands.
ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-3. Definitions.

1 The words "personal property," as used in this chapter includes all fixtures attached to land, if not included in the valuation of such land entered in the proper landbook; all things of value, moveable and tangible, which are the subjects of ownership; all chattels personal; all notes, bonds, and accounts receivable, stocks and all other intangible property.

2 "Agriculture" means the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock.

3 "Horticulture" means plant production of every character except forestry.

4 "Grazing" means the use of land for pasturage.

5 "Products of agriculture" means those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material.

6 "Producer" means the person who is actually engaged in the agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman.

7 "Tax year" means the calendar year following the July first assessment day or, in the case of a public service business assessed pursuant to article six of this chapter, the calendar year beginning on the January first assessment day.

8 "While owned by the producer" means while title is in the producer as above defined.

9 "Employed exclusively" means that the preponderant and the sole gainful use is for the designated purpose.
AN ACT to amend article five, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to clarification of application of freeport warehouse exemption against ad valorem property tax as it applies to goods in a warehouse awaiting shipment out-of-state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-13a. Application of exemption to finished goods in warehouse.

1 (a) This section is intended to clarify the intent of the Legislature and the citizens in establishing the exemption from ad valorem property taxation granted by section one-c, article ten of the West Virginia constitution and section thirteen of this article as it pertains to goods held in warehouse facilities in this state awaiting shipment to a destination outside this state. This section codifies policies applied by agencies and departments of this state upon which persons have relied. It is the intent of the Legislature that the provisions of this section are to be liberally construed in favor of a person claiming exemption from tax pursuant to section one-c, article ten of the West Virginia constitution, this section and section thirteen of this article.
(b) Goods which have been moved to a warehouse or
storage facility, at which no substantial alteration takes
place, to await shipment to a destination outside this state
are deemed to be moving in interstate commerce over the
territory of the state and therefore are exempt from ad
valorem property tax and do not have a tax situs in West
Virginia for purposes of ad valorem taxation.

(c) Notwithstanding subsection (b) of this section,
personal property of inventories of natural resources shall
not be exempt from ad valorem taxation unless required
by federal law.

(d) This section is intended to be declarative of the law
as of the enactment hereof and shall be fully retroactive.

CHAPTER 206

(Com. Sub. for H. B. 2496—By Delegate Warner)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter
eleven of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended; and to further amend said
article by adding thereto a new section, designated section
seven-a, all relating to tax assessments of commercial motor
vehicles; expanding coverage for imposition of an ad valo-
rem tax on public service businesses to include commercial
vehicles subject to proportional registration agreements in-
volving other states by virtue of engaging in interstate com-
merce, and those involved solely in intrastate commerce; and
setting forth a formula to calculate the tax.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.

§11-6-7a. Same — Commercial motor vehicles; calculation of tax.

§11-6-1. Returns of property to board of public works.

1 (a) On or before the first day of May in each year a return in writing shall be filed with the board of public works: (1) By the owner or operator of every railroad, wholly or in part within this state; (2) by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; (3) by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than the owners or operators as may own or operate a railroad within the state; (4) by the owner or operator of every express company or express line, wholly or in part within this state, used for the transportation by steam or otherwise of freight and other articles of commerce; (5) by the owner or operator of every pipeline, wholly or in part within this state, used for the transportation of oil or gas or water, whether the oil or gas or water be owned by the owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power; (6) by the owner or operator of every telegraph or telephone line, wholly or in part within this state, except private lines not operated for compensation; (7) by the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; (8) by the owner or operator of hydroelectric companies for the generation and transmission of light, heat or power; (9) by the owner or operator of water companies furnishing or distributing water; (10) by the owner or operator of all other public service corporations or persons engaged in public service business whose property is located, wholly or in part, within this state; and (11) on or before the first day of May,
one thousand nine hundred ninety-eight, and on or before
the first day of May, each year thereafter, by the owner or
operator of every truck or semitrailer used as a commer-
cial motor vehicle in the transportation of property either
exclusively within this state or within and without this state
by commercial motor vehicles registered under a propor-
tional registration agreement pursuant to the provisions of
section ten-a, article two, chapter seventeen-a of this code.
For the purposes of this article, commercial motor vehicle
is defined as those vehicles registered under a proportional
registration agreement pursuant to the provisions of sec-
tion ten-a, article two, chapter seventeen-a of this code and
vehicles that would otherwise be subject to registration
under a proportional registration agreement as provided in
section ten-a except that the vehicle is only engaged in
intrastate commerce. The procedure for determining the
valuation thereof is exclusively provided for under section
seven-a of this article.

(b) The words "owner or operator," as applied here-
in to railroad companies, shall include every railroad com-
pany incorporated by or under the laws of this state for
the purpose of constructing and operating a railroad, or of
operating part of a railroad within this state, whether the
railroad or any part of it be in operation or not; and shall
also include every other railroad company, or persons or
associations of persons, owning or operating a railroad or
part of a railroad in this state on which freight or passen-
gers, or both, are carried for compensation. The word
"railroad," as used herein includes every street, city, sub-
urban or electric or other railroad or railway.

(c) The words "owner or operator," as applied here-
in to express companies, shall include every express com-
pany incorporated by or under the laws of this state, or
doing business in this state, whether incorporated or not,
and any person or association of persons, owning or oper-
ating any express company or express line upon any rail-
road or otherwise, doing business partly or wholly within
this state.
(d) The words "owner or operator," as applied herein to trucks or semitrailers used as a commercial motor vehicle in the transportation of property, shall include every company incorporated by or under the laws of this state, or doing business in this state, whether incorporated or not, and any person or association of persons, owning or operating any truck or semitrailer used as a commercial motor vehicle in the transportation of property doing business partly or wholly within this state.

(e) The return shall be signed and sworn to by the owner or operator if a natural person, or, if the owner or operator shall be a corporation, shall be signed and sworn to by its president, vice president, secretary or principal accounting officer.

(f) The return required by this section of every owner or operator shall cover the year ending on the thirty-first day of December, next preceding, and shall be made on forms prescribed by the board of public works, which board is hereby invested with full power and authority and it is hereby made its duty to prescribe the forms as will require from any owner or operator herein mentioned information as in the judgment of the board may be of use to it in determining the true and actual value of the properties of the owners or operators.

§11-6-7a. Same — Commercial motor vehicles; calculation of tax.

(a) In the case of commercial motor vehicles used for the transportation of property exclusively within this state or commercial vehicles used for the transportation of property both within and without this state which are subject to being registered under a proportional registration agreement pursuant to the provisions of section ten-a, article two, chapter seventeen-a of this code, by owners or operators, the return shall show for each commercial vehicle operator the total miles driven in West Virginia and the total miles driven in any other states as reported in the most recent taxable year to the division of motor vehicles pursuant to any proportional registration agreement on file therewith. The return shall, additionally, show the gross capital cost of the commercial vehicle to the pur-
chaser thereof and the year the purchaser acquired the commercial vehicle. In the case of commercial motor vehicles used for the transportation of property exclusively within this state the return shall only show the gross capital cost of the commercial vehicle to the purchaser thereof and the year the commercial vehicle was acquired by the purchaser thereof.

(b) Ad valorem taxes provided for in this chapter shall, notwithstanding the provisions of section five, article one-c of this chapter, be determined as follows for: (1) The gross capital cost of a commercial vehicle shall be multiplied by a percentage factor representing the remainder of the vehicle's value after depreciation according to a depreciation schedule established by the tax commissioner, which calculation shall yield the appraised value of the vehicle; (2) for a trailer, semitrailer or road tractor registered in this state as part of a fleet registered under any proportional registration agreement under the provisions of section ten-a, article two, chapter seventeen-a of this code, the appraised value shall be multiplied by the fraction comprised of a numerator representing the total miles driven in West Virginia (regardless whether property is being transported for commercial purposes) in the taxable year and a denominator representing the total miles driven in the taxable year by the commercial motor vehicle operator during times property was being transported for commercial purposes, as reported to the division of motor vehicles pursuant to any proportional registration agreement on file therewith to obtain the apportioned value, which apportioned value shall be multiplied by sixty percent to yield the assessed value which shall be multiplied by the applicable rate of tax; (3) for a trailer, semitrailer or road tractor operated exclusively in this state and which is not a part of a fleet registered under any proportional registration agreement or is not registered under the provisions of section ten-a, article two, chapter seventeen-a of this code, the tax shall be determined by multiplying the appraised value by sixty percent to obtain the assessed value which shall be multiplied by the tax rate to obtain the amount of the tax.
AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-f, relating to appraisal of property as part of qualified capital addition to a manufacturing facility for ad valorem property tax purposes; legislative findings; definition of terms; certification by state tax commissioner; and rules including emergency rules and effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-1. Legislative findings.
§11-6F-2. Definitions.
§11-6F-3. Tax treatment of certified capital addition property.
§11-6F-4. Application and certification.
§11-6F-5. Authority to propose rules.
§11-6F-6. Effective date.

§11-6F-1. Legislative findings.

1 The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. The Legislature further finds that the ad valorem property tax valuation set forth in this article
for certified capital addition property, as defined in section two of this article, will help preserve the tax base and preserve and create jobs attributable to manufacturing facilities existing in this state.

§11-6F-2. Definitions.

As used in this article, the term:

(a) "Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the state tax commissioner in accordance with section four of this article: Provided, That airplanes and motor vehicles licensed by the division of motor vehicles shall in no event constitute certified capital addition property.

(b) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(c) "Personal property" means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(d) "Qualified capital addition to a manufacturing facility" means all real property and personal property, the combined original cost of all of the property which exceeds fifty million dollars to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least one hundred million dollars: Provided, That if the capital addition is made in a polymer alliance zone as designated from time-to-time by executive order
of the governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least one hundred million dollars if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility.

(e) "Real property" means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements.

§11-6F-3. Tax treatment of certified capital addition property.

Notwithstanding any other provisions of law, the value of certified capital addition property, for purposes of ad valorem property taxation under this chapter, shall be its salvage value, which for purposes of this article is five percent of the certified capital addition property's original cost.

§11-6F-4. Application and certification.

Any person seeking designation of property as certified capital addition property shall first make a sworn application to the state tax commissioner on forms prescribed by the state tax commissioner on or before the date the property is first required to be reported on an annual return for ad valorem property tax purposes. The state tax commissioner shall within ninety days of the application determine in writing whether the property is or will be part of a qualified capital addition to a manufacturing facility as defined in section two of this article and shall provide a copy of the written determination to the applicant and the assessor or assessors in the county or counties in which the manufacturing facility is located. The applicant may file an appeal with the state tax commissioner to have a formal hearing for a review and
redetermination on qualified capital additions to a manufact-
ufacturing facility which have been disallowed by the state
tax commissioner within thirty days of the official written
notification from the state tax commissioner. After the
state tax commissioner determines that property is or will
be part of a qualified capital addition to a manufacturing
facility, the property is and remains certified capital
addition property for purposes of this article until the
earlier of: (a) The disposition of the property to an
unrelated third party other than a transferee who continues
to operate the manufacturing facility; (b) the cessation of
all business at the manufacturing facility; or (c) the tenth
year succeeding the year in which the qualified capital
addition to a manufacturing facility to which the property
relates is first placed in service. All applications and
determinations under this section constitute return infor-
mation and are subject to section twenty-three, article one-
a of this chapter. The state tax commissioner shall report
annually the number of applications filed, certified, denied
and pending pursuant to this section for the preceding
year along with recommendations regarding the structure,
benefits and costs of the valuation method specified in this
article to the joint committee on government and finance
and to the governor: Provided, That identifying character-
istics and facts about applicants may not in any event be
disclosed under this section.

§11-6F-5. Authority to propose rules.

The state tax commissioner shall propose rules for
promulgation in accordance with article three, chapter
twenty-nine-a of this code for the administration of this
article as may be necessary to implement the provisions of
this article: Provided, That the state tax commissioner
may promulgate emergency rules to implement the
provisions of this article.

§11-6F-6. Effective date.

This article is effective for the tax years beginning on
and after the first day of July, one thousand nine hundred
ninety-seven.
AN ACT to amend and reenact section two-a, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funding of criminal investigation division in the amount appropriated by the Legislature out of bingo fees, charitable raffle fees and charitable raffle board fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CRIMES AND PENALTIES.

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

(a) Criminal investigation division. — A criminal investigation division consisting of no more than twelve investigators, of which one investigator shall serve as division director, plus necessary support staff, all of whom are exempt from the classified service, is hereby established in the state tax division for the purpose of assuring compliance with laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes, imposed on individuals by article twenty of this chapter.

(b) Special audits division. — A special audits division consisting of no more than eight tax examiners, plus necessary support staff, all of whom are covered by the classified service, is hereby established in the auditing section of the state tax division for purposes of assuring compliance with laws and rules pertaining to taxes, fees or
credits administered under article ten of this chapter, including, but not limited to, the provisions of articles twenty, twenty-one and twenty-three, chapter forty-seven of this code, but not including income taxes imposed on individuals by article twenty-one of this chapter.

(c) The Legislature hereby finds that the enforcement of the laws and rules pertaining to the taxes, fees or credits administered under article ten of this chapter, as such are applicable to persons whose residence or principal place of business is outside of the state of West Virginia, requires greater efforts and investigation than required for resident persons subject thereto, and does further find that there is a greater rate of noncompliance with said laws and rules by such nonresident persons. Therefore, the criminal investigation division and the special audits division created in subsections (a) and (b) of this section are hereby directed to expend a significant amount of their efforts to ensure compliance with the laws and rules pertaining to taxes, fees or credits administered under article ten of this chapter in accordance with the authority provided in this section, by persons whose residence or principal place of business is located outside the state of West Virginia.

(d) Deposits of certain fees. — Charitable bingo fees imposed by article twenty, chapter forty-seven of this code; charitable raffle fees imposed by article twenty-one of said chapter; and charitable raffle boards and games fees imposed by article twenty-three of said chapter in an amount not to exceed the amount appropriated by the Legislature in any fiscal year shall be deposited in a special revenue account established in the office of the treasurer. The special revenue account shall be used to support compliance expenditures relating to the establishment, operation, maintenance and support of the criminal investigation division established in subsection (a) of this section and the special audits division established in subsection (b) of this section. Such expenditures may include, but shall not be limited to, employee compensation, equipment, office supplies and travel expenses. On the last day of each fiscal year, unencumbered funds in the special revenue account in excess of seventy-five thousand dollars shall be transferred to the general revenue fund.
(e) **Investigators.** — Investigators employed in the criminal investigation division shall have a background in accounting or law enforcement or related fields pursuant to article twenty-nine, chapter thirty of this code, or its equivalent. Any investigator so designated by the tax commissioner shall have all the lawful powers delegated to members of the division of public safety except the power to carry firearms and shall have the authority to enforce the provisions of this article and the criminal provisions of any other article of this code to which this article applies, in any county or municipality of this state. The tax commissioner shall establish such additional standards as he or she considers applicable or necessary. Any employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of the employee's duties and the bond shall be approved as to form by the attorney general and shall be filed with the secretary of state for preservation in that office. The division of public safety, any county sheriff or deputy sheriff and any municipal police officer upon request by the tax commissioner is hereby authorized to assist the tax commissioner in enforcing the provisions of this article and any criminal penalty provision of any article of this code to which this article applies.

(f) **Class A license plates.** — Notwithstanding the provisions of article three, chapter seventeen-a of this code, upon application by the tax commissioner and payment of fees, the commissioner of motor vehicles shall issue a maximum of twenty Class A license plates to be used on state owned or leased vehicles assigned to investigators employed in the criminal investigation division.

(g) **Reports.** — On the first day of July of each year, beginning in the year one thousand nine hundred ninety-four, the tax commissioner shall present a written report to the joint committee on government operations on the division's compliance with the provisions of this section, including, but not limited to, activities of the divisions created by this section and disbursement of funding.
AN ACT to amend and reenact section three, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a reduction of the severance tax rate for coal mined in West Virginia by underground methods based upon seam thickness.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of tax or privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

(a) Imposition of tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except
as otherwise provided in this article. In the case of coal,
this five percent rate of tax includes the thirty-five one
hundredths of one percent additional severance tax on
coop imposed by the state for the benefit of counties and
municipalities as provided in section six of this article.

(c) "Certain health care services" defined. — For
purposes of this section, the term "certain health care
services" means, and is limited to, behavioral health
services and community care services.

(d) Tax in addition to other taxes. — The tax imposed
by this section shall apply to all persons severing or
processing (or both severing and processing) in this state
natural resources enumerated in subsection (a) of this
section, and to all persons providing certain health care
services in this state as enumerated in subsection (c) of this
section, and shall be in addition to all other taxes imposed
by law.

(e) Effective date. — This section, as amended in the
year one thousand nine hundred ninety-three, shall apply
to gross proceeds derived after the thirty-first day of May
of such year. The language of this section, as in effect on
the first day of January of such year, shall apply to gross
proceeds derived prior to the first day of June of such
year and, with respect to such gross proceeds, shall be
fully and completely preserved.

(f) Reduction of severance tax rate. — For tax years
beginning after the effective date of this subsection, any
person exercising the privilege of engaging within this
state in the business of severing coal for the purposes
provided in subsection (a) of this section, shall be allowed
a reduced rate of tax on coal mined by underground
methods in accordance with the following:

(i) For coal mined by underground methods from
seams with an average thickness of thirty-seven inches to
forty-five inches, the tax imposed in subsection (a) of this
section shall be two percent of the gross value of the coal
produced. For coal mined by underground methods from
seams with an average thickness of less than thirty-seven
inches, the tax imposed in subsection (a) of this section
shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in section six of this article.

(ii) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than forty-five inches in average thickness or any existing mine that has not produced coal from seams forty-five inches or less in thickness in the one hundred eighty days immediately preceding the effective date of this subsection.

(iii) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

CHAPTER 210

(H. B. 2653—By Delegate Michael)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the distribution of dedicated oil, gas and coal severance taxes to counties and municipalities; removing the requirement that the proceeds from the taxes be appropriated; continuing and redesignating certain funds; and requirements for budgeting additional tax on severance, extraction and production of coal.

Be it enacted by the Legislature of West Virginia:
That sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective the first day of July, one thousand nine hundred ninety-six, five percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be
distributed to the counties and municipalities as provided in this section. Effective the first day of July, one thousand nine hundred ninety-seven, and thereafter, ten percent of the tax attributable to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section.

(b) Seventy-five percent of this dedicated tax shall be distributed by the state treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the dedicated tax on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in the state treasurer's office by chapter two hundred forty-two, acts of the Legislature, regular session, one thousand nine hundred ninety-five, as amended and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the distribution of the remaining twenty-five percent of the dedicated tax on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been
produced in those counties or municipalities, the special
fund known as the all counties and municipalities revenue
fund established in state treasurer's office by chapter two
hundred forty-two, acts of the Legislature, regular session,
one thousand nine hundred ninety-five, as amended and
reenacted in the subsequent act of the Legislature, is here-
by redesignated as the "all counties and municipalities oil
and gas revenue fund" and is hereby continued.

Seventy-five percent of the dedicated tax on oil and
gas shall be deposited in the "oil and gas county reve-
 nue fund" and twenty-five percent of the dedicated tax on
oil and gas shall be deposited in the "all counties and
municipalities oil and gas revenue fund", from time to
time, as the proceeds are received by the tax com mission-
er. The moneys in the funds shall be distributed to the
respective counties and municipalities entitled to the mon-
ey in the manner set forth in subsection (e) of this sec-
tion.

(e) The moneys in the "oil and gas county revenue
fund" and the moneys in the "all counties and munic-
palities oil and gas revenue fund" shall be allocated
among and distributed annually to the counties and mu-
icipalities entitled to the moneys by the state treasurer in
the manner specified in this section. On or before each
distribution date, the state treasurer shall determine the
total amount of moneys in each fund which will be avail-
able for distribution to the respective counties and munici-
palities entitled to the moneys on that distribution date.
The amount to which an oil and gas producing county is
entitled from the "oil and gas county revenue fund" shall
be determined in accordance with subsection (f) of this
section, and the amount to which every county and munic-
ipality shall be entitled from the "all counties and munici-
palities oil and gas revenue fund" shall be determined in
accordance with subsection (g) of this section. After de-
termining, as set forth in subsections (f) and (g) of this
section, the amount each county and municipality is enti-
tled to receive from the respective fund or funds, a warrant
of the state auditor for the sum due to the county or mu-
icipality shall issue and a check drawn thereon making
payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the “oil and gas county revenue fund” shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year.

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

(g) The amount to which each county and municipality is entitled from the “all counties and municipalities oil and gas revenue fund” shall be determined in accordance with the provisions of this subsection. For purposes of this subsection “population” means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the “all counties and municipalities oil and gas revenue fund” by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county’s “base share”.

(2) Each county's "base share" shall then be subdivided into two portions. One portion is determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share". The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand, at least seventy-five percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That the moneys distributed to any county or municipality under the provisions of this section shall not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before the twenty-eighth day of March, one thousand nine hundred ninety-seven, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the tax commissioner on forms provided by the tax commissioner a special budget,
detailing how the moneys are to be spent during the sub-
sequent fiscal year. The budget shall be followed in ex-
pending the moneys unless a subsequent budget is ap-
proved by the state tax commissioner. All unexpended
balances remaining in the county or municipality general
fund at the close of a fiscal year shall remain in the gener-
al fund and may be expended by the county or munici-
pality without restriction.

(j) On or before the fifteenth day of December, one
thousand nine hundred ninety-six, and each fif teenth day
of December thereafter, the tax commissioner shall deliver
to the clerk of the Senate and the clerk of the House of
Delegates a consolidated report of the budgets, created by
subsection (i) of this section, for all county commissions
and municipalities as of the fifteenth day of July of the
current year.

(k) The state tax commissioner shall retain for the
benefit of the state from the dedicated tax attributable to
the severance of oil and gas the amount of thirty-five
thousand dollars annually as a fee for the administration
of the additional tax by the tax commissioner.

§11-13A-6. Additional tax on the severance, extraction and
production of coal; dedication of additional tax
for benefit of counties and municipalities; distri-
bution of major portion of such additional tax
to coal-producing counties; distribution of mi-
nor portion of such additional tax to all counties
and municipalities; reports; rules; special funds
in office of state treasurer; method and formulas
for distribution of such additional tax; expendi-
ture of funds by counties and municipalities for
public purposes; special funds in counties and
municipalities; and requiring special county
and municipal budgets and reports thereon.

(a) Additional coal severance tax. — Upon every
person exercising the privilege of engaging or continuing
within this state in the business of severing coal, or prepar-
ing coal (or both severing and preparing coal), for sale,
profit or commercial use, there is hereby imposed an addi-
tional severance tax, the amount of which shall be equal to
the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of this article is measured as shown by the gross proceeds derived from the sale of the coal by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection is in addition to the tax imposed by section three of this article, and this additional tax is referred to in this section as the "additional tax on coal".

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall be distributed by the state treasurer in the manner specified in this section to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are referred to in this section as the "coal-producing counties". The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by section three of this article, and all of the enforcement and other provisions of this article shall apply to the additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-seven, article two, chapter twenty-two-a of this code, the tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules as may be necessary to implement the provisions of this section: Provided, That notwithstanding any language contained in this code to the contrary, the gross amount of additional tax
on coal collected under this article shall be paid over and  
distributed without the application of any credits against  
the tax imposed by this section.

(d) In order to provide a procedure for the distribu-
tion of seventy-five percent of the net proceeds of the  
additional tax on coal to the coal-producing counties, the  
special fund known as the "county coal revenue fund"  
established in the state treasurer's office by chapter one  
hundred sixty-two, acts of the Legislature, regular session,  
one thousand nine hundred eighty-five, as amended and  
reenacted in subsequent acts of the Legislature, is hereby  
continued. In order to provide a procedure for the distri-
bution of the remaining twenty-five percent of the net  
proceeds of the additional tax on coal to all counties and  
municipalities of the state, without regard to coal having  
been produced therein, the special fund known as the "all  
counties and municipalities revenue fund" established in  
the state treasurer's office by chapter one hundred sixty-
two, acts of the Legislature, regular session, one thousand  
ine hundred eighty-five, as amended and reenacted in  
subsequent acts of the Legislature, is hereby redesignated  
as the "all counties and municipalities coal revenue fund"  
and is hereby continued.

Seventy-five percent of the net proceeds of such addi-
tional tax on coal shall be deposited in the "county coal  
revenue fund" and twenty-five percent of the net pro-
ceeds shall be deposited in the "all counties and municip-
alities coal revenue fund", from time to time, as the pro-
ceeds are received by the tax commissioner. The moneys  
in the funds shall be distributed to the respective counties  
and municipalities entitled to the moneys in the manner  
set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund"  
and the moneys in the "all counties and municipalities  
cal revenue fund" shall be allocated among and distrib-
uted quarterly to the counties and municipalities entitled  
to the moneys by the state treasurer in the manner speci-
fied in this section. On or before each distribution date,  
the state treasurer shall determine the total amount of  
moneys in each fund which will be available for distribu-
tion to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality is entitled from the "all counties and municipalities coal revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and subsection (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to each county or municipality shall issue and a check drawn thereon making payment of such amount shall thereafter be distributed to each such county or municipality.

(f) The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined by: (1) Dividing the total amount of moneys in the fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in the county during the preceding quarter.

(g) The amount to which each county and municipality is entitled from the "all counties and municipalities coal revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities coal revenue fund" by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's "base share" shall then be subdivided into two portions. One portion is determined by
multiplying the "base share" by that percentage which
the total population of all unincorporated areas within the
county bears to the total population of the county, and the
other portion is determined by multiplying the "base
share" by that percentage which the total population of all
municipalities within the county bears to the total popula-
tion of the county. The former portion shall be paid to
the county and the latter portion is the "municipalities'
portion" of the county's "base share". The percentage
of the latter portion to which each municipality in the
county is entitled shall be determined by multiplying the
total of the latter portion by the percentage which the
population of each municipality within the county bears to
the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal
severance tax revenue fund" which shall be the depository
for moneys distributed to any county or municipality
under the provisions of this section, from either or both
special funds. Moneys in the coal severance tax revenue
fund, in compliance with subsection (i) of this section,
may be expended by the county commission or governing
body of the municipality for such public purposes as the
county commission or governing body shall determine to
be in the best interest of the people of its respective county
or municipality: Provided, That in counties with popula-
tion in excess of two hundred thousand, at least seventy-
five percent of the funds received from the county coal
revenue fund shall be apportioned to, and expended with-
in the coal-producing area or areas of the county, said
coal-producing areas of each county to be determined
generally by the state tax commissioner: Provided, how-
ever, That the coal severance tax revenue fund moneys
shall not be budgeted for personal services in an amount
to exceed one fourth of the total funds available in such
fund.

(i) On or before the twenty-eighth day of March, one
thousand nine hundred eighty-six, and each twenty-eighth
day of March thereafter, each county commission or gov-
erning body of a municipality receiving such revenue
shall submit to the tax commissioner on forms provided
by the tax commissioner a special budget, detailing how
such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending the revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in coal severance tax revenue fund at the close of a fiscal year shall be reappropriated to the budget of the county commission or governing body for the subsequent fiscal year. The reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before the fifteenth day of July of the current budget year.

(j) On or before the fifteenth day of December, one thousand nine hundred eighty-six, and each fifteenth day of December thereafter, the tax commissioner shall deliver to the clerk of the Senate and the clerk of the House of Delegates a consolidated report of the special budgets, created by subsection (i) of this section, for all county commissions and municipalities as of the fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the benefit of the state from the additional taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.

CHAPTER 211

(Com. Sub. for H. B. 2870—By Delegates Beach, Kelley, Proudfoot, Boggs, Buchanan, Damron and Dempsey)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-m, all relating generally to allowing a tax credit to eligible taxpayers equal to two hundred fifty dollars for each new job
filled by a full-time employee of the eligible taxpayer working in a new consumer-ready wood product manufacturing facility in this state, or at a new consumer-ready wood product line of an existing manufacturing facility, that begins manufacturing after the thirtieth day of June, one thousand nine hundred ninety-seven; stating legislative purpose; defining terms; allowing credit against business franchise tax and against income taxes; providing rules for determining amount of allowable credit and for application of amount of allowable credit against certain taxes; providing for proration of credit among partners, members of limited liability companies and shareholders in electing small business corporations; requiring annual computation of number of new jobs filled by full-time employees; making credit available to successors; providing for credit recapture upon certain events along with interest, additions to tax and a waivable money penalty; specifying time limitations for certain actions; authorizing promulgation of administrative rules; providing rule of construction; specifying effective date; and providing for expiration of credit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13M. TAX CREDIT FOR NEW VALUE-ADDED WOOD MANUFACTURING OPERATIONS.

§11-13M-1. Legislative purpose.
§11-13M-2. Definitions.
§11-13M-3. Eligibility for tax credits; creation of the credit.
§11-13M-4. Amount of credit allowed; expiration of the credit.
§11-13M-5. Application of annual credit allowance.
§11-13M-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.
§11-13M-7. Annual computation of the number of new jobs held by full-time employees.
§11-13M-8. Availability of credit to successors.
§11-13M-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
§11-13M-10. Administrative rules.
§11-13M-12. Effective date.

§11-13M-1. Legislative purpose.

The Legislature finds that production of consumer-ready wood products is very important to the economy of this state and that a sound economy is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this state, through the manufacture of consumer-ready wood products after the thirtieth day of June, one thousand nine hundred ninety-seven, thereby increasing employment and economic development, there is hereby provided to eligible taxpayers a credit for each new job filled by a full-time hourly employee who works in a new consumer-ready wood product manufacturing facility, or in a new consumer-ready wood product line of an existing manufacturing facility, that begins operating in this state after the thirtieth day of June, one thousand nine hundred ninety-seven.

§11-13M-2. Definitions.

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

(b) Terms defined.

(1) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates.

In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.
(2) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia, or the tax commissioner's delegate.

(3) "Consumer-ready wood products" means value-added wood products that are ready for sale to consumers at the end of the manufacturing process. Consumer-ready wood includes any value-added wood product that does not require further manufacturing before it may ordinarily be used or consumed by the purchaser of the product, except that consumer-ready wood product does not include any product that is not manufactured primarily from wood, any product that is not commercially marketed as a wood product for sale primarily to consumers of the product, or paper or paper products.

(4) "Corporation" includes any corporation, a joint-stock company and any association or other organization which is classified as a corporation under federal income tax law.

(5) "Delegate", when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(6) "Eligible taxpayer" means a person who after the thirtieth day of June, one thousand nine hundred ninety-seven, begins manufacturing a consumer-ready wood product at a new manufacturing facility located in this state, or begins manufacturing a new consumer-ready wood product line at an existing manufacturing facility located in this state, which results in the creation of new jobs filled by full-time employees.

(7) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that if the person for whom the individual performs or performed the service does not have control of the payment of wages
for such services, the term "employer" means the person having control of the payment of such wages.

(8) "Existing manufacturing facility" means a building which at anytime during the twelve months preceding the month in which manufacture of a consumer-ready wood product begins was used by the taxpayer, or by a related person, to manufacture tangible personal property.

(9) "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new consumer-ready wood product manufacturing facility in this state, or in a new consumer-ready wood product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

(10) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, of the United States.

(11) "Manufacturing facility" means any facility which is used in the manufacturing of tangible personal property (including processing resulting in a change in the condition of such property).

(12) "New consumer-ready wood product line" means the manufacture of a consumer-ready wood product in an existing manufacturing facility in this state that first begins manufacturing the new consumer-ready wood product line after the thirtieth day of June, one thousand nine hundred ninety-seven.

(13) "New consumer-ready wood product manufacturing facility" means a building that is primarily used by the eligible taxpayer to manufacture a consumer-ready wood product that is first placed in service and used for that purpose by the eligible taxpayer after the thirtieth
day of June, one thousand nine hundred ninety-seven. If the facility was used by the taxpayer, or by a related person, to manufacture tangible personal property at any time during the twelve months preceding the month in which the facility is first used by the taxpayer to manufacture a consumer-ready wood product, the building is not a new consumer-ready wood product manufacturing facility.

(14) "New job" means a job at a new consumer-ready wood product manufacturing facility located in this state, or at a new consumer-ready wood product line at an existing manufacturing facility located in this state, which did not exist in this state with any employer as of the first day of the second calendar month preceding the calendar month in which the new consumer-ready wood product manufacturing facility begins to manufacture consumer-ready wood products, or in which the new consumer-ready wood product line begins to manufacture consumer-ready wood products in an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer.

(15) "Partnership" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is classified as a partnership for federal income tax purposes for the taxable year.

(16) "Partner" includes a member in a syndicate, group, pool, joint venture or organization classified as a partnership for federal income tax purposes for the taxable year.

(17) "Part-time employee" means any employee who normally works twenty hours or less per week.

(18) "Seasonal employee" means an employee who normally works on a full-time basis less than five months in a year.
(19) "Temporary employee" means an employee performing services under a contractual arrangement with the employer of two years or less duration.

(20) "Person" means and includes an individual, a trust, estate, partnership, association, company or corporation.

(21) "Related entity", "related person", "entity related to" or "person related to" means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer. For purposes of this subdivision (21), "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the Internal Revenue Code: Provided, That paragraph (3) of section 267(c) of the Internal Revenue Code shall not apply.
166 (22) "Tax year" or "taxable year," means the tax year of the taxpayer for federal income tax purposes.

168 (23) "Taxpayer" means any person subject to the tax imposed by articles twenty-one, twenty-three or twenty-four of this chapter.

§11-13M-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the taxes imposed in articles twenty-one, twenty-three and twenty-four of this chapter. The amount of this credit shall be determined and applied as provided in this article.

§11-13M-4. Amount of credit allowed; expiration of the credit.

(a) Credit allowable. — The amount of annual credit allowable under this article to an eligible taxpayer shall be two hundred fifty dollars for each new job at a new consumer-ready wood product manufacturing facility located in this state, or at a new consumer-ready wood product line of an existing manufacturing facility located in this state, that is filled by a full-time employee of the eligible taxpayer during the taxable year, subject to the following:

(1) When the new consumer-ready wood product manufacturing facility, or the new wood product line of an existing consumer-ready wood product manufacturing facility, is in operation for less than twelve months of the taxable year in which it is placed in service, the credit allowed by subsection (a) of this section shall be prorated by the ratio that the number of months in the taxpayer's taxable year during which the new consumer-ready wood products facility, or the new products line of an existing consumer-ready wood product manufacturing facility, was in service bears to twelve.

(2) When the eligible taxpayer stops manufacturing consumer-ready wood products at the new consumer-ready wood product manufacturing facility, or at the new wood product line of an existing consumer-ready wood product manufacturing facility, during the taxable year, the credit allowed by subsection (a) of this section shall be
prorated by the ratio that the number of months in the taxpayer's taxable year during which the new consumer-ready wood products facility, or the new products line of an existing consumer-ready wood product manufacturing facility, was in operation manufacturing consumer-ready wood product bears to twelve.

(3) When determining the number of full-time employees who fill new jobs at the new consumer-ready wood product manufacturing facility located in this state, or who fill new jobs at a new consumer-ready wood product line of an existing manufacturing facility located in this state, the eligible taxpayer shall not include any position occupied by any employee of the eligible taxpayer, or of a related person, which existed in this state as of the first day of the second calendar month preceding the calendar month in which the new consumer-ready wood product manufacturing facility, or a new consumer-ready wood product line at an existing consumer-ready wood products manufacturing facility first becomes operational, whether such positions are filled by permanent, seasonal, temporary or part-time employees.

(4) The amount of credit allowable each taxable year shall be calculated annually based upon the number of new jobs filled by full-time employees during the taxable year.

(b) Expiration of credit. — This credit shall expire on the first day of July, two thousand two. When the first day of July in the year two thousand two falls during the taxable year of the eligible taxpayer, the amount of credit allowable for that taxable year shall be limited to that portion of the amount of credit that would have been allowable had the credit not expired multiplied by the ratio the number of months during taxpayers taxable year ending before the first day of July, two thousand two, bears to twelve.

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

(a) Application of credit against business franchise tax. — The amount of credit allowed under section four of this article shall first be applied against the eligible
taxpayer's liability for the tax imposed by article twenty-three of this chapter that is attributable to a new consumer-ready wood product manufacturing facility located in this state and to a new consumer-ready wood product production line at an existing manufacturing facility located in this state.

(b) Application of remaining credit against income tax. — After application of the allowable credit against the tax imposed by article twenty-three of this chapter, as provided in subsection (a) of this section, any remaining credit may be applied against the taxes imposed by article twenty-one or twenty-four of this chapter to the extent those taxes are attributable to a new consumer-ready wood product manufacturing facility located in this state and to a new consumer-ready wood product production line at an existing manufacturing facility located in this state: Provided, That no credit shall be allowed against employer withholding taxes due under article twenty-one of this chapter.

(c) Excess credit forfeited. — If after application of subsections (a) and (b) of this section, any credit remains for the taxable year, the amount remaining and not used is forfeited. Unused credit may not be carried back to any prior taxable year and shall not carry forward to any subsequent taxable year.

(d) Application of this credit when other credits apply. — The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by articles twenty-one, twenty-three or twenty-four of this chapter.

(e) Completion of annual schedule to assert credit. — To assert this credit against tax, the eligible taxpayer shall prepare and file with the annual tax return filed under articles twenty-one, twenty-three or twenty-four of this chapter, an annual schedule showing the amount of tax paid for the taxable year, and the amount of credit allowed under this article. This annual schedule shall set
forth the information and be in the form prescribed by the tax commissioner.

(f) Payments of estimated tax. — A taxpayer may consider the amount of credit allowed under this article when determining the taxpayer's liability under articles twenty-one, twenty-three and twenty-four of this chapter for periodic payments of estimated tax for the taxable year, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule required by subsection (e) of this section.

§11-13M-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.

The amount of credit allowed under this article for the taxable year to a partnership or limited liability company classified as a partnership for the taxable year, or to an electing small business corporation, that remains after application the credit against the tax imposed by article twenty-three of this chapter as provided in subsection (a), section five of this article shall be allocated to the individual partners, members or shareholders, as the case may be, in proportion to their ownership interest in the partnership, limited liability company or electing small business corporation. The amount of credit allocated to the individual partners, members or shareholders, as the case may be, may be applied against the taxes imposed by articles twenty-one and twenty-four of this chapter in accordance with the rule set forth in subsection (b), section five of this article.

§11-13M-7. Annual computation of the number of new jobs held by full-time employees.

(a) The eligible taxpayer shall annually determine the number of new jobs held by full-time permanent employees of the eligible taxpayer in the taxable year by calculating the average number of full-time employees holding jobs for each month of the taxable year by
averaging the beginning and ending monthly employment
of full-time employees, then totaling the monthly
averages and dividing that total by twelve.

(b) The eligible taxpayer shall also annually
determine the number of new jobs filled during the
taxable year by full-time employees of the eligible
taxpayer employed at a new consumer-ready wood
product manufacturing facility, or at a new consumer-
ready wood product line at an existing manufacturing
facility, located in this state that is owned or operated by
the eligible taxpayer, by calculating the average number
of new jobs held by full-time employees for each month
of the taxable year by averaging the beginning and
ending monthly employment of full-time employees
holding new jobs, then totaling the monthly averages and
dividing that total by twelve.

(c) Preexisting jobs carried over from a corporation
or other entity merged with the taxpayer, and not
reflective of a true increase in the number of new jobs in
West Virginia, or preexisting jobs formerly in place with a
contract service provider which are taken over or
supplanted by the internal operations of the taxpayer, or
any other increase in the count of jobs in place with a
taxpayer which is not reflective of new jobs, as defined in
section two of this article, shall not count as new jobs for
purposes of the credit allowed under this article.

(d) The tax commissioner may prescribe by rule
alternative methods for determining the number of jobs
held by full-time permanent employees in the taxable year
upon a finding by the tax commissioner that an alternative
method is appropriate for ascertaining an accurate and
realistic determination of new jobs held by full-time
employees in the taxable year. For purposes of
prescribing alternative methods, the tax commissioner may
require the deduction or inclusion of jobs in place with
contract service providers that provide or at any time
provided any service to any eligible taxpayer or to any
member of the affiliated group related to any eligible
taxpayer or to any one or more entities related to the
eligible taxpayer: Provided, That deduction, or inclusion
of those jobs shall only pertain to jobs held by employees of the contract service provider that are attributable or that were formerly attributable to the service provided by the contract service provider to the taxpayer. The tax commissioner may require any deconsolidation of any filing entity, or may require an alternative method based on separate accounting, unitary combination, combination of the affiliated group or combination of the taxpayer and one or more entities related to the taxpayer, or any other method determined by the tax commissioner to be appropriate for ascertaining an accurate and realistic determination of new jobs held by full-time employees in the taxable year.

§11-13M-8. Availability of credit to successors.

(a) Transfer or sale. — When there is a transfer or sale of the business assets of an eligible taxpayer to a successor taxpayer which continues to operate the new consumer-ready wood product manufacturing facility located in this state, or the new consumer-ready wood product line of an existing manufacturing facility located in this state, the successor taxpayer is entitled to the credit allowed under this article: Provided, That the successor taxpayer otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(b) Allocation of credit between eligible taxpayer and successor eligible taxpayer. — For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor taxpayer under this section occurs, or a merger allowed under this section occurs, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of individuals filling new jobs for which the credit allowed under this article is based and the number of days during the taxable year that each taxpayer owned the new consumer-ready wood product manufacturing facility located in this state, or the new consumer-ready wood product line of an existing manufacturing facility located in this state.
(c) Stock purchases. — When a corporation which is an eligible taxpayer entitled to the credit allowed under this article is purchased through a stock purchase by a new owner, and the corporation remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the credit allowed under this article will not be affected by the ownership change.

(d) Mergers. —

(1) When a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation, or entity, the surviving corporation, or entity, shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled only if the surviving corporation, or entity, otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of employees holding the new jobs upon which the credit allowed under this article is based and the number of days during the taxable year that each owned the transferred business assets: Provided, That when the taxable year of the predecessor eligible taxpayer and the taxable year of the successor eligible taxpayer are different, the apportionment shall be made in accordance with legislative rules prescribed by the tax commissioner.

(e) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article may be transferred only in circumstances where there is a valid successorship as described under this section.

§11-13M-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person has improperly claimed the credit allowed by this article, the amount improperly claimed and which the
person was not entitled to take shall be recaptured. Amended returns shall be filed for any taxable year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.

(b) Recapture for jobs lost. —

(1) In any tax year the number of individuals employed in full-time positions by the eligible taxpayer decreases by more than ten percent, credit recapture shall apply, and the taxpayer shall return to the state an amount of tax determined by multiplying five hundred dollars by the number of full-time jobs lost which exceed ten percent. An amended return shall be filed for the tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty plus such other penalties and additions to tax as may be applicable under the provisions of article ten of this chapter.

(2) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived, in whole or in part, at the discretion of the tax commissioner. However, interest may not be waived.

(c) Notwithstanding the provisions of article ten of this chapter, the time within which a notice of assessment may be issued by the tax commissioner to recover recapture tax shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

§11-13M-10. Administrative rules.
The tax commission may prescribe such rules as may be necessary to carry out the purposes of this article, including, but not limited to, rules relating to applicability of credit, method of claiming of credit, credit recapture, documentation necessary to claim credit and rules preventing abuse of this article by related persons or by change in the form of doing business. All rules promulgated under this article shall be promulgated in accordance with article three, chapter twenty-nine-a of this code.


The provisions of this article shall be reasonably construed. The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

§11-13M-12. Effective date.

This article shall be effective for taxable years beginning on or after the first day of July, one thousand nine hundred ninety-seven.

CHAPTER 212

(S. B. 324—By Senators Love, Schoonover and Anderson)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sales tax exemptions; providing sales tax exemptions on services provided by certain entertainers or performing artists, on materials and services sold by certain county government agencies, and on sales by the division of natural resources of the magazine known as "Wonderful West Virginia".

Be it enacted by the Legislature of West Virginia:
That section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service, in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and/or services are exempt as provided in this subsection:

1. Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

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

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

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

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations, and does not apply to purchases of gasoline or special fuel;

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

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

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

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

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

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

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

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

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

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

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

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

(ii) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and
(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

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

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The tax commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

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

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

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

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

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

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

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible
personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases, when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and "limited duration" means no more than eighty-four consecutive hours; and

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

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

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

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

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

(19) Notwithstanding the provisions of section eighteen of this article or any other provision of this
article to the contrary, sales of propane to consumers for
poultry house heating purposes, with any seller to the
consumer who may have prior paid the tax in his or her
price, to not pass on the same to the consumer, but to
make application and receive refund of the tax from the
tax commissioner, pursuant to rules which are
promulgated after being proposed for legislative approval
in accordance with chapter twenty-nine-a of this code by
the tax commissioner;

(20) Any sales of tangible personal property or
services purchased after the thirtieth day of September,
one thousand nine hundred eighty-seven, and lawfully
paid for with food stamps pursuant to the federal food
stamp program codified in 7 U.S.C. §2011 et seq., as
amended, or with drafts issued through the West Virginia
special supplement food program for women, infants and
children codified in 42 U.S.C. §1786;

(21) Sales of tickets for activities sponsored by
elementary and secondary schools located within this state;

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

(23) Tuition charged for attending educational
summer camps;

(24) Dispensing of services performed by one
corporation, partnership or limited liability company for
another corporation, partnership or limited liability
company when the entities are members of the same
controlled group or are related taxpayers as defined in
Section 267 of the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(25) Food for the following are exempt:

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

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

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

(D) Food sold in an occasional sale by a charitable or nonprofit organization including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;
298 (E) Food sold by any religious organization at a social
299 or other gathering conducted by it or under its auspices, if
300 the purpose in selling the food is to obtain revenue for the
301 functions and activities of the organization and the
302 revenue obtained from selling the food is actually used in
303 carrying on those functions and activities: Provided, That
304 purchases made by the organizations are not exempt as a
305 purchase for resale;

306 (26) Sales of food by little leagues, midget football
307 leagues, youth football or soccer leagues and similar types
308 of organizations, including scouting groups and church
309 youth groups, if the purpose in selling the food is to
310 obtain revenue for the functions and activities of the
311 organization and the revenues obtained from selling the
312 food is actually used in supporting or carrying on
313 functions and activities of the groups: Provided, That the
314 purchases made by the organizations are not exempt as a
315 purchase for resale;

316 (27) Charges for room and meals by fraternities and
317 sororities to their members: Provided, That the purchases
318 made by a fraternity or sorority are not exempt as a
319 purchase for resale;

320 (28) Sales of or charges for the transportation of
321 passengers in interstate commerce;

322 (29) Sales of tangible personal property or services to
323 any person which this state is prohibited from taxing
324 under the laws of the United States or under the
325 constitution of this state;

326 (30) Sales of tangible personal property or services to
327 any person who claims exemption from the tax imposed
328 by this article or article fifteen-a of this chapter pursuant
329 to the provision of any other chapter of this code;

330 (31) Charges for the services of opening and closing a
331 burial lot;

332 (32) Sales of livestock, poultry or other farm products
333 in their original state by the producer of the livestock,
334 poultry or other farm products or a member of the
335 producer's immediate family who is not otherwise engaged
336 in making retail sales of tangible personal property; and
337 sales of livestock sold at public sales sponsored by
338 breeders or registry associations or livestock auction
339 markets: Provided, That the exemptions allowed by this
340 subdivision apply to sales made on or after the first day of
341 July, one thousand nine hundred ninety, and may be
342 claimed without presenting or obtaining exemption
343 certificates: Provided, however, That the farmer shall
344 maintain adequate records;

(33) Sales of motion picture films to motion picture
345 exhibitors for exhibition if the sale of tickets or the charge
346 for admission to the exhibition of the film is subject to the
347 tax imposed by this article and sales of coin-operated
348 video arcade machines or video arcade games to a person
349 engaged in the business of providing the machines to the
350 public for a charge upon which the tax imposed by this
351 article is remitted to the tax commissioner: Provided, That
352 the exemption provided in this subdivision applies to sales
353 made on or after the first day of July, one thousand nine
354 hundred ninety, and may be claimed by presenting to the
355 seller a properly executed exemption certificate;

(34) Sales of aircraft repair, remodeling and
356 maintenance services when the services are to an aircraft
357 operated by a certified or licensed carrier of persons or
358 property, or by a governmental entity, or to an engine or
359 other component part of an aircraft operated by a
360 certificated or licensed carrier of persons or property, or
361 by a governmental entity and sales of tangible personal
362 property that is permanently affixed or permanently
363 attached as a component part of an aircraft owned or
364 operated by a certificated or licensed carrier of persons or
365 property, or by a governmental entity, as part of the repair,
366 remodeling or maintenance service and sales of
367 machinery, tools or equipment, directly used or consumed
368 exclusively in the repair, remodeling or maintenance of
369 aircraft, aircraft engines or aircraft component parts, for a
370 certificated or licensed carrier of persons or property, or
371 for a governmental entity;

(35) Charges for memberships or services provided by
372 health and fitness organizations relating to personalized
373 fitness programs;
(36) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(37) Sales of services after the thirtieth day of June, one thousand nine hundred ninety-seven, by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(38) Commissions received after the thirtieth day of June, one thousand nine hundred ninety-seven, by a manufacturer's representative;

(39) Sales of primary opinion research services after the thirtieth day of June, one thousand nine hundred ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly utilized for quantitative and qualitative opinion research studies;

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five
consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semi-finished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher; and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the
members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance, and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations, and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, airshows, or any other public meeting, display or show other than those specified herein: Provided, however, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The state tax commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: Provided further, That nude dancers or strippers shall not be considered as entertainers for the purposes of this exemption;

(42) After the thirtieth day of June, one thousand nine hundred ninety-seven, charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for
related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or, the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(43) Sales of governmental services or governmental materials after the thirtieth day of June, one thousand nine hundred ninety-seven, by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations; and

(44) Direct or subscription sales by the division of natural resources of the magazine currently entitled "Wonderful West Virginia".

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and/or services are exempt from tax as provided in this subsection:

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

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and shall not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.
AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-five, but prior to the first day of January, one thousand nine hundred ninety-seven, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether such changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-seven, shall be given any effect.
(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections, are not “wages” for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code, and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter, which are collected by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year one thousand nine hundred ninety-seven shall be retroactive to the extent allowable under federal income tax law. With respect to taxable years that begin prior to the first day of January, one thousand nine hundred ninety-six, the law in effect for each of those years shall be fully preserved as to such year, except as provided in this section.

CHAPTER 214

(S. B. 269—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 25, 1997; in effect from passage. Approved by the Governor.]
corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, one thousand nine hundred ninety-five, but prior to the first day of January, one thousand nine hundred ninety-seven, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether such changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, one thousand nine hundred ninety-seven, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the “Federal Tax Reform Act of 1986” and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the “Federal Tax Reform Act of 1986” was enacted, that were not amended or repealed by the “Federal Tax Reform Act of 1986”. Except when inappropriate, any references in any law, executive order or other document:
31 (1) To the Internal Revenue Code of 1954 shall 32 include reference to the Internal Revenue Code of 1986; 33 and
34 (2) To the Internal Revenue Code of 1986 shall 35 include a reference to the provisions of law formerly 36 known as the Internal Revenue Code of 1954.

37 (c) Effective date. — The amendments to this section 38 enacted in the year one thousand nine hundred ninety- 39 seven shall be retroactive to the extent allowable under 40 federal income tax law. With respect to taxable years that 41 begin prior to the first day of January, one thousand nine 42 hundred ninety-six, the law in effect for each of those 43 years shall be fully preserved as to such year, except as 44 provided in this section.

CHAPTER 215

(Com. Sub. for H. B. 2688—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)  
[By Request of the Executive]

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]
reappointment, terms and compensation of members of the
council; powers and duties of council; the responsibilities of
the executive director of the council; requiring a
comprehensive strategic plan that must be reported;
providing for public and private partnerships; changing the
powers and duties of the information services and
communications division; authority of chief technology
officer to obtain assistance from the division; allowing
certain assessments against spending units; and transfer of
proceeds of assessments to office of chief technology
officer.

Be it enacted by the Legislature of West Virginia:

That article eighteen, chapter eighteen-b of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
repealed; that chapter five of said code be amended by adding
thereto two new articles, designated articles one-b and one-c; and
that section four, article seven, chapter five-a 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.

5A. Department of Administration.

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

1B. Chief Technology Officer.
1C. Science and Technology Council.

ARTICLE 1B. CHIEF TECHNOLOGY OFFICER.

§5-1B-1. Findings and purposes.
§5-1B-2. Definitions.
§5-1B-3. Creation of the office of chief technology officer; appointment and
qualifications.
§5-1B-4. Powers and duties; professional staff.
§5-1B-5. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.

§5-1B-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state purchasing division.

§5-1B-7. Biannual report.

§5-1B-8. Exemptions.

§5-1B-1. Findings and purposes.

The Legislature finds and declares that information technology is essential to finding practical solutions to the everyday problems of government, and that the management goals and purposes of government are furthered by the development of compatible, linked information systems across government. Therefore, it is the purpose of this article to create, as an integral part of the office of the governor, the office of chief technology officer with the authority to advise and make recommendations to all state spending units on their information systems.

§5-1B-2. Definitions.

As used in this article:

(a) “Information systems” means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;

(b) “Information technology” means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance and training, and includes the programs and routines used to employ and control the capabilities of data processing hardware;

(c) “Information equipment” includes central processing units, front-end processing units, minicomputers, microprocessors and related peripheral equipment such as data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters and equipment and systems for computer networks;
(d) "Related services" include feasibility studies, systems design, software development and time-sharing services whether provided by state employees or others;

(e) "Telecommunications" means any transmission, emission or reception of signs, signals, writings, images or sounds of intelligence of any nature by wire, radio or other electromagnetic or optical systems. The term includes all facilities and equipment performing those functions that are owned, leased or used by the executive agencies of state government; and

(f) "Chief technology officer" means the person holding the position created in section three of this article and vested with authority to assist state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the individual state spending units, and further the overall management goals and purposes of government.

§5-1B-3. Creation of the office of chief technology officer; appointment and qualifications.

There is hereby created the office of chief technology officer within the office of the governor. The chief technology officer shall be appointed by and shall serve at the will and pleasure of the governor. The chief technology officer shall have knowledge in the field of information technology, experience in the design and management of information systems and an understanding of the special demands upon government with respect to budgetary constraints, the protection of privacy interests and federal and state standards of accountability.

§5-1B-4. Powers and duties; professional staff.

(a) With respect to all state spending units the chief technology officer may:

(1) Develop an organized approach to information resource management for this state;

(2) Provide, with the assistance of the information services and communications division of the department
of administration, technical assistance to the administrators of the various state spending units in the design and management of information systems;

(3) Evaluate, in conjunction with the information services and communications division of the department of administration, the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units;

(4) Develop a mechanism for identifying those instances where systems of paper forms should be replaced by direct use of information equipment and those instances where applicable state or federal standards of accountability demand retention of some paper processes;

(5) Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of information;

(6) Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

(7) Engage in any other activities as directed by the governor; and

(8) Charge a fee to be assessed by the director of the information services and communications division to the state spending units for evaluations performed and technical assistance provided under the provisions of this section. All fees collected by the chief technology officer shall be deposited in a special account in the state treasury to be known as the "Chief Technology Officer Administration Fund". Expenditures from the fund shall be made by the chief technology officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with
the provisions of article three, chapter twelve of this code
and upon the fulfillment of the provisions set forth in
article two, chapter five-a of this code. 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.

(b) With respect to executive agencies only, the chief
technology officer may:

(1) Develop a unified and integrated structure for
information systems for all executive agencies;

(2) Establish, based on need and opportunity,
priorities and time lines for addressing the information
technology requirements of the various executive agencies
of state government;

(3) Exercise such authority inherent to the chief
executive of the state as the governor may, by executive
order, delegate, to overrule and supersede decisions made
by the administrators of the various executive agencies of
government with respect to the design and management of
information systems and the purchase, lease or acquisition
of information equipment and contracts for related
services;

(4) Draw upon staff of other executive agencies for
advice and assistance in the formulation and
implementation of administrative and operational plans
and policies; and

(5) Recommend to the governor transfers of
equipment and human resources from any executive
agency and the most effective and efficient uses of the
fiscal resources of executive agencies, to consolidate or
centralize information-processing operations.

(c) The chief technology officer may employ the
personnel necessary to carry out the work of the office
and may approve reimbursement of costs incurred by
employees to obtain education and training.
§5-1B-5. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.

Any state spending unit that is required to submit a request for proposal to the state purchasing division prior to purchasing goods or services shall notify the chief technology officer, in writing, of any proposed purchase of goods or services related to its information and telecommunication systems. The notice shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the notice to the chief technology officer at the same time it submits its request for proposal to the state purchasing division.

§5-1B-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state purchasing division.

(a) Any state spending unit that is not required to submit a request for proposal to the state purchasing division prior to purchasing goods or services shall notify the chief technology officer, in writing, of any proposed purchase of goods or services related to its information or telecommunication systems. The notice shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the notice to the chief technology officer a minimum of ten days prior to the time it requests bids on the provision of the goods or services.

(b) If the chief technology officer evaluates the suitability of the information and telecommunication equipment and related services under the provisions of subdivision (3), subsection (a), section four of this article and determines that the goods or services to be purchased are not suitable, he or she shall, within ten days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the chief technology officer within the time period required by this section, the
§5-1B-7. Biannual report.

The chief technology officer shall report biannually to the legislative joint committee on government and finance on the activities of his or her office.

§5-1B-8. Exemptions.

The provisions of this article do not apply to the Legislature or the judiciary.

ARTICLE 1C. SCIENCE AND TECHNOLOGY COUNCIL.

§5-1C-1. Legislative purpose.

(a) The Legislature hereby finds that a pressing need exists for a strategy based upon science and technology which promotes a scientifically literate citizenry, enhances government efficiency, encourages the creation of higher-paying jobs and enhances the growth of West Virginia’s gross state product. To that end, the state recognizes the need for collaborative research and development efforts among institutions of higher 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 development to economic advancement.

(b) The Legislature therefore declares that creation of a science and technology advisory council will be
advantageous to the state by working to move West Virginia into a strong competitive position in science and technology and by improving the efficiency of government. The council shall provide policy advice to the Legislature and to the chief technology officer in the office of 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.

§5-1C-2. Science and technology advisory council; members, appointment and expenses; appointment, duties, and compensation of director.

(a)(1) The science and technology advisory council created by chapter one hundred twenty, acts of the Legislature, regular session, one thousand nine hundred ninety-six, which is a body corporate and politic, constituting a public corporation and government instrumentality, is hereby abolished and a new science and technology advisory council is created within the office of the governor.

(2) The council shall consist of eleven members who have professional, labor or managerial knowledge in science and technology development and operations and shall be appointed as follows:

(A) The governor shall appoint five members, with the advice and consent of the Senate. No more than three of the five members may belong to the same political party. Three of the five members shall also be from different congressional districts of the state, and, shall provide a broad state geographical distribution of members of the council;

(B) The governor shall appoint one member, with the advice and consent of the Senate, from a list of two persons recommended by the speaker of the House of Delegates;
(C) The governor shall appoint one member, with the
advice and consent of the Senate, from a list of two
persons recommended by the president of the Senate;

(D) The governor shall appoint two members, 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;

(E) The governor shall appoint one member, 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

(F) The governor shall appoint one member, with the
advice and consent of the Senate, from a list of two
persons recommended by the council for community and
economic development.

(b) The terms of the council members first taking
office on or after the effective date of this legislation
expire as designated by the governor at the time of their
appointment, with three terms expiring at the end of the
first year, four terms expiring at the end of the second
year, and four terms expiring at the end of the third year.
As the original appointments expire, each subsequent
appointment is 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. In cases of any vacancy in the office of a
member, the 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 as chair. The council
shall conduct all meetings in accordance with the open
(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. The 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 any state spending unit for research and administrative support.

(g) The executive director of the council shall be available to the governor, the chief technology officer within the office of 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.

§5-1C-3. Powers and duties of science and technology council.
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(a) (1) The council shall consult with the board of trustees of the university system, the board of directors of the college system and with state business leaders in the exercise of its powers and duties, which include, but are not limited to, the following:

(A) Preparation of a comprehensive strategic plan and recommendation of programs in furtherance of the comprehensive strategic plan that will support and foster state science and technology research;

(B) Cooperation with appropriate state spending units to retain and enlarge existing state industries through technology expansion; and

(C) Formulation of plans to establish science and technology research centers at state colleges and universities.

(2) 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.

(3) The council shall develop an initial comprehensive strategic plan that will support and foster economic growth in science and technology research and development in the state and shall provide the initial plan to the chief technology officer within the office of the governor and the joint committee on government and finance no later than the first day of July, one thousand nine hundred ninety-seven. The initial comprehensive strategic plan shall include, but not be limited to, the following:

(A) A science and technology policy;

(B) The identification of strengths and weaknesses in the basic science resources and research capabilities in the state;

(C) The identification of methods that will coordinate and engender collaborative research efforts between
research entities throughout the state, whether public or private;

(D) 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;

(E) Recommendations on how to improve and strengthen the partnership between the private sector, institutions of higher education and government;

(F) Recommendations on how to improve the infrastructure for research and research training;

(G) Recommendations on a system to transfer technology to the private sector in the state;

(H) Recommendations on information systems that serve the effectiveness and efficiency of state spending units and higher education and further the overall management goals and purposes of government;

(I) Recommendations on a tracking system for special needs students enrolled in the public schools and state colleges and universities, and the programs and services provided for those students;

(J) Recommendations on legislative changes required to improve the overall science and technology environment in the state; and

(K) Other recommendations on science and technology policy and programs as appropriate.

(4) The strategic plan may be updated and refiled on or before the first day of July of each year. The council shall submit an annual work plan each year beginning the first day of July, one thousand nine hundred ninety-eight, to the chief technology officer and the joint committee on government and finance.

(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 comprehensive 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 provided in section four of this article, 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.

§5-1C-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. The chief technology officer within the office of the governor and the council, by a majority vote, shall approve all contracts and joint venture agreements. The council may also enter into contractual agreements for consideration even though the entities are funded from sources other than the state. Members of the council may sit on the boards of directors of any contracting private
nonprofit corporation, foundation or firm: Provided,
That members of the council are not exempt from any of
the provisions of chapter six-b of this code.

(b) The council may receive and accept gifts or
grants from private foundations, corporations, individuals,
devises and bequests or from other lawful sources. The
funds shall be paid into a special account in the state
treasury for the use and benefit of the science and
technology advisory council.

§5-1C-5. Exemptions.

The provisions of this article do not apply to the
Legislature or the judiciary.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4. Powers and duties of division generally; professional
staff; telephone service.

(a) The division is responsible for providing
technical services and assistance to the various state
spending units with respect to developing and improving
data processing and telecommunications functions. The
division may provide training and direct data processing
services to the various state agencies. The division shall,
upon request of the chief technology officer within the
office of the governor, provide technical assistance in
evaluating the economic justification, system design and
suitability of equipment and systems used in state
government. The director shall report to the secretary.

(b) The director is responsible for the development
of personnel to carry out the technical work of the
division and may approve reimbursement of costs
incurred by employees to obtain education and training.

(c) The director may assess each state spending unit
for the cost of any evaluation of the economic
justification, system design and suitability of equipment
and systems used by the state spending unit or any other
technical assistance that is provided or performed by the
chief technology officer and the division under the
provisions of section four, article one-b of this chapter.
23  (d) The director shall transfer any moneys received as
24  a result of the assessments that he or she makes under
25  subsection (c) of this section to the office of chief
26  technology officer. The director shall report quarterly to
27  the joint committee on government and finance on all
28  assessments made pursuant to subsection (c) of this
29  section.

30  (e) The director shall maintain an accounting system
31  for all telephone service to the state.

32  (f) The provisions of this article do not apply to the
33  Legislature or the judiciary.

CHAPTER 216

(S. B. 503—By Senators Oliverio, Walker, Prezioso,
McKenzie and Tomblin, Mr. President)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-four, chapter twen-
ty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, all relating to the technolo-
gy-related assistance revolving loan fund for individuals with
disabilities act; authorizing the director of the division of
rehabilitation services or his or her designee to vote as an ex
officio member of the technology-related assistance revolv-
ing loan fund for individuals with disabilities board; revising
qualifications of members of board; continuing the board
and terms of members; authority of governor to appoint
members of board; removal of board member; compensation
and expenses for board members; powers, duties and respon-
sibilities of the board; legislative rules; reports to the Legisla-
ture; loan agreements; maximum interest rate on loans; creat-
ing the technology-related assistance revolving loan fund for
individuals with disabilities fund in the state treasury; abol-
ishment of prior fund; deposits required to be made into
fund; and administrative costs.
Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter twenty-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 24. TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND FOR INDIVIDUALS WITH DISABILITIES ACT.

§29-24-1. Legislative findings and declarations.
§29-24-2. Terms defined.
§29-24-3. Board created, membership, terms, officers and staff.
§29-24-5. Power, duties and responsibilities of the board; loans.
§29-24-6. Disbursements.
§29-24-7. Fund created.
§29-24-8. Deposits created by the board.

§29-24-1. Legislative findings and declarations.

Individuals with disabilities comprise a significant and increasing percentage of West Virginia's population. The Legislature finds and declares that action is necessary to assist these individuals in their homes, schools, employment and communities to become more independent citizens of the state. Many of these individuals require technology-related devices and technology-related services in order to perform functions, such as caring for themselves, performing manual tasks, mobility, seeing, hearing, speaking, breathing and learning in order to have the ability to more independently participate in society and the work force. In order to meet the present and increasing needs of West Virginians for technology-related devices and technology-related services, it is necessary for the state to provide funds for the technology-related revolving loan fund for individuals with disabilities that neither supplant nor replace existing state, federal or private sector funds.

§29-24-2. Terms defined.

As used in this article, the term:
(a) "Board" means the technology-related assistance revolving loan fund for individuals with disabilities board.

(b) "Individual with disability" means any individual, of any age who, for the purposes of state or federal law, is considered to have a disability or handicap, injuries and chronic health conditions, whether congenital or acquired; and who is or would be enabled by technology-related devices or technology-related services to maintain or improve his or her ability to function in society and the workplace.

(c) "Qualifying borrower" means any individual with disabilities and their family members, guardians, authorized representatives or nonprofit entity who demonstrates that such a loan will improve their independence or become more productive members of the community. The individual must demonstrate credit worthiness and repayment abilities to the satisfaction of the board. No more than twenty percent of all loan funds are to be provided to nonprofit entities in a single year.

(d) "Technology-related assistance" means either the provision of technology-related devices or technology-related services to improve the independence, quality of life or productive involvement in the community of individuals with disabilities.

(e) "Technology-related device" means any item, piece of equipment or product system, whether acquired commercially off-the-shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of individuals with disabilities.

(f) "Technology-related service" means any service that directly assists an individual with a disability in the selection, acquisition or use of a technology-related device, including:

(1) The evaluation of the needs of an individual with a disability, including a functional evaluation in the individual's customary environment;
(2) Purchasing, leasing or otherwise providing for the acquisition of technology-related devices by individuals with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing technology-related devices;

(4) Coordinating and using other therapies, interventions or services with technology-related devices, such as those associated with existing education and rehabilitation plans and programs; and

(5) Training or technical assistance for individuals or the family of an individual with disabilities.

(g) "Revolving loan fund" means the technology-related assistance revolving loan fund for individuals with disabilities established in this article.

(h) "Consumer" means individuals with disabilities and, when appropriate, their family members, guardians, advocates or authorized representatives.

§29-24-3. Board created, membership, terms, officers and staff.

(a) The technology-related assistance revolving loan fund for individuals with disabilities board created by chapter two hundred forty-seven, acts of the Legislature, regular session, one thousand nine hundred ninety-six, is hereby continued.

(b) The board shall consist of seven members as follows, of whom at least three must be individuals with disabilities:

(1) Director of the division of rehabilitation services, ex officio, who shall be entitled to vote, or his or her designee;

(2) A representative of the banking industry;

(3) A representative of the medical profession;

(4) A certified public accountant; and
(5) Three members from the public at large who are users or providers of technology-related assistance devices or services for individuals with disabilities. Members shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of three years. Members appointed by the governor with the advice and consent of the Senate prior to the effective date of this section shall continue to serve for the terms for which they were appointed. State officers or employees may be appointed to the board unless otherwise prohibited by law.

(c) In the event a board member fails to attend more than twenty-five percent of the scheduled meetings in a twelve-month period, the board may, after written notification to that member and the secretary of education and the arts, request in writing that the governor remove the member and appoint a new member to serve his or her unexpired term.

(d) In the event of death, resignation, disqualification or removal for any reason of any member of the board, the vacancy shall be filled in the same manner as the original appointment and the successor shall serve for the unexpired term.

(e) The board shall elect from its membership a chairperson, treasurer and secretary as well as any other officer as appropriate. The term of the “chairperson” is for two years in duration and he or she cannot serve more than two consecutive terms.


Members of the board who are not employees of the state are entitled to receive a compensation in an amount not to exceed fifty dollars for each day the member of the board is in attendance at a meeting of the board, plus reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as a member of the board in accordance with state travel regulations. Members with disabilities are also entitled to reimbursement for costs associated with personal assistance, interpreters and disability-related accommodations for the purpose of conducting the business of the board.
§29-24-5. Power, duties and responsibilities of the board; loans.

(a) The board has the following powers, duties and responsibilities:

1. Meet at such times (minimum of four times each fiscal year) and at places as it determines necessary or convenient to perform its duties. The board shall also meet on the call of the chairperson or secretary of education and the arts;

2. Maintain written minutes of its meetings;

3. Propose rules for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for the transaction of its business and to carry out the purposes of this article. Such rules shall include: (A) Guidelines, procedures, reporting requirements, accountability measures and such other criteria as the board deems appropriate and necessary to fulfill its governance responsibility under this article if it elects to contract with a nonprofit, consumer-driven organization to carry out the purposes of this article; (B) an appeals process with regard to the administration of the fund; and (C) rules governing the operation of the fund, including, but not limited to, eligibility of receipt of funds and all other matters consistent with and necessary to accomplishing the purpose of this fund;

4. Employ personnel on a full-time, part-time or contracted basis. Board personnel may be members of the state civil service system. Participating agencies shall make staff support and resources available to the board whenever practicable at the discretion of the agencies. The compensation of personnel shall be paid from moneys in the revolving loan fund;

5. Receive, administer and disburse funds to support purposes established by this article and contract with nonprofit, consumer-based groups dealing with individuals...
with disabilities to assist in administering programs established by this article;

(6) Maintain detailed records of all expenditures of the board, funds received as gifts and donations and disbursements made from the revolving loan fund;

(7) Submit to the secretary of education and the arts and the Legislature annually a summary report concerning programmatic and financial status of the revolving loan fund;

(8) Develop and implement a comprehensive set of financial standards to ensure the integrity and accountability of all funds received as well as loan funds disbursed; and

(9) Conform to the standards and requirements prescribed by the state auditor.

(b) Subject to available funds, the board shall enter into loan agreements with any qualifying borrower, who demonstrates that:

(1) The loan will assist one or more individuals with disabilities in improving their independence, productivity and full participation in the community; and

(2) The applicant has the ability to repay the loan. Any necessary loan limitation shall be determined by the board. All loans must be repaid within such terms and at such interest rates as the board may determine to be appropriate. However, no loan may extend beyond sixty months from date of award and may be paid off anytime without prepayment penalty. The board shall determine the interest rate to be charged on loans made pursuant to this article, but in no event may the interest rate on any such loans be less than four or more than twenty-one percent per annum.

(c) The board may authorize loans up to ninety percent of the cost of an item or items.

(d) The board may award loans to qualifying borrowers for purposes, including, but not limited to, the following:
(1) To assist one or more individuals with disabilities to improve their independence through the purchase of technology-related devices; and

(2) To assist one or more individuals with disabilities to become more independent members of the community and improve such individuals quality of life within the community through the purchase of technology-related devices.

(e) In the event of the failure of the borrower to repay the loan balance due and owing, the board shall seek to recover the loan balance by such legal or administrative action available to it. Persons or representatives of persons who default on a loan are not eligible for a new loan. The board shall retain ownership of all property, equipment or devices until the borrower's loan is paid in full.

(f) A new loan may not be issued to, or on behalf of, a disabled person if a previous loan made to, or on behalf of, such person remains unpaid.

(g) The board may charge a fee for loan applications and processing. All funds generated by fee charges shall be directly placed into the revolving loan fund to off-set the costs of application processing.

The board may accept federal funds granted by Congress or executive order for the purposes of this chapter as well as gifts and donations from individuals, private organizations or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the Legislature to continue the purposes for which the federal funds are made available. All funds received in the manner described in this article shall be deposited in the revolving loan fund to be disbursed as other moneys in the revolving loan fund.

§29-24-6. Disbursements.

Loans may be made for amounts ranging from a minimum of five hundred dollars to a maximum of five thousand dollars. The loan must be used to purchase technology-related devices or directly related services that will
assist the person with a disability to overcome barriers in
daily living.

§29-24-7. Fund created.

The technology-related assistance revolving loan fund
for individuals with disabilities is hereby created in the
state treasury to be expended by the board in accordance
with the provisions of and for the purposes of this article.
Upon the effective date of this section, any funds remain-
ing in the technology-related assistance revolving loan
fund for individuals with disabilities created by chapter
two hundred forty-seven, acts of the Legislature, regular
session, one thousand nine hundred ninety-six, which is
hereby abolished, shall be deposited into the fund created
by this section. Nothing contained herein may be con-
strued to require any level of funding by the Legislature.

§29-24-8. Deposits created by the board.

The board shall deposit all amounts paid, appropriat-
ed, granted or donated to it, including interest accrued on
loan balances, fees charged and funds received in repay-
ment of loans, in the revolving loan fund.


The moneys in the revolving loan fund shall be used
only for the following purposes:

(a) Implementing revolving loan program for
technology-related devices;

(b) Providing technology-related devices to individu-
als with severe disabilities who meet economic criteria
established by the board;

(c) Providing support for technology-related assis-
tance;

(d) Providing technology-related and disability pre-
vention education and research;

(e) Disseminating public information;

(f) Conducting program evaluation and needs assess-
ment;
(g) Operating the board and other administrative and personnel costs;
(h) Conducting research and demonstration projects, including new and future uses of technology-related services; and
(i) Developing a strategic plan.

Administrative costs are not to exceed ten percent of the revolving loan fund’s yearly budget.

All unexpended moneys contained in this fund at the end of the fiscal year shall be carried forward from year to year.

CHAPTER 217

(Com. Sub. for S. B. 415—By Senators Buckalew and Sharpe)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to prohibiting use or possession of tobacco products by inmates held in facilities operated solely by the regional jail and correctional facility authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.
1 Notwithstanding any provision of this code to the contrary, the authority shall prohibit the use or possession of tobacco products by inmates held in facilities operated solely by the authority. The authority may establish smoking cessation programs to facilitate the prohibition set forth in this section.

CHAPTER 218

(S. B. 291—By Senators Ross, Dittmar, Love, Wiedebusch, Ball, McKenzie and Buckalew)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirty-five and thirty-six, all relating to toll bridges; authorizing municipalities to maintain ownership of toll bridges under certain circumstances; establishing permissible uses of tolls collected; and requiring municipalities retaining bridges to provide for their maintenance and inspection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. TOLL BRIDGES.

§17-17-23. When tolls to cease.
§17-17-35. Authorization for municipalities to maintain ownership of and continue charging tolls for toll bridges upon the payment of
all bonds issued to acquire and construct or refinance the bridge
and the interest thereon; permitted use of tolls collected.

§17-17-36. Maintenance of bridges retained by municipalities after repay-
ment of indebtedness thereon; inspections by commissioner;
bridge maintenance fund.

§17-17-23. When tolls to cease.

Except as otherwise provided in section thirty-five of
this article, when the particular bonds issued for any
bridge or bridges and the interest thereon shall have been
paid, or a sufficient amount shall have been provided for
their payment and shall continue to be held for that
purpose, and there are no operating or maintenance
expenses outstanding, and any advances made from the
state road fund toward the construction, operation and
maintenance of such bridge or bridges shall have been
repaid, the authority operating such bridge or bridges
shall cease the collection of tolls for the use thereof:  Provided, That the commissioner may, in his discretion,
continue thereafter tolls for a period sufficient to
accumulate sufficient funds to pay for major maintenance
and repairs foreseeable as being needed on such bridge or
bridges in the immediate future:  Provided, however, That
tolls may be imposed or reimposed on any such bridge or
bridges in the manner provided in section twenty-three-b
of this article. Thereafter, and as long as the cost of
maintaining, repairing and operating such bridge or
bridges is being provided for through means other than
tolls, no tolls shall be charged for transit thereover and
such bridge or bridges shall be free:  Provided further,
That notwithstanding any other provision of law, if any
portion of the cost of construction of a toll bridge is
financed, with the aid of federal funds under federal-aid
road legislation and the share of the cost of such bridge
borne by the state or its subdivisions shall have been
repaid from tolls, or a fund sufficient for such repayment
shall have been provided or set aside for that purpose, tolls
for the use of such bridge shall cease and such bridge
shall thereafter be maintained and operated as a free
bridge.
§17-17-35. Authorization for municipalities to maintain ownership of and continue charging tolls for toll bridges upon the payment of all bonds issued to acquire and construct or refinance the bridge and the interest thereon; permitted use of tolls collected.

Any municipality which owns and operates a toll bridge as of the first day of January, one thousand nine hundred ninety-eight, may, at the sole discretion of the municipality, and upon adoption of a resolution to such effect by the council of such municipality and subject to the requirements of section thirty-six of this article, retain ownership of the toll bridge and may establish and retain toll charges for the use thereof after all bonds issued for the acquisition and construction of the bridge, all bonds issued to refinance such bonds and all interest on such bonds have been paid or such payment has been provided for by defeasement or otherwise. All such tolls collected after a municipality determines to maintain ownership of a toll bridge and the bonds issued for the acquisition and construction of such bridge or issued to refinance such bonds and all interest thereon have been paid or such payment has been provided for by defeasement or otherwise, shall be applied first to provide a fund sufficient to pay the cost of maintaining, repairing, operating and demolishing such bridge pursuant to section thirty-six of this article, and thereafter, for any legal purpose of the municipality. Collected tolls remaining after providing for the payment of the cost of maintaining, repairing, operating and demolishing such bridge may be pledged or otherwise encumbered to effectuate any municipal purpose.

§17-17-36. Maintenance of bridges retained by municipalities after repayment of indebtedness thereon; inspections by commissioner; bridge maintenance fund.

(a) Prior to a municipality retaining ownership of a bridge pursuant to section thirty-five of this article, the
municipality shall notify the commissioner in writing of its intent to do so. Upon receipt of such notice, the commissioner shall make an initial inspection of the bridge to determine what repairs, replacements, improvement and additions are necessary to place the bridge in a safe and efficient condition for use of the public, cause an estimate of the cost of such and shall also provide an estimate of the amount of funds required annually to maintain the bridge after completion of initial improvements. The commissioner shall appoint an engineer to inspect the bridge and to consult and assist the commissioner in making findings. The cost of the engineer's service shall be paid by the municipality.

(b) The municipality shall make the improvements to the bridge that are determined to be necessary by the commissioner. The commissioner may make periodic inspections during construction of improvements and at the completion of any improvement project. The commissioner shall report on each inspection to the municipality and include identification of any deficiencies with recommended action to correct the deficiencies. The municipality shall reimburse the commissioner for inspections and reports.

(c) The municipality shall establish a separate fund, designated as the “bridge maintenance fund”. Proceeds in the fund shall be expended for the purpose of improvements and maintenance of the bridge in a safe and efficient condition for use by the public. Upon the initial inspection of the bridge by the commissioner pursuant to subsection (a) of this section, the municipality shall deposit in the fund an amount equal to the estimate of the commissioner for the costs of the initial improvements to the bridge made pursuant to subsection (a) of this section. Upon completion of the initial improvements, the municipality shall maintain an adequate balance of moneys in the fund sufficient to maintain the bridge annually, as determined by the commissioner pursuant to subsection (a) of this section.
AN ACT to amend article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to authorizing the tourism commission the use of the tourism promotion fund to support the southern legislative conference annual meeting to be held in this state in the year one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12a. Tourism fund support of southern legislative conference annual meeting of 1997.

(a) Notwithstanding the provisions of section twelve of this article, the tourism commission may expend moneys from the tourism promotion fund in the amount necessary to support the annual meeting of the southern legislative conference which will be held in this state in the month of July, one thousand nine hundred ninety-seven.

(b) The provisions of this section expire on the first day of September, one thousand nine hundred ninety-seven.
AN ACT to amend and reenact sections fifteen, sixteen and seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article six of said chapter by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying definitions of employer and employment; providing that agricultural labor if performed by certain aliens is not employment; authorizing food stamp overissuance intercept of unemployment benefits; codifying reporting requirements and required information; providing exemptions to confidentiality requirements; allowing use of information; and clarifying that breach of confidentiality provisions are criminal violations.

Be it enacted by the Legislature of West Virginia:

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

Article

1A. Definitions.

6. Employee Eligibility; Benefits.


ARTICLE 1A. DEFINITIONS.


§21A-1A-17. Employment does not include.


1 "Employer" means:

2 (1) Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

3 (2) Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

4 (3) For the effective period of its election pursuant to section three, article five of this chapter, any employing unit which has elected to become subject to this chapter;

5 (4) Any employing unit which: (A) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more; or (B) for some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year had in employment at least one individual (irrespective of whether the same individual was in employment in each day) except as provided in subdivisions (7) and (8) of this section;

6 (5) Any employing unit for which service in employment, as defined in subdivision (9), section sixteen of this article, the definition of "employment" in this article is performed;

7 (6) Any employing unit for which service in employment, as defined in subdivision (10), section sixteen of this article, the definition of "employment" in this article is performed;

8 (7) Any employing unit for which agricultural labor, as defined in subdivision (12), section sixteen of this article, the definition of "employment" is performed; or

9 (8) Any employing unit for which domestic service in employment, as defined in subdivision (13), section
35 sixteen of this article, the definition of "employment" is
36 performed.


1 “Employment”, subject to the other provisions of this
2 article, means:

3 (1) Service, including service in interstate commerce,
4 performed for wages or under any contract of hire, written
5 or oral, express or implied;

6 (2) Any service performed by an employee, as defined
7 in Section 3306(i) of the federal Unemployment Tax Act,
8 including service in interstate commerce;

9 (3) Any service performed, including service in
10 interstate commerce, by any officer of a corporation;

11 (4) An individual’s entire service, performed within or
12 both within and without this state if: (A) The service is
13 localized in this state; or (B) the service is not localized in
14 any state but some of the service is performed in this state
15 and: (i) The base of operations, or, if there is no base of
16 operations, then the place from which the service is
17 directed or controlled, is in this state; or (ii) the base of
18 operations or place from which the service is directed or
19 controlled is not in any state in which some part of the
20 service is performed but the individual’s residence is in
21 this state;

22 (5) Service not covered under subdivision (4) of this
23 section and performed entirely without this state with
24 respect to no part of which contributions are required and
25 paid under an unemployment compensation law of any
26 other state or of the federal government, is employment
27 subject to this chapter if the individual performing the
28 services is a resident of this state and the commissioner
29 approves the election of the employing unit for whom the
30 services are performed that the entire service of the
31 individual is employment subject to this chapter;

32 (6) Service is localized within a state, if: (A) The
33 service is performed entirely within the state; or (B) the
34 service is performed both within and without the state, but
the service performed without the state is incidental to the
individual’s service within this state, as, for example, is
temporary or transitory in nature or consists of isolated
transactions;

(7) Services performed by an individual for wages are
employment subject to this chapter unless and until it is
shown to the satisfaction of the commissioner that: (A)
The individual has been and will continue to be free from
control or direction over the performance of the services,
both under his or her contract of service and in fact; and
(B) the service is either outside the usual course of the
business for which the service is performed or that such
service is performed outside of all the places of business
of the enterprise for which such service is performed; and
(C) the individual is customarily engaged in an
independently established trade, occupation, profession or
business;

(8) All service performed by an officer or member of
the crew of an American vessel (as defined in Section 305
of an act of Congress entitled Social Security Act
Amendment of 1946, approved the tenth day of August,
one thousand nine hundred forty-six), on or in connection
with the vessel, provided that the operating office, from
which the operations of the vessel operating on navigable
waters within and without the United States is ordinarily
and regularly supervised, managed, directed and
controlled, is within this state;

(9) (A) Service performed by an individual in the
employ of this state or any of its instrumentalities (or in
the employ of this state and one or more other states or
their instrumentalities) for a hospital or institution of
higher education located in this state: Provided, That the
service is excluded from “employment” as defined in the
federal Unemployment Tax Act solely by reason of
Section 3306(c)(7) of that act and is not excluded from
“employment” under subdivision (9), section seventeen
of this article;

(B) Service performed in the employ of this state or
any of its instrumentalities or political subdivisions thereof
or any of its instrumentalities or any instrumentality of
more than one of the foregoing or any instrumentality of
any foregoing and one or more other states or political
subdivisions: Provided, That the service is excluded from
“employment” as defined in the federal Unemployment
Tax Act by Section 3306(c)(7) of that act and is not
excluded from “employment” under subdivision (13),
section seventeen of this article; and

(C) Service performed in the employ of a nonprofit
educational institution which is not an institution of higher
education;

(10) Service performed by an individual in the
employ of a religious, charitable, educational or other
organization but only if the following conditions are met:

(A) The service is excluded from “employment” as
defined in the federal Unemployment Tax Act solely by
reason of Section 3306(c)(8) of that act; and

(B) The organization had four or more individuals in
employment for some portion of a day in each of twenty
different weeks, whether or not the weeks were
consecutive, within either the current or preceding
calendar year, regardless of whether they were employed
at the same moment of time;

(11) Service of an individual who is a citizen of the
United States, performed outside the United States after
the thirty-first day of December, one thousand nine
hundred seventy-one (except in Canada and in the case of
the Virgin Islands after the thirty-first day of December,
one thousand nine hundred seventy-one, and before the
first day of January, the year following the year in which
the secretary of labor approves for the first time an
unemployment insurance law submitted to him or her by
the Virgin Islands for approval), in the employ of an
American employer (other than service which is
considered “employment” under the provisions of
subdivision (4), (5) or (6) of this section or the parallel
provisions of another state’s law) if:

(A) The employer’s principal place of business in the
United States is located in this state; or
(B) The employer has no place of business in the United States, but: (i) The employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) None of the criteria of paragraphs (A) and (B) of this subdivision is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on the service, under the law of this state.

(D) An "American employer", for purposes of this subdivision, means a person who is: (i) An individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed by an individual in agricultural labor as defined in subdivision (3), section seventeen of this article when:

(A) The service is performed for a person who: (i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor including labor performed by an alien referred to in paragraph (B) of this subdivision; or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor, including labor performed by an alien referred to in paragraph (B) of this subdivision, ten or more individuals, regardless of whether they were employed at the same moment of time;
UNEMPLOYMENT COMPENSATION

(B) The service is not performed in agricultural labor if performed by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(C) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader: (i) If the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and (ii) if the other person is not otherwise an employer of the individual;

(D) For the purposes of this subdivision, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under paragraph (C) of this subdivision: (i) The other person and not the crew leader shall be treated as the employer of the individual; and (ii) the other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader (either on his or her own behalf or on behalf of the other person) for the service in agricultural labor performed for the other person; and

(E) For the purposes of this subdivision, the term "crew leader" means an individual who: (i) Furnishes individuals to perform service in agricultural labor for any other person; (ii) pays (either on his or her own behalf or on behalf of the other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person;
(A) The term "employment" includes domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in domestic service; and

(B) Notwithstanding the foregoing definition of "employment", if the services performed during one half or more of any pay period by an employee for the person employing him or her constitute employment, all the services of the employee for the period are employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him or her do not constitute employment, then none of the services of the employee for the period are employment.

§21A-1A-17. Employment does not include.

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state is not certified for any year by the secretary of labor under Section 1603(c) of the federal Internal Revenue Code, the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;
(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after the publications which shall comply with the general rules of the department;

(3) Service performed by an individual in agricultural labor, except as provided in subdivision (12), section sixteen of this article, the definition of "employment". For purposes of this subdivision, the term "agricultural labor" includes all services performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in Section (15)(g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or
operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity with respect to which the service is performed; but the provisions of subparagraphs (i) and (ii) of this paragraph are not applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(E) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in subdivision (13), section sixteen of this article, the definition of "employment";

(5) Service performed by an individual in the employ of his or her son, daughter or spouse;

(6) Service performed by a child under the age of eighteen years in the employ of his or her father or mother;
(7) Service as an officer or member of a crew of an 
American vessel, performed on or in connection with the 
vessel, if the operating office, from which the operations 
of the vessel operating on navigable waters within or 
without the United States are ordinarily and regularly 
supervised, managed, directed and controlled, is without 
this state;

(8) Service performed by agents of mutual fund 
broker-dealers or insurance companies, exclusive of 
industrial insurance agents, or by agents of investment 
companies, who are compensated wholly on a commission 
basis;

(9) Service performed: (A) In the employ of a church 
or convention or association of churches, or an 
organization which is operated primarily for religious 
purposes and which is operated, supervised, controlled or 
principally supported by a church or convention or 
association of churches; or (B) by a duly ordained, 
commissioned or licensed minister of a church in the 
exercise of his or her ministry or by a member of a 
religious order in the exercise of duties required by the 
order; or (C) in a facility conducted for the purpose of 
carrying out a program of rehabilitation for individuals 
whose earning capacity is impaired by age or physical or 
mental deficiency or injury or providing remunerative 
work for individuals who because of their impaired 
physical or mental capacity cannot be readily absorbed in 
the competitive labor market by an individual receiving 
the rehabilitation or remunerative work; or (D) as part of 
an unemployment work-relief or work-training program 
assisted or financed, in whole or in part, by any federal 
agency or an agency of a state or political subdivision 
thereof, by an individual receiving the work relief or work 
training; or (E) by an inmate of a custodial or penal 
institution;

(10) Service performed in the employ of a school, 
college or university, if the service is performed: (A) By a 
student who is enrolled and is regularly attending classes 
at the school, college or university; or (B) by the spouse of 
a student, if the spouse is advised, at the time the spouse
commences to perform the service, that: (i) The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college or university; and (ii) the employment will not be covered by any program of unemployment insurance;

(11) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in this article; and

(13) Service in the employ of a governmental entity referred to in subdivision (9), section sixteen of this article, the definition of "employment" if the service is performed by an individual in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (C) as a member of the state national guard or air national guard; (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (E) in a position which, under or pursuant to the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of "employment", services, except agricultural labor and domestic service in a private home, are in employment if with respect to the services a tax is required
to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-17. Food stamp overissuance intercept of unemployment benefits.

(a) Notwithstanding the provisions of section two, article ten of this chapter, the commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes an uncollected overissuance of food stamp coupons, as defined under subsection (f) of this section:

(1) The amount, if any, determined pursuant to a written agreement between the individual and the department of health and human resources under Section 13(c)(3)(A) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(A), and submitted to the commissioner; or

(2) Any amount otherwise required to be deducted and withheld from such unemployment compensation pursuant to legal process, as that term is used in Section 13(c)(3)(B) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(3)(B) properly served upon the commissioner.

(b) Any amount deducted and withheld under subsection (a) of this section shall be paid by the commissioner to the department of health and human resources.

(c) Any amount deducted and withheld under subsection (a) of this section shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the department of health and human resources in satisfaction of the individual’s uncollected overissuance.
For purposes of this section, the term "unemployment compensation" means any compensation payable under this chapter, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment.

This section applies only if appropriate arrangements have been made for reimbursement by the department of health and human resources for the administrative costs incurred by the commissioner under this section which are attributable to uncollected overissuance being enforced by the state or department of health and human resources.

The term "uncollected overissuance" means, for purposes of this section, obligations which are being enforced pursuant to a plan described in Section 13(c)(1) of the Food Stamp Act of 1977, as codified in 7 U.S.C. 2022(c)(1).

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.


§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name and the address at which the employer's payroll records are maintained;
(2) Each employee’s social security account number, name, and the gross wages paid to each employee, which shall include the first eight thousand dollars of remuneration and all amounts in excess of such amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first eight thousand dollars of remuneration paid to each employee and all amounts in excess of such amount, notwithstanding subdivision (1), subsection (b), section twenty-eight, article one-a of this chapter; and

(4) Other information as is reasonably connected with the administration of this chapter.

(b) Information thus obtained may not be published or be open to public inspection so as to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information thus obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States department of agriculture;

(2) The state agency responsible for enforcement of the medicaid program under Title XIX of the Social Security Act;

(3) The United States department of health and human services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; secondary, post-secondary and vocational education; vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Job Training and Partnership Act;
(5) The tax division, but only for the purposes of collection and enforcement;

(6) The division of labor for purposes of enforcing the wage bond and the contractor licensing provisions of chapter twenty-one of this code;

(7) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

(8) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

(9) The division of workers' compensation for purposes of collection and enforcement: Provided, That the division of workers' compensation shall provide similar information to the other divisions of the bureau of employment programs.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential so as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse the bureau of employment programs for any cost associated therewith.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.
(h) No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U.S.C. 158(f)(3) of an agreement between the organization and the employer.


(a) The bureau of employment programs shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, and to employees of the federal secretary of health and human services, any wage and benefit information with respect to individuals which is contained in its records.

The term "state or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan described in Section 453, 453a or 454 of the Social Security Act, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(b) The requesting agency shall agree that the information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing the obligations which are being enforced pursuant to a plan described in Section 453, 453a or 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.
22 (c) The information may not be released unless the 23 requesting agency agrees to reimburse the costs involved 24 for furnishing the information.

25 (d) In addition to the requirements of this section, all 26 other requirements with respect to confidentiality of 27 information obtained in the administration of this chapter 28 and the sanctions imposed on improper disclosure shall 29 apply to the use of the information by officers, and 30 employees of child support enforcement agencies. A state 31 or local child support enforcement agency may disclose to 32 any agent of the agency that is under contract with the 33 agency to carry out the purposes described in subsection 34 (b) of this section, wage information that is disclosed to an 35 officer or employee of the agency under subsection (a) of 36 this section. Any agent of a state or local child support 37 agency that receives wage information under this 38 paragraph shall comply with the safeguards established to 39 keep the information confidential and is subject to the 40 criminal provisions of subsection (g), section eleven of this 41 article.

CHAPTER 221

(Com. Sub. for H. B. 2167—By Delegates Beane, Doyle, Farris, Fleischauer, Jenkins and Walters)

[Passed March 27, 1997; in effect January 1, 1998. Approved by the Governor.]

AN ACT to repeal article seven, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-seven, article two, chapter forty-eight of said code; to amend and reenact section three, article three, chapter forty-eight-a of said code; to amend and reenact section six, article four of said chapter; to amend and reenact sections two and four, article five of said chapter; and to amend said code by adding thereto a
new chapter, designated chapter forty-eight-b, all relating to
replacing the revised uniform reciprocal enforcement of
support act with the uniform interstate family support act.

Be it enacted by the Legislature of West Virginia:

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

Chapter
48. Domestic Relations.
48A. Enforcement of Family Obligations.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.


All orders in domestic relations cases entered in the
civil order books by circuit clerks are public records. For
purposes of this section, domestic relations cases shall
include actions for divorce, annulment, separate
maintenance, paternity, child support, custody, visitation,
actions brought under the provisions of the uniform
interstate family support act and petitions for writs of
habeas corpus wherein the issue is child custody.

Upon the filing of a domestic relations case, all
pleadings, exhibits or other documents contained in the
court file are confidential and not open for public
inspection either during the pendency of the case or after
the case is closed.
When sensitive information has been disclosed during a hearing or in pleadings, evidence, or documents filed in the record, a circuit judge or family law master may, sua sponte or upon motion of a party, order such information sealed in the court file. Sealed documents or court files shall only be opened by order of a circuit judge or family law master: Provided, That, in any case pending before a family law master, the master may open and inspect the entire contents of the court file.

The parties, their designees, their attorneys, a duly appointed guardian ad litem or any person who has standing to modify or enforce a support order, shall have the right to examine and copy any document in a confidential court file which has not been sealed by order of a circuit judge or family law master. Upon motion and for good cause shown, the circuit court or family law master may permit a person not a party to the action the right to examine and copy such documents as are necessary to further the interests of justice.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article
3. Children’s Advocate.
4. Proceeding Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitations.

ARTICLE 3. CHILDREN’S ADVOCATE.

§48A-3-3. Duties of the children’s advocate.

Subject to the control and supervision of the director:

(a) The children’s advocate shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The children’s advocate will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules and regulations.
(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the children's advocate shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the children's advocate to direct or regulate the advocate's professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the advocate's professional judgment.

(c) The children's advocate shall make available to the public an informational pamphlet, designed in consultation with the director. The informational pamphlet shall explain the procedures of the court and the children's advocate; the duties of the children's advocate; the rights and responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the children's advocate.

(d) The children's advocate shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when such child's primary caretaker is an applicant for or recipient of aid to families with dependent children, and when such primary caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the children's advocate is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the children's advocate shall decline to so act. The children's advocate, upon the request of any primary caretaker of a child born out of wedlock, regardless of whether such primary caretaker is an applicant or recipient
of aid to families with dependent children, shall undertake
to establish the paternity of such child.

(e) The children's advocate shall undertake to secure
support for any individual who is receiving aid to families
with dependent children when such individual has
assigned to the division of human services any rights to
support from any other person such individual may have:
Provided, That if the children's advocate is informed by
the secretary of the department of health and human
resources or his or her authorized employee that it has
been determined that it is against the best interests of a
child to secure support on the child's behalf, the
children's advocate shall decline to so act. The children's
advocate, upon the request of any individual, regardless of
whether such individual is an applicant or recipient of aid
to families with dependent children, shall undertake to
secure support for the individual. If circumstances
require, the children's advocate shall utilize the provisions
of chapter forty-eight-b of this code and any other
reciprocal arrangements which may be adopted with other
states for the establishment and enforcement of support
obligations, and if such arrangements and other means
have proven ineffective, the children's advocate may
utilize the federal courts to obtain and enforce court
orders for support.

(f) The children's advocate shall pursue the
enforcement of support orders through the withholding
from income of amounts payable as support:

(1) Without the necessity of an application from the
obligee in the case of a support obligation owed to an
obligee to whom services are already being provided
under the provisions of this chapter; and

(2) On the basis of an application for services in the
case of any other support obligation arising from a
support order entered by a court of competent
jurisdiction.

(g) The children's advocate may decline to commence
an action to obtain an order of support under the
provisions of section one, article five of this chapter if an
action for divorce, annulment or separate maintenance is pending, or the filing of such action is imminent, and such action will determine the issue of support for the child: Provided, That such action shall be deemed to be imminent if it is proposed by the obligee to be commenced within the twenty-eight days next following a decision by the children's advocate that an action should properly be brought to obtain an order for support.

(h) If the child advocate office, through the children's advocate, shall undertake paternity determination services, child support collection or support collection services for a spouse or former spouse upon the written request of an individual who is not an applicant or recipient of assistance from the division of human services, the office may impose an application fee for furnishing such services. Such application fee shall be in a reasonable amount, not to exceed twenty-five dollars, as determined by the director: Provided, That the director may fix such amount at a higher or lower rate which is uniform for this state and all other states if the secretary of the federal department of health and human services determines that a uniform rate is appropriate for any fiscal year to reflect increases or decreases in administrative costs. Any cost in excess of the application fee so imposed may be collected from the obligor who owes the child or spousal support obligation involved.

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§48A-4-6. Matters to be heard by a family law master.

(a) A circuit court or the chief judge thereof shall refer to the master the following matters for hearing to be conducted pursuant to sections eight and nine of this article:

(1) Actions to obtain orders of support brought under the provisions of section one, article five of this chapter;

(2) All actions to establish paternity brought under the provisions of article six of this chapter and any dependent claims related to such action regarding child support, custody and visitation;
(3) All petitions for writs of habeas corpus wherein the issue contested is child custody;

(4) All motions for temporary relief affecting child custody, visitation, child support, spousal support or family violence, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the master: Provided, That if the family law master determines, in his or her discretion, that the pleadings raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the family law master shall notify the court of this fact and the circuit court shall refer the case to a temporary or special law master or commissioner of the court designated by the chief justice of the supreme court;

(5) All petitions for modification of an order involving child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate maintenance brought pursuant to article two, chapter forty-eight of this code: Provided, That an action for divorce, annulment or separate maintenance which does not involve child custody or child support shall be heard by the circuit judge if, at the time of the filing of the action, the parties file a written property settlement agreement which has been signed by both parties;

(7) All actions wherein an obligor is contesting the enforcement of an order of support through the withholding from income of amounts payable as support or is contesting an affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearages;

(8) All actions commenced under the provisions of chapter forty-eight-b of this code or under the provisions of the revised uniform reciprocal enforcement of support act or the uniform interstate family support act of any other state;
Proceedings for the enforcement of support, custody or visitation orders: Provided, That contempt actions shall be heard by a circuit judge; and

(10) All actions to establish custody of a minor child or visitation with a minor child, including actions brought pursuant to the uniform child custody jurisdiction act and actions brought to establish grandparent visitation: Provided, That any action instituted under article six, chapter forty-nine shall be heard by a circuit judge.

(b) On its own motion or upon motion of a party, the circuit court may revoke the referral of a particular matter to a master if the master is recused, if the matter is uncontested, or for other good cause, or if the matter will be more expeditiously and inexpensively heard by the circuit judge without substantially affecting the rights of parties in actions which must be heard by the circuit court.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATIONS.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-4. Liens against real and personal property for overdue support.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

(a) The total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state under the prior enactments of this code, shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. A child support order shall not be retroactively modified so as to cancel or alter accrued installments of support. When an obligor is in arrears in the payment of support which is required to be paid by the terms of such order, an obligee may file an "Affidavit of Accrued Support" with
the clerk of the circuit court, setting forth the particulars of such arrearage, and requesting a writ of execution, suggestion or suggestee execution. If the duty of support is based upon a foreign support order, the obligee shall first register the foreign support order in the same manner and with the same effect as such orders are registered in actions under the uniform interstate family support act as set forth in article six, chapter forty-eight-b of this code: Provided, That a copy of the reciprocal enforcement of support law of the state in which the order was made need not be filed with the clerk.

(b) The affidavit may be filed in the county wherein the obligee or the obligor resides, or where the obligor's source of income is located.

(c) The affidavit may be filed when a payment required by such order has been delinquent, in whole or in part, for a period of fourteen days.

(d) The affidavit shall:

(1) Identify the obligee and obligor by name and address, and shall list the obligor's social security number or numbers, if known;

(2) Name the court which entered the support order and set forth the date of such entry;

(3) State the total amount of accrued support which has not been paid by the obligor;

(4) List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment; and

(5) If known, the name and address of the obligor's source of income.

(e) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution, and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor, at his last known address. If the children's advocate is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a
copy of the affidavit and the notice of the filing to the 
children's advocate.

(f) The notice provided for in subsection (e) of this 
section shall inform the obligor that if he or she desires to 
contest the affidavit on the grounds that the amount 
claimed to be in arrears is incorrect or that a writ of 
execution, suggestion or suggestee execution is not proper 
because of mistakes of fact, he or she must, within 
fourteen days of the date of the notice: (1) Inform the 
children's advocate in writing of the reasons why the 
affidavit is contested and request a meeting with the 
children's advocate; or (2) obtain a date for a hearing 
before the family law master and mail written notice of 
such hearing to the obligee and to the children's advocate 
on a form prescribed by the administrative office of the 
supreme court of appeals and made available through the 
office of the clerk of the circuit court.

g) Upon being informed by an obligor that he or she 
desires to contest the affidavit, the children's advocate 
shall inform the court of such fact, and the court shall 
require the obligor to give security, post a bond, or give 
some other guarantee to secure payment of overdue 
support.

(h) The clerk of the circuit court shall make available 
form affidavits for use under the provisions of this section. 
Such form affidavits shall be provided to the clerk by the 
child advocate office. The notice of the filing of an 
affidavit shall be in a form prescribed by the child 
advocate office.

(i) Writs of execution, suggestions or suggestee 
exections issued pursuant to the provisions of this section 
shall have priority over any other legal process under the 
laws of this state against the same income, except for 
withholding from income of amounts payable as support 
in accordance with the provisions of section three of this 
article, and shall be effective despite any exemption that 
might otherwise be applicable to the same income.

(j) Notwithstanding any other provision of this code to 
the contrary, the amount to be withheld from the
91 disposable earnings of an obligor pursuant to a suggestee
92 execution in accordance with the provisions of this section
93 shall be the same amount which could properly be
94 withheld in the case of a withholding order under the
95 provisions of subsection (e), section three of this article.

§48A-5-4. Liens against real and personal property for
overdue support.

An order for support entered by a court of competent
jurisdiction will give rise to a lien imposed against real and
personal property for amounts of overdue support owed
by an obligor who resides or owns property within this
state when the provisions of section seventeen, article two,
chapter forty-eight of this code have been complied with:
Provided, That a foreign order shall first be registered as a
foreign support order with the clerk in the same manner as
such orders are registered in actions under the uniform
interstate family support act as set forth in article six,
chapter forty-eight-b of this code: Provided, however,
That a copy of the reciprocal enforcement of support law
of the state in which the order was made need not be filed
with the clerk.

CHAPTER 48B. UNIFORM INTERSTATE
FAMILY SUPPORT ACT.

Article
2. Jurisdiction.
4. Establishment of Support Order.
5. Direct Enforcement of Order of Another State Without Registra-
tion.
6. Enforcement and Modification of Support Order After Registra-
tion.
7. Determination of Parentage.
8. Interstate Rendition.

ARTICLE 1. GENERAL PROVISIONS.

§48B-1-102. Tribunals of state.
§48B-1-103. Remedies cumulative.

As used in this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by section sixteen, article one-a, chapter forty-eight-a of this code to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.
(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules having the force of law.

(12) "Obligee" means: (i) 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; (ii) 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 (iii) an individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent: (i) Who owes or is alleged to owe a duty of support; (ii) who is alleged but has not been adjudicated to be a parent of a child; or (iii) who is liable under a support order.

(14) "Register" means to record a support order or judgment determining parentage in the registry of foreign support orders.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.
(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes: (i) an Indian tribe; (ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal of enforcement of support act.

(20) "Support enforcement agency" means a public official or agency authorized to seek: (i) Enforcement of support orders or laws relating to the duty of support; (ii) establishment or modification of child support; (iii) determination of parentage; or (iv) to locate obligors or their assets.

(21) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement and may include related costs and fees, interest, income withholding, attorney's fees and other relief.

(22) "Tribunal" means a court, administrative agency, family law master or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

§48B-1-102. Tribunals of state.

The circuit court and the family law masters are the tribunals of this state.

§48B-1-103. Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.
§48B-2-201. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with notice within this state;
2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in this state;
4. The individual resided in this state and provided prenatal expenses or support for the child;
5. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
6. The individual committed a tortious act by failing to support a child resident in this state; or
7. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.


A tribunal of this state exercising personal jurisdiction over a nonresident under section two hundred one may apply section three hundred sixteen (Special Rules of Evidence and Procedure) to receive evidence from another state.
state, and section three hundred eighteen (Assistance with Discovery) to obtain discovery through a tribunal of another state. In all other respects, articles three through seven do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

PART 2. PROCEEDINGS INVOLVING TWO OR MORE STATES.

§48B-2-203. Initiating and responding tribunal of state.

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§48B-2-204. Simultaneous proceedings in another state.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if: (1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state; (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if: (1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state; (2) the contesting party timely challenges the exercise of jurisdiction in this state; and (3) if relevant, the other state is the home state of the child.
§48B-2-205. Continuing, exclusive jurisdiction.

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order: (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or (2) until all of the parties who are individuals have filed written consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to this chapter or a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only: (1) Enforce the order that was modified as to amounts accruing before the modification; (2) enforce nonmodifiable aspects of that order; and (3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support
 §48B-2-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.

(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section three hundred sixteen (Special Rules of Evidence and Procedure) to receive evidence from another state and section three hundred eighteen (Assistance with Discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

PART 3. RECONCILIATION OF MULTIPLE ORDERS.

§48B-2-207. Recognition of controlling child support order.

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(b) If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:
If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal is controlling and must be recognized.

If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued is controlling and must be recognized.

If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties must issue a child support order, which is controlling and must be recognized.

If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (b). The request must be accompanied by a certified copy of every support order in effect. Every party whose rights may be affected by a determination of the controlling order must be given notice of the request for that determination.

The tribunal that issued the order that must be recognized as controlling under subsection (a), (b) or (c) is the tribunal that has continuing, exclusive jurisdiction in accordance with section two hundred five.

A tribunal of this state which determines by order the identity of the controlling child support order under subsections (b) (1) or (b) (2) or which issued a new controlling child support order under subsection (b) (3) shall include in that order the basis upon which the tribunal made its determination.

Within thirty days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of it with
each tribunal that had issued or registered an earlier order
of child support. Failure of the party obtaining the order
to file a certified copy as required subjects that party to
appropriate sanctions by a tribunal in which the issue of
failure to file arises, but that failure has no effect on the
validity or enforceability of the controlling order.

§48B-2-208. Multiple child support orders for two or more
obligees.

In responding to multiple registrations or petitions for
enforcement of two or more child support orders in effect
at the same time with regard to the same obligor and
different individual obligees, at least one of which was
issued by a tribunal of another state, a tribunal of this state
shall enforce those orders in the same manner as if the
multiple orders had been issued by a tribunal of this state.

§48B-2-209. Credit for payments.

Amounts collected and credited for a particular period
pursuant to a support order issued by a tribunal of another
state must be credited against the amounts accruing or
accrued for the same period under a support order issued
by the tribunal of this state.

ARTICLE 3. CIVIL PROVISIONS OF GENERAL APPLICATION.

§48B-3-301. Proceedings under chapter.
§48B-3-302. Action by minor parent.
§48B-3-303. Application of law of state.
§48B-3-304. Duties of initiating tribunal.
§48B-3-305. Duties and powers of responding tribunal.
§48B-3-306. Inappropriate tribunal.
§48B-3-307. Duties of support enforcement agency.
§48B-3-308. Duty of West Virginia support enforcement commission.
§48B-3-309. Private counsel.
§48B-3-310. Duties of state information agency.
§48B-3-311. Pleadings and accompanying documents.
§48B-3-312. Nondisclosure of information in exceptional circumstances.
§48B-3-313. Costs and fees.
§48B-3-314. Limited immunity of petitioner.
§48B-3-315. Nonparentage as defense.
§48B-3-316. Special rules of evidence and procedure.
§48B-3-301. Proceedings under chapter.

(a) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(b) This chapter provides for the following proceedings: (1) Establishment of an order for spousal support or child support pursuant to article four; (2) enforcement of a support order and income-withholding order of another state without registration pursuant to article five; (3) registration of an order for spousal support or child support of another state for enforcement pursuant to article six; (4) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to article two, Part 2; (5) registration of an order for child support of another state for modification pursuant to article six; (6) determination of parentage pursuant to article seven; and (7) assertion of jurisdiction over nonresidents pursuant to article two, Part 1.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

§48B-3-302. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§48B-3-303. Application of law of state.

Except as otherwise provided by this chapter, a responding tribunal of this state: (1) Shall apply the procedural and substantive law, including the rules on
choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§48B-3-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents: (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or (2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this chapter or a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

§48B-3-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (c), section three hundred one (proceedings under this chapter), the clerk of the court shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following: (1) Issue or enforce a support order, modify a child support order or render a judgment to determine parentage; (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance; (3) order income withholding; (4) determine
the amount of any arrearages and specify a method of payment; (5) enforce orders by civil or criminal contempt, or both; (6) set aside property for satisfaction of the support order; (7) place liens and order execution on the obligor's property; (8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment; (9) issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants; (10) order the obligor to seek appropriate employment by specified methods; (11) award reasonable attorney's fees and other fees and costs; and (12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

§48B-3-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the clerk of the court shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

§48B-3-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.
(b) A support enforcement agency that is providing services to the petitioner as appropriate shall: (1) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent; (2) request an appropriate tribunal to set a date, time, and place for a hearing; (3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties; (4) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner; (5) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and (6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§48B-3-308. Duty of West Virginia support enforcement commission.

If the West Virginia support enforcement commission determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the commission may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

§48B-3-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.
§48B-3-310. Duties of state information agency.

(a) The child support enforcement division is the state information agency under this chapter.

(b) The state information agency shall: (1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state; (2) maintain a register of tribunals and support enforcement agencies received from other states; (3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and (4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security.

§48B-3-311. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section three hundred twelve (Nondisclosure of Information in Exceptional Circumstances), the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition
may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§48B-3-312. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

§48B-3-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney’s fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under article six (Enforcement and Modification of Support Order After Registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.
§48B-3-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.

§48B-3-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

§48B-3-316. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.
(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony. The supreme court of appeals shall promulgate new rules or amend the rules of practice and procedure for family law to establish procedures pertaining to the exercise of cross examination in those instances involving the receipt of testimony by means other than direct or personal testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

§48B-3-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of
that state, the legal effect of a judgment, decree, or order of that tribunal and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

§48B-3-318. Assistance with discovery.

A tribunal of this state may: (1) Request a tribunal of another state to assist in obtaining discovery; and (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§48B-3-319. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

ARTICLE 4. ESTABLISHMENT OF SUPPORT ORDER.

§48B-4-401. Petition to establish support order.

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if: (1) The individual seeking the order resides in another state; or (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if: (1) The respondent has signed a verified statement acknowledging parentage; (2) the respondent has been determined by or pursuant to law to be the parent; or (3) there is other clear and convincing evidence that the respondent is the child’s parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section three hundred five (Duties and Powers of Responding Tribunal).
ARTICLE 5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION.

§48B-5-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under section sixteen, article one-a, chapter forty-eight-a of this code without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§48B-5-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of the order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as provided by subsection (d) and section five hundred three, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

(1) The duration and the amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;
(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor’s employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee’s attorney, stated as sums certain; and

(5) The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(d) The employer shall comply with the law of the state of the obligor’s principal place of employment for withholding from income with respect to:

(1) The employer’s fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor’s income;

(3) The time periods within which the employer must implement the withholding order and forward the child support payment.

§48B-5-503. Compliance with multiple income withholding orders.

If the obligor’s employer receives multiple orders to withhold support from the earnings of the same obligor, the employer shall be deemed to have satisfied the terms of the multiple orders if the law of the state of the obligor’s principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees is complied with.

§48B-5-504. Immunity from civil liability.

An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer’s withholding child support from the obligor’s income.
§48B-5-505. Penalties for noncompliance.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§48B-5-506. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section six hundred four (Choice of Law) applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer which has directly received an income-withholding order; and

(3) The person or agency designated to receive payments in the income-withholding order; or if no person or agency is designated, to the obligee.

§48B-5-507. Administrative enforcement of orders.

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support
enforcement agency shall register the order pursuant to this chapter.

ARTICLE 6. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION.

§ 48B-6-601. Registration of order for enforcement.
§ 48B-6-602. Procedure to register order for enforcement.
§ 48B-6-603. Effect of registration for enforcement.
§ 48B-6-604. Choice of law.
§ 48B-6-605. Notice of registration of order.
§ 48B-6-606. Procedure to contest validity or enforcement of registered order.
§ 48B-6-607. Contest of registration or enforcement.
§ 48B-6-608. Confirmed order.
§ 48B-6-609. Procedure to register child support order of another state for modification.
§ 48B-6-610. Effect of registration for modification.
§ 48B-6-611. Modification of child support order of another state.
§ 48B-6-612. Recognition of order modified in another state.
§ 48B-6-613. Jurisdiction to modify support order of another state when individual parties reside in this state.
§ 48B-6-614. Notice to issuing tribunal of modification.

PART 1. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER.

§ 48B-6-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

§ 48B-6-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the state information agency who shall forward the order to the appropriate tribunal: (1) A letter of transmittal to the tribunal requesting registration and enforcement; (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order; (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage; (4) the name of the obligor and, if known: (i) The obligor's address and social
security number; (ii) the name and address of the
obligor's employer and any other source of income of the
obligor; and (iii) a description and the location of
property of the obligor in this state not exempt from
execution; and (5) the name and address of the obligee
and, if applicable, the agency or person to whom support
payments are to be remitted.

(b) On receipt of a request for registration, the clerk of
the court shall cause the order to be filed as a foreign
judgment, together with one copy of the documents and
information, regardless of their form.

(c) A petition or comparable pleading seeking a
remedy that must be affirmatively sought under other law
of this state may be filed at the same time as the request
for registration or later. The pleading must specify the
grounds for the remedy sought.

§48B-6-603. Effect of registration for enforcement.

(a) A support order or income-withholding order
issued in another state is registered when the order is filed
in the registering tribunal of this state.

(b) A registered order issued in another state is
enforceable in the same manner and is subject to the same
procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a
tribunal of this state shall recognize and enforce, but may
not modify, a registered order if the issuing tribunal had
jurisdiction.

§48B-6-604. Choice of law.

(a) The law of the issuing state governs the nature,
extent, amount, and duration of current payments and
other obligations of support and the payment of
arrearages under the order.

(b) In a proceeding for arrearages, the statute of
limitation under the laws of this state or of the issuing
state, whichever is longer, applies.
PART 2. CONTEST OF VALIDITY OR ENFORCEMENT.

§48B-6-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:
   (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state; (2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice; (3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and (4) of the amount of any alleged arrearages.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to article five, chapter forty-eight-a of this code.

§48B-6-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section six hundred seven (Contest of Registration or Enforcement).
(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

§48B-6-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses: (1) The issuing tribunal lacked personal jurisdiction over the contesting party; (2) the order was obtained by fraud; (3) the order has been vacated, suspended or modified by a later order; (4) the issuing tribunal has stayed the order pending appeal; (5) there is a defense under the law of this state to the remedy sought; (6) full or partial payment has been made; or (7) the statute of limitation under section six hundred four (Choice of Law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§48B-6-608. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes
§48B-6-609. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Part 1 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

§48B-6-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section six hundred eleven (Modification of Child Support Order of Another State) have been met.

§48B-6-611. Modification of child support order of another state.

(a) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section six hundred thirteen does not apply and after notice and hearing it finds that: (1) The following requirements are met: (i) The child, the individual obligee, and the obligor do not reside in the issuing state; (ii) a petitioner who is a nonresident of this state seeks modification; and (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or (2) the child or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order.
order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section two hundred seven establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

§48B-6-612. Recognition of order modified in another state.

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this chapter or a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

(1) Enforce the order that was modified only as to amounts accruing before the modification; (2) enforce only nonmodifiable aspects of that order; (3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and (4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.
§48B-6-613. Jurisdiction to modify support order of another state when individual parties reside in this state.

(a) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of articles one and two and this article to the enforcement or modification proceeding. Articles three through five, and articles seven and eight do not apply and the tribunal shall apply the procedural and substantive law of this state.

§48B-6-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

ARTICLE 7. DETERMINATION OF PARENTAGE.

§48B-7-701. Proceeding to determine parentage.

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.
In a proceeding to determine parentage, a responding tribunal of this state shall apply article six, chapter forty-eight-a of this code and the rules of this state on choice of law.

ARTICLE 8. INTERSTATE RENDITION.

§48B-8-801. Grounds for rendition.

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this state may: (1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or (2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§48B-8-802. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of
support act, or the revised uniform reciprocal enforcement
of support act, the governor of another state makes a
demand that the governor of this state surrender an
individual charged criminally in that state with having
failed to provide for the support of a child or other
individual to whom a duty of support is owed, the
governor may require a prosecutor to investigate the
demand and report whether a proceeding for support has
been initiated or would be effective. If it appears that a
proceeding would be effective but has not been initiated,
the governor may delay honoring the demand for a
reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and
the individual whose rendition is demanded prevails, the
governor may decline to honor the demand. If the
petitioner prevails and the individual whose rendition is
demanded is subject to a support order, the governor may
decline to honor the demand if the individual is
complying with the support order.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

§48B-9-901. Uniformity of application and construction.

§48B-9-902. Short title.

§48B-9-903. Effective date.

§48B-9-901. Uniformity of application and construction.

This chapter shall be applied and construed to
effectuate its general purpose to make uniform the law
with respect to the subject of this chapter among states
enacting it.

§48B-9-902. Short title.

This chapter may be cited as the “Uniform Interstate
Family Support Act.”

§48B-9-903. Effective date.

The provisions of this chapter take effect on the first
day of January, one thousand nine hundred ninety-eight.
AN ACT to amend and reenact sections one thousand three hundred one, one thousand three hundred two, one thousand three hundred three and one thousand three hundred four, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to professional limited liability companies ("PLLC"); authorizing formation of PLLC's by psychologists licensed under article twenty-one, chapter thirty of said code; specifying that persons providing compatible professional services may form PLLC's; authorizing one or more persons who may legally and ethically practice together to form PLLC's; specifying who may be members of PLLC's; authorizing ownership of limited liability companies by PLLC's; requiring reporting of names of members of PLLC's to secretary of state; and requiring certain licensing boards to allow formation of PLLC's by licensees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.
§31B-13-1303. Name.
§31B-13-1304. Duty of licensing board.

As used in this article:

(1) “Licensing board” means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

(2) “Professional limited liability company” means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

(3) “Professional service” means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen, osteopathic physicians and surgeons under article fourteen, chiropractors under article sixteen and psychologists under article twenty-one, all of chapter thirty of this code.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

(a) One or more persons duly licensed or otherwise legally authorized to render the same or compatible professional services or to otherwise practice together within this state may become members of a professional limited liability company under the provisions of this chapter for the purpose of rendering the same or compatible professional services. Notwithstanding any provision of this code to the contrary, including any limitation or restriction set forth in any licensing provision of chapter thirty of this code, a professional limited liability company may be formed to provide any of the professional services as defined in section one thousand three hundred one of this article.

(b) Any one or more persons who, under applicable legal or ethical rules or principles, can collectively practice the same or compatible professions, whether as general
partners, joint venturers, fellow shareholders, fellow members or common business owners, may form, own and operate, as members, a professional limited liability company under this article. For purposes of this section, members of professional limited liability companies may be natural persons, professional corporations, other professional limited liability companies and professional partnerships. Professional limited liability companies may form, own and operate separate limited liability companies.

(c) No professional limited liability company organized under this article may have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized. The names of members of professional limited liability companies who have signature authority shall be furnished to the secretary of state. Any change in the persons who have signature authority for a professional limited liability company shall be promptly reported to the secretary of state.

§31B-13-1303. Name.

The name of a professional limited liability company shall contain the words “professional limited liability company” or the abbreviation “P.L.L.C.,” “PLLC”, “Professional L.L.C.”, or “Professional LLC”.

§31B-13-1304. Duty of licensing board.

The licensing board for each of the professions authorized to form professional limited liability companies under this article shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, providing for the implementation of this article and the procedures for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of such licensing board. The rules of each licensing board shall permit the formation and approval of professional limited liability companies with members from different professions.
CHAPTER 223

(Com. Sub. for H. B. 2842—By Delegates Givens, Hunt, Coleman, Mahan, Amores, Trump and L. White)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred one, two hundred two and two hundred three, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three hundred one and three hundred five, article three of said chapter; to further amend said article by adding thereto a new section, designated section three hundred four-a; to amend and reenact sections four hundred one, four hundred two, four hundred five, four hundred six, four hundred nine, four hundred thirteen and four hundred fourteen, article four of said chapter; and to further amend said article by adding thereto a new section, designated section four hundred seven-a, all relating to revisions to Uniform Securities Act; exempting federal covered advisers and certain other investment advisers from registration requirements; including references to notice filings for federal covered advisers; making it unlawful to employ unregistered investment adviser representatives; requiring investment adviser representatives to make certain notifications; requiring federal covered advisers to comply with notice filing and fee requirements; establishing certain registration fees and compliance assessments; changing minimum financial, surety bond, record keeping, financial reporting and correcting amendment requirements; establishing notice filing, fee and other requirements for federal covered securities, including provision for oversale assessments; adding and amending certain definitions; establishing registration exemption for federal covered securities; deleting "blue chip exemption" for certain securities; changing funding method for securities division; requiring that violators of chapter pay certain examination expenses; providing for administrative assessments for such violators; and expanding criminal penalties.
Be it enacted by the Legislature of West Virginia:

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

Article

2. Registration of Broker-Dealers and Agents; Registration and Notice Filing for Investment Advisers.

3. Registration of Securities.


ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-201. Registration requirement.


§32-2-203. Post-registration provisions.

§32-2-201. Registration requirement.

1 (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

4 (b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he or she is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him or her an agent, the agent as
well as the broker-dealer or issuer shall promptly notify
the commissioner.

(c) It is unlawful for any person to transact business in
this state as an investment adviser unless: (1) He or she is
so registered under this chapter; (2) he or she is registered
as a broker-dealer without the imposition of a condition
under subdivision (5), subsection (b), section two hundred
four of this article; (3) he or she is a federal covered
adviser except that, until the tenth day of October, one
thousand nine hundred ninety-nine, a federal covered
adviser for which a nonpayment or underpayment of a fee
has not been promptly remedied following written
notification to the adviser of such nonpayment or
underpayment shall be required to register under this
article; or (4) he or she has no place of business in this
state and: (A) His or her only clients in this state are
investment companies as defined in the Investment
Company Act of 1940, other investment advisers, federal
covered advisers, broker-dealers, banks, trust companies,
savings and loan associations, insurance companies,
employee benefit plans with assets of not less than one
million dollars, and governmental agencies or
instrumentalities, whether acting for themselves or as
trustees with investment control, or other institutional
investors as are designated by rule or order of the
commissioner; or (B) during any period of twelve
consecutive months he or she does not have more than
five clients who are residents of this state, other than those
specified in this subsection, whether or not he or she or
any of the clients who are residents of this state is then
present in the state.

(d) Every registration or notice filing expires one year
from its effective date unless renewed. The commissioner
by rule or order may prepare an initial schedule for
renewals of registrations or notice filings so that
subsequent renewals of registrations or notice filings
effective on the effective date of this chapter may be
staggered by calendar months. For this purpose the
commissioner by rule may reduce the registration or
notice filing fee proportionately.
(e) It is unlawful for any:

(1) Person required to be registered as an investment adviser under this article to employ an investment adviser representative unless the investment adviser representative is registered under this article: Provided, That the registration of an investment adviser representative is not effective during any period when he or she is not employed by an investment adviser registered under this article; or

(2) Federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered under this article, or is exempt from registration. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser (in the case of 210 (f) (i)), or the investment adviser representative (in the case of 201 (f) (ii)), shall promptly notify the commissioner.

(f) Except with respect to advisers whose only clients are those described in subdivision (4), subsection (c) of this section, it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person complies with the provisions of subsection (b), section two hundred two of this article.


(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the commissioner an application together with a consent to service of process pursuant to subsection (g), section four hundred fourteen, article four of this chapter. The application shall contain whatever information the commissioner by rule requires concerning matters such as:

(1) The applicant’s firm and place of organization; (2) the applicant’s proposed method of doing business; (3) the qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or
performing similar functions, or any person, directly or indirectly, controlling the broker-dealer or investment adviser and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) subject to the limitations of §15(h)(1) of the Securities Exchange Act of 1934, the applicant's financial condition and history. The commissioner may by rule or order require an applicant for initial registration to publish an announcement of the application as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area or areas for the publication shall be specified by the commissioner. If no denial order is in effect and no proceeding is pending under section two hundred four of this article, registration becomes effective at noon of the thirtieth day after an application is filed. The commissioner may by rule or order specify an earlier effective date, and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment to an application. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer or director, or a person occupying a similar status or performing similar functions, as designated by the broker-dealer in writing to the commissioner and approved in writing by the commissioner. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, or director or a person occupying a similar status or performing similar functions as designated by the investment adviser in writing to the commissioner and approved in writing by the commissioner.

(b) Except with respect to federal covered advisers whose only clients are those described in paragraph (A), subdivision (4), subsection (c), section two hundred one of this article, a federal covered adviser shall file with the commissioner, prior to acting as a federal covered adviser in this state, such documents as have been filed with the
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55 securities and exchange commissioner as the
56 commissioner, by rule or order, may require along with
57 notice filing fees under subsection (c) of this section.

58 (c) Every applicant for initial or renewal registration
59 shall pay a filing fee of two hundred fifty dollars in the
60 case of a broker-dealer and the agent of an issuer,
61 fifty-five dollars in the case of an agent, one hundred
62 seventy dollars in the case of an investment adviser, and
63 fifty dollars for each investment adviser representative.
64 When an application is denied or withdrawn, the
65 commissioner shall retain all of the fee.

66 (d) A registered broker-dealer or investment adviser
67 may file an application for registration of a successor,
68 whether or not the successor is then in existence, for the
69 unexpired portion of the year. A filing fee of twenty
70 dollars shall be paid.

71 (e) The commissioner may, by rule or order, require a
72 minimum capital for registered broker-dealers, subject to
73 the limitations of section fifteen of the Securities
74 Exchange Act of 1934, and establish minimum financial
75 requirements for investment advisers, subject to the
76 limitations of section 222 of the Investment Advisers Act
77 of 1940, which may include different requirements for
78 those investment advisers who maintain custody of clients’
79 funds or securities or who have discretionary authority
80 over same and those investment advisers who do not.

81 (f) The commissioner may, by rule or order, require
82 registered broker-dealers, agents and investment advisers
83 who have custody of or discretionary authority over client
84 funds or securities, to post surety bonds in amounts as the
85 commissioner may prescribe, by rule or order, subject to
86 the limitations of section fifteen of the Securities
87 Exchange Act of 1934 (for broker-dealers) and section
88 222 of the Investment Advisers Act of 1940 (for
89 investment advisers), up to twenty-five thousand dollars
90 and may determine their conditions. Any appropriate
91 deposit of cash or securities shall be accepted in lieu of
92 any bond so required. No bond may be required of any
93 registrant whose net capital, or, in the case of an
94 investment adviser, whose minimum financial require-
ments, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under section four hundred nine, article four of this chapter and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of subsection (f), section four hundred nine, article four of this chapter.

(g) Every applicant, whether registered under this chapter or not, shall pay a fifty-dollar fee for each name or address change.

(h) Every broker-dealer and investment advisor registered under this chapter shall pay an annual fifty-dollar fee for each branch office located in West Virginia.

(i) Each agent, representative and associated person of a broker-dealer or investment advisor when applying for an initial license under section two hundred two of this article or changing employers shall pay a compliance assessment of twenty-five dollars. Each agent, representative and associated person, when applying for a renewal license under section two hundred two of this article, shall pay a compliance assessment of ten dollars.

§32-2-203. Post-registration provisions.

(a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the commissioner prescribes by rule or order, except as provided by section fifteen of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser). All records so required, with respect to an investment adviser, shall be preserved for three years unless the commissioner prescribes by rule or order otherwise for particular types of records.
(b) With respect to investment advisers, the commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commissioner, in his or her discretion, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered broker-dealer and investment advisor shall file such financial reports as the commissioner may prescribe by rule or order, except as provided by section fifteen of the Securities Exchange Act of 1934 (in the case of a broker-dealer) and section 222 of the Investment Advisers Act of 1940 (in the case of an investment adviser).

(d) If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant or federal covered adviser shall promptly file a correcting amendment with the commissioner.

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the commissioner, within or without this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirement.
§32-3-304a. Federal covered securities.
§32-3-305. Provisions applicable to registration and notice filing generally.

§32-3-301. Registration requirement.

1 It is unlawful for any person to offer or sell any security in this state unless: (1) It is registered under this chapter; or (2) the security or transaction is exempted under section four hundred two of this article; or (3) the security is a federal covered security.

§32-3-304a. Federal covered securities.

(a) Securities for which a registration statement has been filed with the securities and exchange commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933 may be offered for sale or sold to residents of this state upon the commissioner's receipt of: (1) A notice as prescribed by the commissioner by rule or otherwise or in lieu thereof a copy of the issuer's federal registration statement as filed with the securities and exchange commission; (2) a consent to service of process signed by the issuer; and (3) payment of a fee as provided for in subsection (b), section three hundred five of this article: Provided, That up through the tenth day of October, one thousand nine hundred ninety-nine, or such other date as may be legally permissible, a federal covered security for which a fee has not been paid or promptly remedied following written notification from the commissioner to the issuer of the nonpayment or underpayment of such fees, as required by this article, shall be required to register under this article.

(b) The commissioner, by rule or otherwise, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933; and
(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the securities and exchange commission under the Securities Act of 1933, which shall be filed concurrently with the commissioner.

(c) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on SEC Form D and a consent to service of process signed by the issuer no later than fifteen days after the first sale of such federal covered security in this state, together with a fee as established by rule by the commissioner.

(d) The commissioner, by rule or otherwise, may require the filing of any document filed with the securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee for such document as appropriate under subsections (m) and (n), section three hundred five of this article.

(e) The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if it finds that: (1) The order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

(f) The commissioner, by rule or order, may waive any or all of the provisions of this section.

§32-3-305. Provisions applicable to registration and notice filing generally.

(a) A registration or notice filing statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. A registration or notice filing statement filed under this chapter registering or noticing investment company shares
shall cover only one class, series or portfolio of investment company shares.

(b) Every person filing a registration or notice filing statement shall pay a filing fee of one twentieth of one percent of the maximum aggregate offering price at which the registered or noticed securities are to be offered in this state, but the fee shall in no case be less than fifty dollars or more than fifteen hundred dollars. When a registration or notice filing statement is withdrawn before the effective date or a preeffective stop order is entered under section three hundred six of this article, the commissioner shall retain all of the fee.

(c) Every registration statement and notice filing shall specify: (1) The amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) In any case where securities sold in this state are in excess of the aggregate amount of securities specified under subsection (c) of this section, the commissioner may require payment of an oversale assessment which shall be three times an amount which equals the difference between the filing fee that would have been payable under subsection (b) of this section based upon the total amount of securities sold in this state and the total filing fees previously paid to the commissioner with respect to such registration or notice filing, but in no case shall the oversale assessment be less than three hundred fifty dollars or be more than fifteen hundred dollars.

(e) Any document filed under this chapter or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.
(f) The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration or notice filing statement.

(g) In the case of a nonissuer distribution, information may not be required under section three hundred four of this article or subsection (k) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(h) The commissioner may by rule or order require as a condition of registration by qualification or coordination: (1) That any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required under this subsection, but he or she may not reject a depository solely because of location in another state.

(i) The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

(j) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution,
except during the time a stop order is in effect under section three hundred six of this article. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction: (1) So long as the registration statement is effective; and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section three hundred six of this article (if the registration statement did not relate, in whole or in part, to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the commissioner.

(k) So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(l) A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective when the commissioner so orders. Every person filing an amendment shall pay a filing fee, calculated in the manner specified in subsection (b) of this section, with respect to the additional securities proposed to be offered.

(m) Every person changing the name or address of a securities registration or notice filing shall pay a fifty-dollar fee for change.

(n) Every person amending a registration statement or notice filing or offering a document without increasing
the dollar amount registered shall pay a fifty-dollar fee for each amended statement, notice filing or document.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.
§32-4-402. Exemptions.
§32-4-405. Unlawful representations concerning registration, exemption or notice filing.
§32-4-406. Administration of chapter; operating fund for securities department.
§32-4-407a. Administrative assessments.
§32-4-409. Criminal penalties.
§32-4-413. Administrative files and opinions.
§32-4-414. Scope of the chapter and service of process.

§32-4-401. Definitions.

When used in this chapter, unless the context otherwise requires:

(a) "Commissioner" means the auditor of the state of West Virginia.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in: (1) Effecting transactions in a security exempted by subdivisions (1), (2), (3), (10) or (11) of subsection (a), section four hundred two of this article; (2) effecting transactions exempted by subsection (b), section four hundred two of this article; (3) effecting transactions in a covered security as described in section 18(b)(3) and section 18(b)(4)(d) of the Securities Act of 1933; (4) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given, directly or indirectly, for soliciting any person in this state; or (5) effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition.
(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. "Broker-dealer" does not include: (1) An agent; (2) an issuer; (3) a bank, savings institution or trust company; or (4) a person who has no place of business in this state if: (A) He or she effects transactions in this state exclusively with or through; (i) the issuers of the securities involved in the transactions; (ii) other broker-dealers; or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or (B) during any period of twelve consecutive months he or she does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in this state.

(d) "Fraud," "deceit" and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(f) "Federal covered adviser" means a person who is: (1) Registered under section 203 of the Investment Advisers Act of 1940; or (2) is excluded from the definition of "investment advisor" under section two hundred two-a (11) of the Investment Advisers Act of 1940.

(g) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation
and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include: (1) A bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of those services is solely incidental to the practice of his or her profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them; (4) a publisher, employee or columnist of a newspaper, news magazine or business or financial publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of each client; (5) a person whose advice, analyses or reports relate only to securities exempted by subdivision (1), subsection (a), section four hundred two of this article; (6) a person who has no place of business in this state if (A) his or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he or she does not have more than five clients who are residents of this state other than those specified in clause (A), whether or not he or she or any of the persons to whom the communications are directed is then present in this state; (7) an investment adviser representative; (8) a "federal covered adviser"; or (9) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(h) "Investment adviser representative" means any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who is
employed by or associated with an investment adviser that is registered or required to be registered under this chapter, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and including clerical or ministerial personnel, who does any of the following: (1) Makes any recommendations or otherwise renders advice regarding securities; (2) manages accounts or portfolios of clients; (3) determines which recommendation or advice regarding securities should be given; (4) solicits, offers or negotiates for the sale of or sells investment advisory services unless such person is registered as an agent pursuant to this article; or (5) supervises employees who perform any of the foregoing unless such person is registered as an agent pursuant to this article.

(i) "Issuer" means any person who issues or proposes to issue any security, except that: (1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer."

(j) "Nonissuer" means not, directly or indirectly, for the benefit of the issuer.

(k) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(l) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.
(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subdivision do not include: (A) Any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

the federal statute which makes certain amendments to the
Securities Act of 1933, the Securities Exchange Act of
1934, the Investment Company Act of 1940, and the
Investment Advisers Act of 1940.

(n) "Security" means any note; stock; treasury stock;
bond; debenture; evidence of indebtedness; certificate of
interest or participation in any profit-sharing agreement;
collateral-trust certificate; preorganization certificate or
subscription; transferable share; investment contract;
voting-trust certificate; certificate of deposit for a security;
certificate of interest or participation in an oil, gas, or
mining title or lease or in payments out of production
under such a title or lease; or, in general, any interest or
instrument commonly known as a "security," or any
certificate of interest or participation in, temporary or
interim certificate for, receipt for, guarantee of, or warrant
or right to subscribe to or purchase, any of the foregoing.
"Security" does not include any insurance or endowment
policy or annuity contract under which an insurance
company promises to pay money either in a lump sum or
periodically for life or some other specified period.

(o) "Federal covered security" means any security
that is a covered security under section 18(b) of the
Securities Act of 1933, as amended by the National
Securities Markets Improvement Act of 1996, or rules
promulgated thereunder.

(p) "State" means any state, territory or possession of
the United States, the District of Columbia and Puerto
Rico.

§32-4-402. Exemptions.

(a) The following securities are exempt from section
three hundred one, article three of this chapter and
section four hundred three of this article:

(1) Any security (including a revenue obligation)
issued or guaranteed by the United States, any state, any
political subdivision of a state, or any agency or corporate
or other instrumentality of one or more of the foregoing;
or any certificate of deposit for any of the foregoing:
(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state;

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association or similar association organized and supervised under the laws of this state;

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is: (A) Subject to the jurisdiction of the interstate commerce commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935, or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the
American Stock Exchange, or the Midwest Stock Exchange, any other stock exchange approved by the commissioner, the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS), or any other market system approved by the commissioner, any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe to any of the foregoing, except that the commissioner may adopt and promulgate rules pursuant to chapter twenty-nine-a of this code which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from this exemption if the commissioner finds that the listing requirements or market surveillance of such exchange or market system are such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual;

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within twelve months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(11) Any investment contract issued in connection with an employees’ stock purchase, savings, pension, profit-sharing or similar benefit plan if the commissioner is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter
(or within thirty days before they are reopened if they are closed on the effective date of this chapter);

(12) Any security issued by an agricultural cooperative association operating in this state and organized under article four, chapter nineteen of this code, or by a foreign cooperative association organized under the laws of another state and duly qualified to transact business in this state.

(b) The following transactions are exempt from sections 301 and 403:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security if: (A) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or
(6) Any transaction by an executor, administrator, sheriff, marshal, constable, receiver, trustee in bankruptcy, guardian or conservator, and any transaction constituting a judicial sale;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subdivision (8) above) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if: (A) The seller reasonably believes that all the buyers in this state (other than those designated in subdivision (8) above) are purchasing for investment; and (B) no commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective buyer in this state (other than those designated in subdivision (8) above), but the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration;

(10) Any offer or sale of a preorganization certificate or subscription if: (A) No commission or other remuneration is paid or given, directly or indirectly, for soliciting any prospective subscriber; (B) the number of subscribers does not exceed ten; and (C) no payment is made by any subscriber;
(11) Any transaction pursuant to an offer to existing
security holders of the issuer, including persons who at the
time of the transaction are holders of convertible
securities, nontransferable warrants or transferable
warrants exercisable within not more than ninety days of
their issuance, if: (A) No commission or other
remuneration (other than a standby commission) is paid
or given, directly or indirectly, for soliciting any security
holder in this state; or (B) the issuer first files a notice
specifying the terms of the offer and the commissioner
does not by order disallow the exemption within the next
five full business days;

(12) Any offer (but not a sale) of a security for which
registration statements have been filed under both this
chapter and the Securities Act of 1933 if no stop order or
refusal order is in effect and no public proceeding or
examination looking toward such an order is pending
under either chapter.

(c) The commissioner may by order deny or revoke
any exemption specified in subdivision (9) or (11) of
subsection (a) or in subsection (b) of this section with
respect to a specific security or transaction. No such order
may be entered without appropriate prior notice to all
interested parties, opportunity for hearing, and written
findings of fact and conclusions of law, except that the
commissioner may by order summarily deny or revoke
any of the specified exemptions pending final
determination of any proceeding under this subsection.
Upon the entry of a summary order, the commissioner
shall promptly notify all interested parties that it has been
entered and of the reasons therefor and that within fifteen
days of the receipt of a written request the matter will be
set down for hearing. If no hearing is requested and none
is ordered by the commissioner, the order will remain in
effect until it is modified or vacated by the commissioner.
If a hearing is requested or ordered, the commissioner,
after notice of and opportunity for hearing to all
interested persons, may modify or vacate the order or
extend it until final determination. No order under this
subsection may operate retroactively. No person may be
considered to have violated section 301 or 403 by reasons
205 of any offer or sale effected after the entry of an order
206 under this subsection if he or she sustains the burden of
207 proof that he or she did not know, and in the exercise of
208 reasonable care could not have known, of the order.

209 (d) In any proceeding under this chapter, the burden
210 of proving an exemption or an exception from a
211 definition is upon the person claiming it.

§32-4-405. Unlawful representations concerning registration,
exemption or notice filing.

1 (a) Neither (1) the fact that a notice filing or an
2 application for registration under article two of this
3 chapter or a registration statement under article three of
4 this chapter has been filed nor (2) the fact that a person or
5 security is effectively registered constitutes a finding by
6 the commissioner that any document filed under this
7 chapter is true, complete and not misleading. Neither any
8 such fact nor the fact that an exemption or exception is
9 available for a security or a transaction means that the
10 commissioner has passed in any way upon the merits or
11 qualifications of, or recommended or given approval to,
12 any person, security or transaction.

13 (b) It is unlawful to make, or cause to be made, to any
14 prospective purchaser, customer or client any
15 representation inconsistent with subsection (a).

§32-4-406. Administration of chapter; operating fund for
securities department.

1 (a) This chapter shall be administered by the auditor
2 of this state, and he or she is hereby designated, and shall
3 be, the commissioner of securities of this state. He or she
4 has the power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) The auditor shall set up a special operating fund
8 for the securities division in his or her office. The auditor
9 shall pay into the fund twenty percent of all fees collected
10 as provided for in this chapter. If, at the end of any fiscal
11 year, the balance in the operating fund exceeds one
12 hundred fifty thousand dollars, the excess shall be
withdrawn from the special fund and deposited in the
general revenue fund.

The special operating fund shall be used by the
auditor to fund the operation of the securities division
located in his or her office. The special operating fund
shall be appropriated by line item by the Legislature.

(c) Moneys payable for assessments established by
section four hundred seven-a of this article shall be
collected by the commissioner and deposited into the
general revenue fund.

(d) It is unlawful for the commissioner or any of his
or her officers or employees to use for personal benefit
any information which is filed with or obtained by the
commissioner and which is not made public. No
provision of this chapter authorizes the commissioner or
any of his or her officers or employees to disclose any
information except among themselves or when necessary
or appropriate in a proceeding or investigation under this
chapter. No provision of the chapter either creates or
derogates from any privilege which exists at common law
or otherwise when documentary or other evidence is
sought under a subpoena directed to the commissioner or
any of his or her officers or employees.

§32-4-407a. Administrative assessments.

(a) A registrant, applicant for registration, issuer or
other person upon whom the commissioner has conducted
an examination, audit, investigation or prosecution and
who has been determined by the commissioner to have
violated this article or rule or order of the commissioner
under this article shall pay for all the costs incurred in the
conduct of such examination, audit, investigation or
prosecution. These costs shall include, but not be limited
to, the salaries and other compensation paid to clerical,
accounting, administrative, investigative, examiner and
legal personnel, the actual amount of expenses reasonably
incurred by such personnel and the commissioner in the
conduct of such examination, audit, investigation or
prosecution, including a pro rata portion of the
commissioner's administrative expense.
(b) After giving notice and opportunity for a hearing, the commissioner may issue an order accompanied by written findings of fact and conclusions of law which imposes an administrative assessment in an amount provided in subdivision (1) against a broker-dealer, agent, investment adviser or investment adviser representative registered under section two hundred one, article two of this chapter, or an affiliate of the broker-dealer or investment adviser where the commissioner finds that the person either willfully has violated this article or a rule or order of the commissioner under this article or has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(1) The commissioner, in issuing an order under this subsection may impose an administrative assessment of up to ten thousand dollars for a single violation or of up to fifty thousand dollars for multiple violations in a single proceeding or a series of related proceedings. Each act or omission that provides a basis for issuing an order under this subsection shall constitute a separate violation.

(2) For purposes of determining the amount of administrative assessment to be imposed in an order issued under this subsection, the commissioner shall consider:

(i) The circumstances, nature, frequency, seriousness, magnitude, persistence and willfulness of the conduct constituting the violation;

(ii) The scope of the violation, including the number of persons in and out of this state affected by the conduct constituting the violation;

(iii) The amount of restitution or compensation that the violator has made and the number of persons in this state to whom the restitution or compensation has been made;

(iv) Past and concurrent conduct of the violator that has given rise to any sanctions or judgment imposed by, or plea of guilty or nolo contendere or settlement with, the commissioner or any securities administrator of any other state or other country, any court of competent jurisdiction, the securities and exchange commissioner, the commodity
futures trading commission, any other federal or state
agency or any national securities association or national
securities exchange as defined in the Securities Exchange

(v) Any other factor that the commissioner finds
appropriate in the public interest or for the protection of
investors and consistent with the purposes fairly intended
by the policy and provisions of this article.

(3) An administrative assessment imposed by an order
issued under this subsection is not mutually exclusive of
any other remedy available under this article.

(4) The commissioner shall not impose an
administrative assessment with respect to any public
proceeding which was instituted prior to the date of
enactment of this section.

§32-4-409. Criminal penalties.

(a) Any person who willfully violates any provision of
this chapter, except section 404, or who willfully violates
any rule or order under this chapter, or who willfully
violates section 404 knowing the statement made to be
false or misleading in any material respect, shall be guilty
of a felony and, upon conviction thereof, shall be fined
not more than fifty thousand dollars, or imprisoned in the
penitentiary not less than one nor more than three years,
or both fined and imprisoned; but no person may be
imprisoned for the violation of any rule or order if he or
she proves that he or she had no knowledge of the rule or
order. No indictment may be returned under this chapter
more than five years after the alleged violation.

(b) The commissioner may refer such evidence as is
available concerning violations of this chapter or of any
rule or order hereunder to the proper prosecuting
attorney, who may, with or without such a reference,
institute the appropriate criminal proceedings under this
chapter.

(c) Nothing in this chapter limits the power of the state
to punish any person for any conduct which constitutes a
crime by statute or at common law.

§32-4-413. Administrative files and opinions.
(a) A document is filed when it is received by the commissioner.

(b) The commissioner shall keep a register of all notice filings and all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under rules prescribed by the commissioner.

(d) Upon request and at such reasonable charges as he or she prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his or her seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions. Copies of the opinions shall be filed in a special file maintained for that purpose and shall be public records available for public inspection. The commissioner shall charge a one hundred-dollar fee for each interpretative opinion.

§32-4-414. Scope of the chapter and service of process.

(a) Sections 101, 201(a), 301, 405 and 410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a) and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer: (1) Originates
from this state; or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance: (1) Is communicated to the offeror in this state; and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as section 405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every person making a notice filing and every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the commissioner, in such form as he or she by rule prescribes, an irrevocable consent appointing the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his or her successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A
person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless: (1) The plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last address on file with the commissioner; and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and he or she has not filed a consent to service of process under subsection (g) of this section and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the commissioner or his or her successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or her or his or her successor, executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last-known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.
AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a; and to amend article five, chapter eight of said code by adding thereto a new section, designated section twenty, all relating to voluntary associations and membership organizations primarily comprised of counties or municipalities in this state or elected or appointed officials of such counties or municipalities; requiring that such association and organizations, whether or not for profit, which annually receive more than five thousand dollars in public funds from the dues of their members to file triennial audits with the secretary of tax and revenue; requiring that such audits be performed by independent certified public accountants; and providing criminal penalties for failure to comply.

Be it enacted by the Legislature of West Virginia:

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

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-17a. Triennial audits by certain associations and organizations receiving county funds.
(a) Any voluntary association or other membership organization, whether nonprofit or for profit, the majority of the membership of which is comprised of counties of this state or of persons who hold elected or appointed county offices in this state, and which annually receives more than five thousand dollars in public moneys from the various counties of this state to pay the membership dues of counties or elected or appointed county officials, shall file with the secretary of tax and revenue on a triennial basis, beginning the first day of July, one thousand nine hundred ninety-seven, an audit of the receipt and disbursement of funds. The period covered by the audit shall be the previous three years or for the years since the last such audit.

(b) Any audit required by the provisions of this section shall be performed by an independent certified public accountant.

(c) Any voluntary association or membership organization subject to the provisions of this section which fails or refuses to file an audit shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-20. Triennial audits of certain associations and organizations.

(a) Any voluntary association or other membership organization, whether nonprofit or for profit, the majority of the membership of which is comprised of municipalities of this state or of persons who hold elected or appointed municipal offices in this state, and which annually receives more than five thousand dollars in
public moneys from the various municipalities of this state
to pay the membership dues of municipalities or elected
or appointed municipal officials, shall file with the
secretary of tax and revenue on a triennial basis,
beginning the first day of July, one thousand nine
hundred ninety-seven, an audit of the receipt and
disbursement of funds. The period covered by the audit
shall be the previous three years or for the years since the
last such audit.

(b) Any audit required by the provisions of this
section shall be performed by an independent certified
public accountant.

(c) Any voluntary association or membership
organization subject to the provisions of this section which
fails or refuses to file an audit shall be guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than one thousand dollars nor more than five
thousand dollars.

CHAPTER 225

(Com. Sub. for H. B. 2712—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chap­
ter sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said
chapter by adding thereto a new article, designated article
thirteen-c, all relating to public water systems; definition of
public water system; criminal penalties; civil and administra­
tive penalties; violation of drinking water rules or regula­
tions; creation of safe drinking water penalty fund; designa­
tion of division of health as instrumentality to enter into
agreements for and accept grants made by the United States
environmental protection agency; creation of drinking water
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; criminal, civil and administrative penalties; safe drinking water penalty fund.

(a) A public water system is any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system; and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system does not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system.
which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

(b) (1) The division of health shall prescribe by legislative rule the maximum contaminant levels to which all public water systems shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer. Such rule shall contain provisions to protect and prevent contamination of wellheads and well fields used by public water supplies so that contaminants do not reach a level which would adversely affect the health of the consumer.

(2) It shall further prescribe by legislative rule minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

(3) In addition, the division of health shall establish by legislative rule, as set out in chapter twenty-nine-a of this code, requirements covering the production and distribution of bottled drinking water and may by legislative rule, as set out in chapter twenty-nine-a of this code, establish requirements governing the taste, odor, appearance, and other consumer acceptability parameters of drinking water.

(c) Authorized representatives of the division of health shall have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing, and shall be furnished records or information reasonably required for a complete inspection.
(d) (1) Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who violates any provision of this section, or any of the rules or orders issued pursuant thereto, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, and each day's violation shall constitute a separate offense. In addition thereto, the division of health may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing violations.

(2) For a willful violation of a provision of this section, or of any of the regulations or orders issued thereunder for which a penalty is not otherwise provided under subdivision (3) of this subsection, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day's violation shall be grounds for a separate penalty.

(3) The division of health shall have the authority to assess administrative penalties and initiate such proceedings as may be necessary for the enforcement of drinking water regulations. The administrative penalty for a violation of any drinking water rule or regulation adopted by the division shall be a minimum of one thousand dollars per day per violation and each day’s violation shall be grounds for a separate penalty. In any action brought to enforce drinking water rules or regulation, the administrative penalty may not exceed an aggregate amount of five thousand dollars for systems serving a population of less than ten thousand persons and may not exceed twenty-five thousand dollars for systems serving a population of ten thousand persons or more. Payments shall be payable to the division of health. All moneys collected under this section shall be deposited into a restricted account known
as the safe drinking water penalty fund, which is hereby created in the office of the state treasurer. All money deposited into the fund shall be used by the division of health to provide technical assistance to public water systems.

ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING FUND ACT.

§16-13C-1. Definitions.
§16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.
§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water resources authority; set-aside accounts.
§16-13C-5. Remedies to enforce payment.
§16-13C-6. Construction of article.

§16-13C-1. Definitions.

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

(1) "Authority" means the water development authority provided for in section four, article one, chapter twenty-two-c of this code.

(2) "Capacity development" means the technical, managerial and financial capability of a public water system.

(3) "Cost" means the cost of all labor, materials, machinery, equipment, lands, property, rights and easements, plans and specifications and all other expenses necessary or incident to the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of a project.

(4) "Disadvantaged community" means the service area of a public water system that meets affordability criteria established after public review and comment by the state.

(5) "Federal safe drinking water act" means the federal statute commonly known as the "Safe Drinking Water
(6) "Fund" means the West Virginia drinking water treatment revolving fund created in this article.

(7) "Instrumentality" means the division of health which shall have the primary responsibility for administering the fund and this article pursuant to requirements of the federal safe drinking water act.

(8) "Local Entity" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state which is empowered to construct and operate an eligible project.

(9) "Public water system" means that term as defined in section nine-a, article one, chapter sixteen of the code.

(10) "Project" means a project for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state and federal drinking water regulations.

(11) "Set-aside accounts" means those accounts that may be set up for activities required by the federal safe drinking water act and the moneys for these accounts may be taken from the federal capitalization grant for these nonproject activities before the capitalization grant is deposited into the fund.

(12) "Small system" means a public water system serving 10,000 or fewer persons.

§16-13C-2. Designation of division of health as state instrumentality; rules; small systems; disadvantaged communities.

(a) The division of health shall act as the instrumentality that is hereby empowered to enter into capitalization agreements with the United States Environmental Protection Agency, to accept capitalization grant awards made under the federal safe drinking water act, and to direct the administration and management of the drinking water
treatment revolving fund created in this article in accordance with the requirements of federal law.

(b) The division of health shall propose rules for legislative approval in accordance with provisions of article three, chapter twenty-nine-a of the code for the purpose of effecting the administration of the provisions of this article. The rules shall include, but are not limited to, establishing requirements for: (1) Capacity development; (2) environmental review; (3) disadvantaged community designation; (4) receipt and disbursement of fund moneys; and (5) establishment of a drinking water treatment revolving fund program to direct the financial management of the fund to water systems and establish the interest rates and repayment terms of the loans.

(c) Two percent of the annual federal capitalization grants made to this state shall be utilized to provide technical assistance services for small systems to assist those systems in maintaining compliance with the federal safe drinking water act. The division of health shall enter into contracts to provide technical assistance services for small systems with such nonprofit organizations that: (1) Have a membership that represent at least twenty-five percent of the small systems of this state; and (2) have at least five years experience in providing on-site technical assistance to small systems.

(d) The division of health shall, in accordance with the provisions of the federal safe drinking water act, establish a program for loan subsidies to disadvantaged communities. Thirty percent of the annual federal capitalization grants made to this state shall be dedicated to the funding of projects for disadvantaged communities.

§16-13C-3. Drinking water treatment revolving fund; duties of division of health and water resources authority; set-aside accounts.

(a) There is hereby created in the office of the state treasurer a special fund to be known as the “West Virginia drinking water treatment revolving fund”. The fund shall be administered and managed in accordance with the provisions of the federal safe drinking water act.
(b) The fund shall be administered and managed by the water development authority under the direction of the division of health. The fund shall be comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state by the federal government expressly for the purpose of establishing and maintaining a drinking water treatment revolving fund, all receipts from loans made from the fund, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans or provide other allowable financial assistance to eligible projects for public water systems, as described in the federal safe drinking water act.

(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, 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.

(d) The authority shall propose rules for legislative approval in accordance with the provisions of article three chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with the provisions of this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director’s designee. Any depository or officer of the depository to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply them solely for the purposes for which the moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. Notwithstanding any provision of this code to the contrary, amounts in the fund shall be deposited by the authority in one or more banking institutions: Provided, That any moneys so deposited shall be deposited in a
banking institution located in this state. The banking institution shall be selected by the authority by competitive bid. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

(f) Pursuant to the provisions of the federal safe drinking water act, set-aside accounts may be set up in accounts separate from the drinking water treatment revolving fund. These set-aside accounts shall include, but not be limited to, administration costs, source water protection, operator training and certification, technical assistance to systems, local assistance, and other state activities permitted by the federal safe drinking water act. The division of health shall direct the authority to establish and administer the set-aside accounts as permitted by the federal safe drinking water act. An application fee may be charged and deposited into the administrative account to defray the cost of administering the program.


The authority shall manage the funds received pursuant to the provisions of this article for accounting purposes. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year and the cost thereof may be defrayed as administrative expense under provisions of this article. The audit shall be conducted by a certified public accountant and provide an auditor’s opinion on the fund financial statements, a report on the internal controls and a report prepared in compliance with the provisions of the drinking water treatment revolving fund.

§16-13C-5. Remedies to enforce payment.

(a) In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement made between the state and a local entity, and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the
following rights and remedies in the event of any default by a local entity under a loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local entity pursuant to this article, and may proceed directly to enforce and collect the service charges, together with all necessary costs of the enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as the agent for a particular local entity, all of the rights, powers and remedies of the local entity with respect to the project or which may be conferred upon the local entity by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local entity pursuant to this article.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local entity of all the terms and conditions of the loan agreement between the state and that local entity including:

(A) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(B) The enforcement and collection of service charges; and

(C) The enforcement by the local entity of all rights and remedies conferred by statute, rule, regulation or judicial decision.

(b) The rights and remedies enumerated in this article are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§16-13C-6. Construction of article.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effected. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.
AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen and eighteen, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article two, chapter forty-eight-a of said code, all relating to conforming the West Virginia works act and support enforcement law to federal requirements; legislative findings; defining terms; removing obsolete language relating to program implementation, waiver proposals and emergency rules; removing requirement that rules be promulgated in accordance with administration procedures act; changing work exemption for new mothers; requiring personal responsibility contract be signed before receipt of cash assistance; diversionary assistance allowances; providing for confidentiality of information; fines and criminal penalties for unauthorized release of confidential information; and removing the pass-through of the first fifty dollars of amounts collected as child support.

Be it enacted by the Legislature of West Virginia:

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

Chapter

48A. Enforcement of Family Obligations.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-2. Legislative findings; purpose.
§9-9-5. West Virginia works program fund.
§9-9-6. Program participation.
§9-9-7. Work requirements.
§9-9-10. Participation limitation; exceptions.
§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
§9-9-18. Relationship with other law.

§9-9-2. Legislative findings; purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The entitlement of any person to receive federal-
3 state cash assistance is hereby discontinued;

4 (2) At-risk families are capable of becoming self-
5 supporting;

6 (3) A reformed assistance program should both
7 expect and assist a parent and caretaker-relatives in at-risk
8 families to support their dependent children and children
9 for which they are caretakers;

10 (4) Every parent or caretaker-relative can exhibit
11 responsible patterns of behavior so as to be a positive role
12 model;

13 (5) Every parent or caretaker-relative who receives
14 cash assistance has a responsibility to participate in an
15 activity to help them prepare for, obtain and maintain
16 gainful employment;
(6) For a parent or caretaker-relative who receives cash assistance and for whom full-time work is not feasible, participation in some activity is expected to further themselves, their family or their community;

(7) The state should promote the value of work and the capabilities of individuals;

(8) Job development efforts should enhance the employment opportunities of participants;

(9) An effective public education system is the key to long-term self-support; and

(10) A reformed assistance program should be structured to achieve a clear set of outcomes; deliver services in an expedient, effective and efficient manner; and maximize community support for participants. After five years, there is expected to be a decrease in the following: (i) The number of persons receiving public assistance; and (ii) the amount of time an individual remains on public assistance.

(b) The goals of the program are to achieve more efficient and effective use of public assistance funds; reduce dependency on public programs by promoting self-sufficiency; and structure the assistance programs to emphasize employment and personal responsibility. The program is to be evaluated on the increase in employment rates in the program areas; the completion of educational and training programs; the increased compliance in preventive health activities, including immunizations; and a decrease in the case-load of division of personnel.


In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of West Virginians living in the same household, living below the federally designated poverty level, lacking the resources to
become self-supporting, and consisting of a dependent
minor child or children living with a parent, stepparent or
caretaker-relative; an "at-risk family" may include an
unmarried minor parent and his or her dependent child or
children who live in an adult supervised setting;

(b) "Beneficiary" or "participant" means any parent
or caretaker-relative in an at-risk family who receives cash
assistance for himself or herself and family members;

(c) "Cash assistance" means temporary assistance for
needy families or diversionary assistance;

(d) "Challenge" means any fact, circumstance or
situation that prevents a person from becoming self-
sufficient or from seeking, obtaining or maintaining
employment of any kind, including physical or mental
disabilities, lack of education, testing, training, counseling,
child care arrangements, transportation, medical treatment
or substance abuse treatment;

(e) "Community or personal development" means
activities designed or intended to eliminate challenges to
participation in self-sufficiency activities. These activities
are to provide community benefit and enhance personal
responsibility, including, but not limited to, classes or
counseling for learning life skills or parenting, dependent
care, job readiness, volunteer work, participation in
sheltered workshops or substance abuse treatment;

(f) "Department" means the state department of
health and human resources;

(g) "Division" means the division of human services;

(h) "Income" means money received by any mem-
ber of an at-risk family which can be used at the discretion
of the household to meet its basic needs: Provided, That
income shall not include earnings of minor children in
school, payments received from earned income tax credit
or tax refunds;

(i) "Personal responsibility contract" means a written
agreement entered into by the division and a beneficiary
which establishes the responsibilities and obligations of the beneficiary;

(j) "Secretary" means the secretary of the state department of health and human resources;

(k) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the division for the creation and maintenance of the employment position;

(l) "Support services" means, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which is assisting families to receive child support enforcement and supplemental social security income; family support services which is parenting, budgeting and family planning; relocation assistance; and mentoring services;

(m) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the division for the creation and maintenance of the employment position;

(n) "Work" means unsubsidized employment, subsidized employment, work experience or community or personal development; and

(o) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.


(a) The secretary shall conduct the West Virginia works program in accordance with this article and any applicable regulations promulgated by the secretary of the federal department of health and human services in accordance with federal block-grant funding or similar federal funding stream. This program shall be implemented to replace welfare assistance programs for at-risk
families in accordance with this article and within federal
requirements; to coordinate the transfer of all applicable
state programs into the temporary assistance to needy
families West Virginia works program; to expend only the
funds appropriated by the Legislature to establish and
operate the program or any other funds available to the
program pursuant to any other provisions of the code or
rules; to establish administrative due process procedures
for revocation or termination proceedings; and implement
such other procedures as may be necessary to accomplish
the purpose of this article.

(b) The secretary may establish the program as one or
more pilot projects to test the policy being evaluated. Any
pilot project so established is to be consistent with the
principles and goals set forth in this article. The secretary
shall determine the counties in which to implement the
provisions of this program, considering a fair representa-
tion of both rural and urban areas, and may vary the
program components to test the effectiveness, efficiency
and fiscal impact of each prior to statewide implementa-
tion. The secretary shall structure the initial pilot pro-
gram, or programs to include a minimum of fifteen
percent of the state population that qualifies for temporary
assistance for needy families, or any successor program.
The pilot program shall eventually include a minimum of
fifteen-percent of the participants eligible in other catego-
ries, as funds are available.

(c) The West Virginia works program authorized
pursuant to this act does not create an entitlement to that
program or any services offered within that program,
unless entitlement is created pursuant to a federal law or
regulation. The West Virginia works program, and each
component of that program established by this act or the
expansion of any component established pursuant to
federal law or regulation, is subject to the annual appropi-
ation of funds by the Legislature.

(d) Copies of all rules proposed by the secretary shall
also be filed with the legislative oversight commission on
health and human resources accountability established
(e) In conjunction with the performance evaluation of the department of health and human resources scheduled during the interim of the Legislature in the year one thousand nine hundred ninety-seven, the performance evaluation and research division of the legislative auditor’s office shall undertake a statistical study evaluating the rates at which participants in the pilot program established under this article move to unsubsidized employment, subsidized employment and work experience, and report findings to the joint committee on government operations not later than the thirtieth day of October, one thousand nine hundred ninety-seven. The performance evaluation and research division may review and make recommendations with respect to the methodology established by the secretary for evaluating the effectiveness, efficiency and fiscal impact of the pilot project established pursuant to this section.

(f) Notwithstanding the provisions of subsection (b) of this section, the secretary shall implement, not later than the first day of January, one thousand nine hundred ninety-eight, modifications to the temporary assistance to needy families program so that the method of calculating the amount of cash assistance for which a participant’s family is eligible, including treatment of income and assets, does not vary depending on the participant’s county of residence: Provided, That nothing in this subsection may be construed to require the expansion or statewide implementation of the program created in this article until such time as the effectiveness, efficiency and fiscal impact of the program is tested and evaluated.

§9-9-5. West Virginia works program fund.

There is hereby created a special account within the state treasury to be known as the “West Virginia Works Program Fund”. Expenditures from the fund shall be used exclusively to meet the necessary expenditures of the program, including wage reimbursements to participating employers, temporary assistance to needy families, employment-related child care payments, transportation
expenses and administrative costs directly associated with
the operation of the program. Moneys paid into the
account shall be from specific annual appropriations of
funds by the Legislature.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult
recipients of cash assistance shall be required to participate
in the West Virginia works pilot program in accordance
with the provisions of this article. The level of participa-
tion, services to be delivered and work requirements shall
be defined within the terms of the personal responsibility
contract and through rules established by the secretary.

(b) To the extent funding permits, any individual
exempt under the provisions of section eight of this article
may participate in the activities and programs offered
through the West Virginia works program.

(c) Support services other than cash assistance through
the works program may be provided to at-risk families to
eliminate the need for cash assistance.

(d) Cash assistance through the works program may
be provided to an at-risk family if the combined family
income is below the income and asset test levels estab-
lished by the division: Provided, That an at-risk family
that includes a married man and woman and dependent
children of either one or both may receive an additional
cash assistance benefit in an amount ten percent greater
than the cash assistance benefit provided to the same size
household in which there are no married adults: Provided,
however, That an at-risk family shall receive an
additional cash assistance benefit in an amount equal to
the amount of child support collected in a month on
behalf of a child or children of the at-risk family, not to
exceed fifty dollars.

§9-9-7. Work requirements.

 Unless otherwise exempted by the provisions of
section eight of this article, the West Virginia works
program shall require that anyone who possesses a high
school diploma, or its equivalent, or anyone who is of the
age of twenty years or more, to work or attend an educa-
tional or training program for a minimum of twenty hours
per week to receive any form of cash assistance. In
accordance with federal law or regulation, the work,
education and training requirements of this section are
waived for any qualifying participant with a child under
six years of age if the participant is unable to obtain
appropriate and available child care services. In order for
any participant to receive cash assistance, he or she shall
enter into personal responsibility contracts pursuant to the
provisions of section nine of this article.


Participants exempt from the work requirements of
the works program pursuant to the provisions of this
section shall be required to develop a personal responsibil-
ity contract. The secretary shall establish by rule catego-
ries of persons exempt only from the work requirements
of the program, which categories include, but are not
limited to, the following:

(a) A parent caring for a dependent child with a life-
threatening illness;

(b) Individuals over the age of sixty years;

(c) Full-time students that are less than twenty years of
age and are pursuing a high school diploma or equivalent;

(d) Persons with a physical or mental incapacity or
persons suffering from a temporary debilitating injury
lasting more than thirty days, as defined by the secretary;

(e) Relatives providing in-home care for an individual
that would otherwise be institutionalized; and

(f) Any woman during the last trimester of pregnancy
and the first six months after the birth of the child but in
no case shall the woman be exempt from the work re-
quirements for more than a total of six months: Provided,
That, in the case of the birth of the first child to said
woman after said woman first becomes a cash assistance
recipient, the woman may be exempt up to the time her
child reaches twelve months of age.
§9-9-9. **Personal responsibility contract.**

(a) Every eligible adult beneficiary shall participate in a program orientation and the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the assessed goals and challenges of the participant:

1. If the participant has a recent attachment to the work force, the contract shall include provisions regarding required job search activities, identified support services, level of benefits requested and time limitation.

2. If the participant does not have a recent attachment to the work force, the contract shall identify the evaluation or testing activities, and/or job training activities necessary prior to job search activities, identified support services, benefits requested and time limitation.

3. If it is determined that the participant is not able to obtain or maintain gainful employment, the contract shall contain appropriate provisions defining the activities that benefit the participant, their family or their community.

4. The participant's contract shall include the requirement that the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for their dependent child, including routine examinations and immunizations; assurance of school attendance for school age children under their care; assurance of properly supervised child care, including after-school care; and establish paternity or actively pursue child support, or both, if applicable and if deemed necessary, nutrition or other counseling, parenting or family planning classes.

5. If the participant must overcome challenges prior to employment, the contract shall include a list of the identified challenges and an individual plan for overcoming the same.

6. If the participant is a teenage parent, the participant may work, but the contract shall include the requirements that the participant:
(A) Remain in an educational activity to complete high school, obtain a general equivalent diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both if appropriate; and

(C) Live at home or in other adult supervised arrangements if they are unemancipated minor parents.

(7) If the participant is under the age of twenty years and does not have a high school education or its equivalent, the contract shall include requirements to participate in mandatory education or training, which if the participant is unemployed, may include a return to high school with satisfactory scholastic progress.

(b) In order to receive cash assistance the participant shall enter into a personal responsibility contract. If the participant refuses to sign the personal responsibility contract, the participant and family members shall be ineligible to receive cash assistance: Provided, That a participant who alleges that the terms of a personal responsibility contract are inappropriate based on the individual circumstances of the participant may request and shall be provided a fair and impartial hearing in accordance with administrative procedures established by the division and due process of law. A participant who signs a personal responsibility contract, or complies with a personal responsibility contract, does not waive his or her right to request and receive a due process hearing under this subsection.

(c) Personal responsibility contracts shall be drafted by the division on a case-by-case basis; take into consideration the individual circumstances of each beneficiary; reviewed and reevaluated not less often than every two years; and, in the discretion of the division, amended or extended on a periodic basis.

§9-9-10. Participation limitation; exceptions.

The length of time a participant may receive cash assistance through the West Virginia works program shall
be defined in the personal responsibility contract: Provided, That no participant may receive benefits for a period longer than sixty months, except in circumstances as defined by the secretary.


(a) The division may refuse to extend or renew a personal responsibility contract and the benefits received by the beneficiary, or may terminate an existing contract and benefits, if the division finds any of the following:

(1) The employment of fraud or deception by the beneficiary in applying for or receiving program benefits;

(2) A substantial breach of the requirements and obligations set forth in the personal responsibility contract;

(3) A violation of any provision of the personal responsibility contract, this article, or any rule promulgated by the secretary pursuant to this article.

(b) In the event the division determines that a personal responsibility contract or the benefits received by the beneficiary are subject to revocation or termination, written notice of the violation, revocation or termination shall be deposited in the United States mail, postage prepaid and addressed to the beneficiary at his or her last known address thirteen days prior to such termination or revocation. Such notice shall state the action of the division, its reason or reasons for such termination and grant to the beneficiary a reasonable opportunity to be heard at a fair and impartial hearing before the division in accordance with administrative procedures established by the division and due process of law.

(c) In any hearing granted pursuant to the provisions of this section, the beneficiary shall maintain the burden of proving that his or her benefits were improperly terminated and shall bear his or her own costs, including attorneys fees.

(d) The secretary shall determine by rule de minimis violations and those violations subject to sanctions and
maximum penalties. In the event the division finds that a beneficiary has violated any provision of this article, of his or her personal responsibility contract or any applicable division rule, the division shall impose sanctions against the beneficiary as follows:

(1) For the first noncompliance, a one-third reduction of benefits for three months;

(2) For the second noncompliance, a two-thirds reduction in benefits for three months; and

(3) For the third noncompliance, a termination of benefits for six months.

(e) For any sanction imposed pursuant to subsection (d) of this section, if compliance occurs within thirteen days of the date of the notice of the sanction, the reduction in benefits shall not be imposed, but the noncompliance shall count in determining the level of sanction to be imposed for any future noncompliance. Once a reduction in benefits is in effect, it shall remain in effect for the designated time period: Provided, That if a participant incurs a second noncompliance sanction during the time period of an imposed first noncompliance sanction, the sanctions shall run concurrently at the second noncompliance sanction rate: Provided, however, That if during the time period of an imposed second noncompliance sanction, a third noncompliance occurs, the third noncompliance sanction shall be imposed and the participant's benefits shall be terminated. If benefits are terminated, benefits may not be provided until after the six-month time period and the noncompliance that caused the termination has been rectified or excused.

§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.

(a) In order to encourage at-risk families not to apply for ongoing monthly cash assistance from the state, the secretary may issue one-time diversionary assistance allowances to families in an amount not to exceed three months of cash assistance in order to enable such families to become immediately self-supporting: Provided, That
receipt of such allowance, regardless of amount, shall count as three months of the sixty months designated under the provisions of section ten of this article.

(b) The secretary shall establish by rule the standards to be considered in making diversionary assistance allowances.

(c) Nothing in this section shall be construed to require that the division or any assistance issued pursuant to this section be subject to any of the provisions of chapter thirty-one or chapter forty-six-a of this code.


The Legislature encourages the development of a system of coordinated services, shared information and stream-lined application procedures between the program and the other agencies within the department to implement the provisions of this article. The secretary shall require the coordination of activities between the program and the following agencies:

(a) The child support enforcement division for the purpose of establishing paternity, promoting cooperation in the pursuit of child support, encouraging noncustodial parents to get job search assistance and determining eligibility for cash assistance and support services;

(b) The bureau of public health for the purpose of determining appropriate immunization schedules, delivery systems and verification procedures; and

(c) The bureau of medical services for the purpose of reporting eligibility for medical assistance and transitional benefits.

The secretary may require the coordination of procedures and services with any other agency he or she deems necessary to implement this program: Provided, That all agencies coordinating services with the division shall, when provided with access to division records or information, abide by state and federal confidentiality requirements including the provisions of section twenty of this article.
The secretary shall propose any rules, including emergency rules, necessary for the coordination of various agency activities in the implementation of this section.

§9-9-18. Relationship with other law.

If any provision of this article conflicts with any other provision of this code or rules, the provisions of this article shall supersede such provisions: Provided, That the provisions of this article shall not supersede any provisions which are required or mandated by federal law.

Any reference in this code or rules to “aid to families with dependent children” means “temporary assistance for needy families” or any successor state program funded under Part A, Title IV of the Social Security Act.


(a) Except as otherwise provided in this code or rules, all records and information of the department regarding any beneficiary or beneficiary’s family members shall be confidential and shall not be released, except under the following circumstances:

(1) If permissible under state or federal rules or regulations;

(2) Upon the express written consent of the beneficiary or his or her legally authorized representative;

(3) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section: Provided, That all confidential records and information presented to the court shall after review be sealed by the clerk and shall not be open to any person except upon order of the court upon good cause being shown therefor; or

(4) To a department or division of the state, pursuant to the terms of an interagency agreement.

(b) Any person who knowingly and willfully releases or causes to be released the confidential records and
information described in this section, except under the specific circumstances enumerated in this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail for not more than six months, or both.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-24. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the child support enforcement division shall be distributed within ten days of receipt, except as otherwise specifically provided in this chapter. Such amounts shall, except as otherwise provided under the provisions of subsection (c) of this section, be distributed as follows:

(1) Any amounts which are collected periodically which represent monthly support payments shall be paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources to reimburse it for assistance payments to the family during that period (with appropriate reimbursement of the federal government to the extent of its participation in the financing);

(2) Amounts as are in excess of amounts required to reimburse the department of health and human resources under subdivision (1) of this subsection and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the obligee; and

(3) Amounts that are in excess of amounts required to be distributed under subdivisions (1) and (2) of this subsection shall be: (A) Paid by the child support enforcement division to the appropriate administrative unit of the department of health and human resources (with
appropriate reimbursement of the federal government to

the extent of its participation in the financing) as reim-

bursement for any past assistance payments made to the

family for which the department has not been reimbursed;

or (B) if no assistance payments have been made by the

department which have not been repaid, such amounts

shall be paid to the obligee.

(b) (1) Whenever a family for whom support pay-

ments have been collected and distributed under the

provisions of this chapter ceases to receive assistance from

the department of health and human resources, the child

support enforcement division shall provide notice to the

family of their rights with regard to a continuation of

services. Unless notified by the family that services are no

longer desired, the child support enforcement division

shall continue to collect amounts of support payments

which represent monthly support payments from the

obligor and pay any amount so collected, which represents

monthly support payments, to the family (without require-

ing any formal reapplication and without the imposition

of any application fee) on the same basis as in the case of

other obligees who are not receiving assistance from the

department of health and human resources.

(2) So much of any amounts of support so collected

shall be paid, first, to the obligee until all past due support

owed to the family by the obligor has been paid. After all

arrearages owing to the family have been paid, any

amounts of support collected which are in excess of the

required support payments shall be distributed in the

manner provided by paragraphs (A) and (B), subdivision

(3), subsection (a) of this section with respect to excess

amounts described in said subsection.

(c) (1) Notwithstanding the preceding provisions of

this section, amounts collected by the child support

enforcement division as child support for months in any

period on behalf of a child for whom the department of

health and human resources is making foster care mainte-

nance payments shall:

(A) Be paid by the child support enforcement division

to the appropriate administrative unit of the department of
health and human resources to the extent necessary to
reimburse the department for foster care maintenance
payments made with respect to the child during such
period (with appropriate reimbursement of the federal
government to the extent of its participation in financing);

(B) Be paid to the appropriate administrative unit of
the department of health and human resources to the
extent that the amounts collected exceed the foster care
maintenance payments made with respect to the child
during such period but do not exceed the amounts
required by a court order to be paid as support on behalf
of the child during such period; and the department of
health and human resources may use the payments in the
manner it determines will serve the best interests of the
child, including setting such payments aside for the child's
future needs or making all or a part thereof available to
the person responsible for meeting the child's day-to-day
needs; and

(C) Be paid to the appropriate administrative unit of
the department of health and human resources if any
portion of the amounts collected remains after making the
payments required under paragraphs (A) and (B) of this
subdivision, to the extent that such portion is necessary to
reimburse the department of health and human resources
(with appropriate reimbursement to the federal govern-
ment to the extent of its participation in the financing), for
any past foster care maintenance payments, or payments
of aid to families with dependent children which were
made with respect to the child (and with respect to which
past collections have not previously been retained);

(d) Any payment required to be made under the
provisions of this section to a family shall be made to the
resident parent, legal guardian or caretaker relative having
custody of or responsibility for the child or children.

(e) The commission shall establish bonding require-
ments for employees of the child support enforcement
division who receive, disburse, handle or have access to
cash.
The director shall maintain methods of administration which are designed to assure that employees of the child support enforcement division or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the director may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

No penalty or fee may be collected by or distributed to a recipient of child support enforcement division services from the state treasury or from the child support enforcement fund when child support is not distributed to the recipient in accordance with the time frames established herein.

CHAPTER 227

(H. B. 2854—By Delegates Boggs, Stemple, Leggett and Border)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the Little Kanawha River Parkway Authority; functions; members; appointment; powers and duties; officers; bylaws and rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA LITTLE KANAWHA RIVER PARKWAY AUTHORITY.

§1. Highway authority created; purpose.
§2. Members; appointment; officers.
§3. Powers.


§1. Highway authority created; purpose.

There is hereby created the Little Kanawha River Parkway Authority, to promote and advance the construction of a modern highway through Wirt, Braxton, Gilmer, Calhoun and Wood counties, to be known as the Little Kanawha River Parkway Authority and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the Little Kanawha River Parkway for the benefit of West Virginians.

§2. Members; appointment; officers.

(a) The authority consists of fifteen voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, one thousand nine hundred ninety-seven.

(b) Each of the county commissions of the counties of Wirt, Gilmer, Calhoun, Braxton and Wood shall appoint three voting members to the authority. The terms of the voting members initially appointed by a county commission are as follows: One member from each county shall be appointed for a term of one year, one member from each county shall be appointed for a term of two years and the rest of the members shall be appointed for a term of four years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or designee, the director of natural resources or designee and the executive director of the West Virginia development office or designee.
(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) The authority shall meet annually on the third Monday in July and at such other times designated by the authority in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice of the meeting in writing. Eight voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws and rules as may be necessary for its operation and management.

§3. Powers.

The authority has all, but only those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The promotion of economic development and tourism along Little Kanawha River Parkway;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of the Little Kanawha River Parkway and West Virginia routes between Burnsville and Elizabeth into Mineral Wells at the request of or without the request of any governmental entity or private person or entity.

The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the highway.


Each voting member of the authority shall receive compensation and expense reimbursement from the governing body which appointed the member in an amount to be fixed by the governing body, not to exceed
the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.


The authority hereby created shall be a public corporation and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and may have and use a corporate seal.


If any provision hereof is held invalid, the invalidity may not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are severable.

CHAPTER 228
(H. B. 2727—By Delegates Flanigan, Osborne, Frederick and Staton)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the Mercer County Governmental Council to provide a forum for elected and appointed leaders of Mercer County to use in building consensus about issues facing the county, in order to present a unified voice to government at state and federal levels.

Be it enacted by the Legislature of West Virginia:

MERCER COUNTY GOVERNMENTAL COUNCIL.

§1. Mercer County Governmental Council created.
§2. Purpose.
§3. Membership.
§4. Officers.
§6. Meetings.


§1. Mercer County Governmental Council created.

1 There is hereby created the Mercer County
2 Governmental Council as a cooperative endeavor of the
3 various governmental units and officials of Mercer
4 County, West Virginia, and its municipalities.

§2. Purpose.

1 The purpose of the council created herein is to foster
2 and promote cooperation and understanding among the
3 various governing bodies and officials of Mercer County,
4 West Virginia and the Mercer County legislative
5 delegation. The desired effect of this organization is for
6 Mercer County to present a unified voice and vision to the
7 state and federal governments for the betterment of
8 Mercer County and to ensure that the citizens of Mercer
9 County are heard by their state and federal representatives
10 and receive a fair and equitable proportion of resources
11 available from these levels of government.

§3. Membership.

1 The Mercer County Governmental Council shall be
2 composed of three distinct groups of members: Full
3 members; affiliate members; and associate members.
4
5 The full members shall be the elected members of the
6 governing bodies of the municipalities located within
7 Mercer County, the members of the Mercer County
8 Commission, and those members of the state Senate and
9 the House of Delegates elected to represent Mercer
10 County, or a portion thereof, in the Legislature. The terms
11 of office for these members shall be coextensive with the
12 terms of their respective elected offices.

13 The affiliate members shall be those individuals
14 elected to the following Mercer County public offices:
15 Sheriff, county clerk, circuit clerk, assessor, prosecuting
16 attorney, circuit judge, and magistrate. The terms of office
17 of these members shall be coextensive with the terms of
18 their respective elected offices.
The associate members shall be those individuals who are elected or appointed to the following offices or positions: Mercer County Economic Development Authority; Bluefield city manager; Princeton city manager; Region I Planning and Development Council; West Virginia Division of Highways district office; Chambers of Commerce; Mercer County Board of Education; Mercer County Health Board; Bluestone Convention and Tourism Board; Mercer County Emergency Services; and hospital administrators of hospitals located in Mercer County. The terms of office of these members shall be coextensive with the terms of their elected or appointed offices or positions.

§4. Officers.

The Mercer County Governmental Council shall, at its first meeting in July, one thousand nine hundred ninety-seven, elect from among its membership a president and vice president, who shall serve in their respective capacities for terms of two years. The president shall appoint an individual to serve as secretary/treasurer, who shall serve until a successor is appointed.

§5. Meetings.

The Mercer County Governmental Council shall hold an annual meeting each year on a day in July, to be chosen by a majority vote of the members. Thereafter, the council shall conduct monthly meetings to discuss problems of mutual concern and opportunities for common good; to provide a forum for discourse and discussion among the elected and appointed leaders of Mercer County; and, where possible, to reach consensus on issues of common concern so that Mercer County's governmental leaders may be unified in their efforts to improve the county.

Notice of all meetings shall be provided to members at least one week in advance. The president or, in the president's absence, the vice president shall preside. All meetings shall be governed by Roberts Rules of Order and be open to the public, in accordance with the Open Governmental Meetings Act. A simple majority of members constitutes a quorum for conducting business.

1. The council as a whole may take up for consideration any matter brought before it by any member but only full members of the council are entitled to vote on a matter. A simple majority of the full members present voting in the affirmative shall be sufficient for the measure to carry. However, no vote of the council may have a binding effect upon any member in the performance of his or her duties as an elected or appointed official and such votes of the council shall be advisory only.

CHAPTER 229

(H. B. 2577—By Delegates Warner and Cann)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Nutter Fort to meet as a levying body for the purpose of presenting to the voters of the city an election to consider an excess levy for the fire department in Nutter Fort, from the second Tuesday of March until the third Tuesday in May, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

NUTTER FORT EXCESS LEVY.

§1. Extended time for the city of Nutter Fort to meet as levying body for election to consider an excess levy for fire department.

1. The city of Nutter Fort is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from the second Tuesday in March, until the third Tuesday in May, one thousand nine hundred ninety-seven, for the purpose of submitting to the voters of Nutter Fort the consideration of an excess levy for fire department.
CHAPTER 230

(H. B. 2633—By Delegate Everson)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the municipality of Philippi to
meet as a levying body for the purpose of presenting to the
voters of the municipality an election to consider an excess
levy for park and recreational facilities in the municipality of
Philippi, from the third Tuesday of April until the last
Thursday in May, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

MUNICIPALITY OF PHILIPPI EXCESS LEVY.

§1. Extended time for Philippi governing body to meet as
levying body for election to consider an excess levy for
park and recreational facilities.

1 Notwithstanding the provisions of article eight, chapter
eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, to the contrary, the
municipality of Philippi is hereby authorized to extend the
time for its meeting as a levying body, setting the levy rate
and certifying its actions to the state tax commissioner
from the third Tuesday in April, until the last Thursday in
May, one thousand nine hundred ninety-seven, for the
purpose of submitting to the voters of the municipality of
Philippi the consideration of an excess levy for park and
recreational facilities.
AN ACT to establish the Robert C. Byrd Corridor H Highway Authority; functions; members; appointment; powers and duties; officers; bylaws and rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

ROBERT C. BYRD CORRIDOR H HIGHWAY AUTHORITY.

§1. Highway authority created; purpose.
§2. Members; appointment; officers.
§3. Powers.

§1. Highway authority created; purpose.

There is hereby created the Robert C. Byrd Corridor H Highway Authority, to promote and advance the construction of a modern highway, to be known as the Robert C. Byrd Corridor H Highway, through Randolph, Tucker, Grant, Hardy, Barbour, Upshur and Lewis counties and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of the Robert C. Byrd Corridor H Highway for the benefit of West Virginians.

§2. Members; appointment; officers.

(a) The authority consists of twenty-one voting members and three ex officio nonvoting members. All
members shall be appointed before the first day of July, one thousand nine hundred ninety-seven.

(b) Each of the county commissions of the counties of Randolph, Tucker, Grant, Hardy, Barbour, Upshur and Lewis shall appoint three voting members to the authority. The terms of the voting members initially appointed by a county commission are as follows: One member from each county shall be appointed for a term of one year, one member from each county shall be appointed for a term of two years and the rest of the members shall be appointed for a term of four years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or designee, the director of natural resources or designee and the executive director of the West Virginia development office or designee.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) The authority shall meet annually on the third Monday in July and at such other times designated by the authority in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice of the meeting in writing. Eleven voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws and rules as may be necessary for its operation and management.

§3. Powers.

The authority has all, but only those powers necessary, incidental, convenient and advisable for the following purposes:
(1) The promotion of economic development and tourism along Robert C. Byrd Corridor H Highway;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of the Robert C. Byrd Corridor H Highway at the request of or without the request of any governmental entity or private person or entity.

The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the highway.


Each voting member of the authority shall receive compensation and expense reimbursement from the governing body which appointed the member in an amount to be fixed by the governing body, not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.


The authority hereby created is a public corporation and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and may have and use a corporate seal.


If any provision hereof is held invalid, the invalidity may not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are severable.
CHAPTER 232

(Com. Sub. for H. B. 2539—By Delegates Varner, Hutchins, Ennis, Givens, Tucker, Pettit and Davis)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the West Virginia Route 2 and Interstate 68 Authority; functions; members; appointment; powers and duties; officers; bylaws; rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA ROUTE 2 AND INTERSTATE 68 AUTHORITY.

§1. West Virginia Route 2 and Interstate 68 Authority created; purposes.

§2. Members; appointment; officers.

§3. Powers.


§1. West Virginia Route 2 and Interstate 68 Authority created; purposes.

There is hereby created a West Virginia Route 2 and Interstate 68 Authority, to promote and advance the construction of a modern highway through Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke, Hancock, Marion and Monongalia counties and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of West Virginia Route 2, between Parkersburg and Chester, and Interstate 68, between Moundsville and Morgantown for the benefit of West Virginians.

§2. Members; appointment; officers.

(a) The authority consists of twenty voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, one thousand nine hundred ninety-seven.
(b) Each of the county commissions of the counties of Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke, Hancock, Marion and Monongalia shall appoint two voting members to the authority. The terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of two years and one member shall be appointed for a term of four years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or designee, the director of natural resources or designee and the executive director of the West Virginia development office or designee.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) The authority shall meet annually on the third Monday in July and at such other times designated by the authority in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice of the meeting in writing. Eleven voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws, rules as may be necessary for its operation and management.

§3. Powers.

The authority has all, but only those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The promotion of economic development and tourism along West Virginia Route 2, between Parkersburg and Chester, and Interstate 68, between Moundsville and Morgantown;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of West Virginia Route 2, between
The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the highways described herein.


Each voting member of the authority shall receive compensation and expense reimbursement from the governing body which appointed the member in an amount to be fixed by the governing body, not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law, for each day or substantial portion thereof engaged in the performance of official duties.


The authority hereby created is a public corporation and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and may have and use a corporate seal.


If any provision hereof is held invalid, the invalidity may not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are severable.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2

(By Delegate Martin)

[Adopted January 8, 1997]

Authorizing the placement of a statue of the Honorable Robert C. Byrd in the Rotunda of the Capitol.

WHEREAS, It is rare when a public servant, in an elected position, serves the citizenry for half a century; and

WHEREAS, West Virginia has been blessed with such distinguished service by U. S. Senator Robert C. Byrd; and

WHEREAS, His legislative career began in the West Virginia House of Delegates in 1947; he moved to the State Senate in 1949; then to the U. S. House of Representatives in 1953 and, finally, to the U. S. Senate in 1959. His unmatched record of service to his home State of West Virginia is acknowledged at this 50th anniversary of that service, which continues for the State he loves; therefore, be it

Resolved by the Legislature of West Virginia:

That the House of Delegates and the State Senate hereby authorize the placement of a full-sized statue of Senator Byrd to be located on the legislative floor of our stately capitol. His eternal presence will remind others of what one man, so dedicated, caring and confident can do in the service of his fellow man; and, be it

Further Resolved, That the statue is to be permanently placed in the rotunda area in gratitude for his service in both houses of our Legislature.
SENATE CONCURRENT RESOLUTION 36

(By Senators Tomblin, Mr. President, Anderson, Bailey, Ball, Boley, Bowman, Buckalew, Chafin, Craigo, Deem, Dittmar, Dugan, Fanning, Helmick, Hunter, Jackson, Kimble, Love, Macnaughtan, McKenzie, Minear, Oliverio, Plymale, Prezioso, Ross, Schoonover, Scott, Sharpe, Snyder, Sprouse, Walker, White, Wiedebusch and Wooton)

[Adopted April 8, 1997]

Expressing sadness at the passing of the Honorable William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian.

WHEREAS, The Honorable William T. Brotherton, Jr., was born April 17, 1926, the son of the late William T. Brotherton, a Charleston grocer, and Kathryn (Slack) Brotherton; and

WHEREAS, The Honorable William T. Brotherton, Jr., served his nation with pride and distinction in the United States Navy during World War II; and

WHEREAS, The Honorable William T. Brotherton, Jr., received his education at Washington and Lee University, earning (AB)(LLB) degrees. He served the citizens of Kanawha County as an assistant prosecuting attorney. He also was a sole practitioner of law from 1950 until his election to West Virginia Supreme Court of Appeals; and

WHEREAS, On June 17, 1950, the Honorable William T. Brotherton, Jr., married Ann J. Caskey, with whom he shared the joy of having three children, Elizabeth A., William T., III, and Laura J.; and

WHEREAS, The Honorable William T. Brotherton, Jr., was elected to the West Virginia House of Delegates in 1952 and served until 1964. The outstanding leadership ability of the Honorable William T. Brotherton, Jr., was recognized during his tenure in the House of Delegates. He served as chairman of the House Committee on the Judiciary during the 1958 session and as House Majority Leader and chairman of the House Committee on the Judiciary from 1960 through 1964; and
WHEREAS, In 1964, the Honorable William T. Brotherton, Jr., was elected to the West Virginia Senate, representing the seventeenth senatorial district. Again, the legislative expertise and leadership ability of the Honorable William T. Brotherton, Jr., was recognized and utilized. From 1968 to 1970, Senator Brotherton served the Senate as chairman of the Senate Committee on the Judiciary. From 1970 to 1972, he served, this time in a dual role as Majority Leader and chairman of the Senate Committee on the Judiciary; and

WHEREAS, In 1972, the Honorable William T. Brotherton, Jr., rose to the highest office in the Senate, being elected as the forty-third President of the West Virginia Senate. President Brotherton will long be remembered as a legislative leader who knew and respected the legislative process. As president, his integrity and fairness to his fellow colleagues were never questioned. He served as president through 1980, when he left legislative service, bringing to an end twenty-eight years of devoted public service to the citizens, not only of Kanawha County, but to all of West Virginia; and

WHEREAS, President Brotherton's love of the legislative process combined with his unquestionable integrity, honesty, fairness and legislative expertise made him a legend in his own time in the marbled halls of the Legislature; and

WHEREAS, Following his long and honorable service to the citizens of West Virginia as a legislator and legislative leader, the Honorable William T. Brotherton, Jr., became involved in the Charleston Sternwheel Regatta Commission. During his tenure as chairman of the Sternwheel Regatta Commission, the annual event flourished, becoming Charleston's most memorable festival in the city's history; and

WHEREAS, In 1984, the Honorable William T. Brotherton, Jr., was elected to the West Virginia Supreme Court of Appeals. During his tenure on the state's high court, Justice Brotherton served as Chief Justice in 1989 and 1994. Again, the integrity, honesty and fairness of Justice Brotherton was never questioned. His brilliant knowledge of law and constitutional matters was a great asset to the state's high court. Justice Brotherton retired from the court in 1995; and

WHEREAS, Sadly, the Honorable William T. Brotherton, Jr.,
passed away on Sunday, April 6, 1997, leaving behind a loving family, many cherished friends and colleagues, and a legendary legislative and judicial career; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby expresses its sincere sadness at the passing of the Honorable William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian; and, be it

Further Resolved, That the Honorable William T. Brotherton, Jr., will be remembered for his brilliant legal intellect, his wit and wisdom, his integrity, honesty and fairness, which, if emulated would make West Virginia’s government a model for the nation; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the family of the late William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian.

SENATE JOINT RESOLUTION 4

(By Senators Wooton, Ball, Bowman, Buckalew, Dittmar, Hunter, Kimble, Oliverio, Ross, Schoonover, Snyder and White)

[Adopted April 12, 1997]

Proposing an amendment to the Constitution of the State of West Virginia, amending section six, article ten thereof, relating to taxation and finance; eliminating the prohibition against investment of state funds in common stocks and other equity investments; authorizing the investment of state or public funds subject to procedures and guidelines established by the Legislature; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.
Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September twenty-seventh, one thousand nine hundred ninety-seven, which proposed amendment is that section six, article ten thereof, be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§6. Credit of state not to be granted in certain cases.

The credit of the state shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the state ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person. The investment of state or public funds shall be subject to procedures and guidelines heretofore or hereafter established by the Legislature for the prudent investment of such funds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Modern Investment Management Amendment" and the purpose of the proposed amendment is summarized as follows: "To authorize the investment of state or public funds in common stocks and other equity investments and to further require the Legislature to establish guidelines and procedures for the prudent investment of such funds."

HOUSE RESOLUTION 6

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[Adopted February 12, 1997]

Amending House Rule 78, relating to composition of committees.

Resolved by the House of Delegates:

That House Rule 78 be amended to read as follows:
"Composition of Committees.

78. The Committee on Rules shall consist of not less than seven nor more than fourteen members, which number shall include the Speaker, Majority Leader and Minority Leader; the Committee on Interstate Cooperation of seven members; and all other standing committees shall consist of not less than fifteen nor more than twenty-five members."

HOUSE RESOLUTION 24
(By Delegates Cann, Fragale, Linch and Warner)

[Adopted April 12, 1997]

In memory of Donald L. Kopp, former member, former Speaker and former Clerk of the House of Delegates from the County of Harrison.

WHEREAS, Donald L. Kopp was born May 23, 1935, the son of Francis and Jenny Kopp, in Clarksburg, West Virginia.

Don Kopp was educated in the public schools of the State and immediately following his graduation, went to work in the glass plants of Clarksburg, working alongside his father. He quickly became an officer in the union representing glassworkers and stayed true to organized labor for the remainder of his life.

Married to Beverly Wyckoff, they had three children: Donald L, II, Jenny Le, Tina Marie, and four grandchildren.

His public service began at the early age of twenty-nine, when he was first elected to the House of Delegates and continued for more than thirty years. After having served twelve years as a member and Chairman of the Committee on Industry and Labor and the Committee on Interstate Cooperation, he was elected Speaker of the House at the beginning of the 63rd Legislature. Following a severe heart attack and a hiatus of two years, Don Kopp was reelected to the House in 1980 and served as Speaker Pro Tempore until January 1, 1983, when he was appointed Clerk of the House, following the resignation of former Clerk C. A. Blankenship. He was elected Clerk of the
House on January 12, 1983, and continued in that position until his retirement on December 31, 1995.

A strong Democrat during his entire life, he served as First Vice Chairman of the West Virginia Democratic Executive Committee and was active in party affairs. His political advice was sought after by many who knew him.

Next to his grandchildren, his greatest enjoyment came from riding his motorcycle. It was not uncommon for him to plan weekend trips in the wilds of West Virginia to enjoy the natural beauty of the State and the friendliness and openness of her citizens whom he encountered at his many stops along the way. Once he even rode his motorcycle across four states to attend the annual meeting of the American Society of Legislative Clerks and Secretaries in Illinois.

Donald Kopp ended his life as we know it on the 13th day of June, 1996, in a fashion he would have himself chosen: riding his bicycle with his son, Donny.

The Legislature has lost a friend, the House of Delegate has lost a friend, colleague, and mentor; therefore, be it

_Resolved by the House of Delegates:_

That this House of Delegate hereby formally notes the life, service and passing of Donald L. Kopp, Member, Speaker and Clerk of the House, that it extends sincere expressions of its collective sorrow to his surviving wife, son, daughters and grandchildren, and that it recognize the years, service and accomplishments of a son, father, grandfather and friend; and, be it

_Further Resolved,_ That the Clerk of the House of Delegates prepare certified copies of this resolution for the family of Donald L. Kopp.

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**HOUSE RESOLUTION NO. 25**

(By Delegates Beane, Johnson, Farris, Thompson, Walters, Jenkins, Fantasia, H. White, Amores, Flanigan, Gillespie, Laird, Tillis, Wright, Hutchins, Dempsey, Heck, Tomblin, Azinger, Cann, Hunt, Clements, Seacrist and L. White)

[Adopted April 12, 1997]
Requesting the Speaker to appoint a House Select Committee on Insurance to meet between the regular sessions of the Legislature.

Whereas, The House of Delegates Committee on Banking and Insurance has been and will be subjected to the review, study, analysis and resolution of various issues in response to federal legislation and current trends in the insurance industry; and

Whereas, The Committee on Banking and Insurance is unable to fully respond to these issues through legislation presented to the Committee during regular sessions of the Legislature; and

Whereas, It is appropriate to authorize a House Select Committee to sit between regular sessions; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates Select Committee on Insurance be created by Rule 90 of the Rules of the House of Delegates; and, be it

Further Resolved, That, pursuant to subsection (a), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the House Select Committee on Insurance is hereby directed to meet between the regular sessions of the Legislature at such times and places as the Speaker of the House of Delegates shall direct; and, be it

Further Resolved, That in accordance with subsection (a), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for travel expenses of members of the House of Delegates serving on such committee or subcommittees as authorized, from time to time, by the Committee on Rules and for the payment of staff, as directed, from time to time, by the Speaker; and, be it

Further Resolved, That the authority of this resolution shall be in addition to the authority for meetings of joint standing committees or joint subcommittees thereof under the supervision of the Joint Committee on Government and Finance, pursuant to subsections (b) and (c), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended.
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 executive, governor’s office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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-seven; 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-seven, to the executive, governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by three million dollars as follows:

**TITLE II—APPROPRIATIONS.**

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

**EXECUTIVE**

**8—Governor's Office**

**Civil Contingent Fund**

(WV Code Chapter 5)

**Account No.**

**Fund 0105 FY 1997 Org 0100**

<table>
<thead>
<tr>
<th>General Revenue Fund</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Contingent Fund—Total(R)</td>
<td>114</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Civil Contingent Fund—Total (fund 0105, activity 114) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding three million dollars to the existing appropriation to the aforesaid account for expenditure during the fiscal year one thousand nine hundred ninety-seven.
CHAPTER 2

(S. B. 1005—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; 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-seven, in the amount of nineteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, 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-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

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-seven; 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-seven; therefore

Be it enacted by the Legislature of West Virginia:
That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, be decreased by expiring the amount of nineteen 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-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by nineteen million dollars as follows:

1

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

8—Governor's Office—
Civil Contingent Fund

(WV Code Chapter 5A)

Account No.

Fund 0105 FY 1997 Org 0100

1 Civil Contingent Fund - Surplus (R) . 263 $19,000,000

The purpose of this bill is to expire the sum of nineteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding nineteen million dollars to the existing appropriation.
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-seven, in the amount of four hundred forty-seven thousand six hundred sixty-two dollars from the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the auditor's office, general administration, account no. fund 0116, fiscal year 1997, organization 1200, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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-seven; 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-seven, appropriated to the department of tax and revenue, insurance commissioner, examination revolving fund,
account no. fund 7150, fiscal year 1997, organization 0704, be
decreased by expiring the amount of four hundred forty-seven
thousand six hundred sixty-two dollars to the unappropriated
surplus balance in the state fund, general revenue, and that the
total appropriation for fiscal year ending the thirtieth day of
June, one thousand nine hundred ninety-seven, to the auditor’s
office, general administration, account no. fund 0116, fiscal year
1997, organization 1200, be supplemented and amended by
increasing the total appropriation by four hundred forty-seven
thousand six hundred sixty-two dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

10—Auditor’s Office—
General Administration

(WV Code Chapter 12)

Account No.

Fund 0116 FY 1997 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>Encoding System and Printer Replacement $ 594 $ 447,662</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Encoding System and Printer Replacement (fund 0116, activity 594) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to expire funds from the department of tax and revenue, insurance commissioner, examination revolving fund account no. fund 7150, fiscal year 1997, organization 0704, and to supplement the auditor’s office, general administration, account no. fund 0116, fiscal year 1997, organization 1200, in the budget act for the fiscal year ending the thirtieth day of June, one
26 thousand nine hundred ninety-seven, by adding four
27 hundred forty-seven thousand six hundred sixty-two
28 dollars to a new line item appropriation for expenditure
29 during the fiscal year ending the thirtieth day of June, one
30 thousand nine hundred ninety-seven.

CHAPTER 4

(S. B. 1006—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of four hundred twenty-five
thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That the amount of four hundred twenty-five thousand dollars be expired from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, be supplemented and amended by increasing the total appropriation by four hundred twenty-five thousand dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

13—Department of Agriculture

(WV Code Chapter 19)

Account No.

Fund 0131  FY 1997  Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>10a Moorefield Field Office Furnishings</td>
<td>$275,000</td>
</tr>
<tr>
<td>10b Logan Farmer’s Market</td>
<td>$100,000</td>
</tr>
<tr>
<td>10c Weston Farmer’s Market</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Moorefield field office furnishings (fund 0131, activity 637), the Logan farmer’s market (fund 0131, activity 728) and the Weston farmer’s market (fund 0131, activity 755) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to supplement the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding four hundred twenty-five thousand dollars in three new line item appropriations for expenditure during fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.
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-seven, in the amount of sixty-one thousand dollars from the board of investments, investment legal loss expense fund account, account no. fund 8563; in the amount of forty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704; in the amount of fourteen thousand dollars from the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss expense fund, the insurance commissioner and the insurance commissioner-examination revolving fund exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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-seven; therefore
Be it enacted by the Legislature of West Virginia:

That the amount of sixty-one thousand dollars from the board of investments, investment legal loss expense fund account, account no. fund 8563; the amount of forty-five thousand dollars from the insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704; the amount of fourteen thousand dollars from the insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, be expired 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-seven, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, be supplemented and amended by increasing the total appropriation by one hundred twenty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

18—Secretary of State

(WV Code Chapters 3, 5 and 59)

Account No.

Fund 0155 FY 1997 Org 1600

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5a Technology Improvements ... 599</td>
<td>$ 120,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for technology improvements (fund 0155, activity 599) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to expire funds from the aforementioned accounts and to supplement the secretary of state, account no. fund 0155, fiscal year 1997,
organization 1600, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred twenty thousand dollars to a new line item appropriation for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

CHAPTER 6

(H. B. 106—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; 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 as an unappropriated balance in the state fund, general revenue, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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-seven; 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-seven, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, be supplemented and amended by increasing the total appropriation by two million seven hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.
DEPARTMENT OF ADMINISTRATION

23—Division of General Services

(WV Code Chapter 5A)

Account No.

Fund 0230 FY 1997 Org 0211

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a</td>
<td>Chilled Water Plant-Phase III ... 291 $2,700,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for chilled water plant-phase III (fund 0230, activity 291) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding two million seven hundred thousand dollars to the existing appropriation to the aforesaid account for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, from a new line item.

CHAPTER 7

(H. B. 108—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of one million two hundred thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926,
to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the bureau of commerce, division of natural resources, account no. fund 0265, fiscal year 1997, organization 0310, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the public service commission account no. fund 8623, fiscal year 1997, organization 0926, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one million two hundred thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, be expired 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-seven, to the bureau of commerce, division of natural resources, account no. fund 0265, fiscal year 1997, organization 0310, be supplemented and amended by increasing the total appropriation by one million two hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 BUREAU OF COMMERCE

4 78—Division of Natural Resources

5 (WV Code Chapter 20)
CHAPTER 8

(H. B. 103—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]
treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education, West Virginia school for the deaf and the blind, account no. fund 0320, fiscal year 1997, organization 0403, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, It thus appearing from the provisions of this legislation that 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-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one hundred fifty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, be expired 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-seven, to the department of education, West Virginia school for the deaf and blind, account no. fund 0320, fiscal year 1997, organization 0403, be supplemented and amended by increasing the total appropriation by one hundred fifty-five thousand dollars as follows:

1  TITLE II—APPROPRIATIONS.
2  Section 1. Appropriations from general revenue.
3  DEPARTMENT OF EDUCATION
4  39—West Virginia Schools for the Deaf and the Blind
5  (WV Code Chapters 18 and 18A)
6  Account No.
7  Fund 0320  FY 1997  Org 0403
8  General
9  Activity
10 Revenue
11 Fire and Smoke Alarm System .. 641 $ 155,000
Any unexpended balance remaining in the appropriation for fire and smoke alarm system (fund 0320, activity 641) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to expire funds from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, and to supplement the department of education, West Virginia school for the deaf and blind, account no. fund 0320, fiscal year 1997, organization 0403 in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one hundred fifty-five thousand dollars to the existing appropriation for expenditure during the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-seven.

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 health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature an executive message, dated the sixteenth day of April, one thousand nine hundred ninety-seven, which included a statement
of the state fund, general revenue, setting forth therein the estimate of revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive message number seven, dated the sixteenth day of April, one thousand nine hundred ninety-seven, 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-seven; 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-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by nineteen million eight hundred twenty-eight thousand three hundred forty-eight dollars as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>$7,148,783</td>
</tr>
<tr>
<td>19</td>
<td>$12,679,565</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0403, activity 099) and social services (fund 0403, activity 195) at the close of
the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding nineteen million eight hundred twenty-eight thousand three hundred forty-eight dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-seven.

CHAPTER 10

(H. B. 111—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; 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 as an unappropriated balance in the state fund, general revenue, to the department of health and human resources, division of health central office, account no. fund 0407, fiscal year 1997, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature an executive message, dated the sixteenth day of April, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive message number seven, dated the sixteenth day of April, one thousand nine hundred ninety-seven, 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-seven; 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-seven, to the department of health and human resources, division of health central office, account no. fund 0407, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred forty-one thousand six hundred forty-eight dollars as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>DEPARTMENT OF HEALTH AND</td>
</tr>
<tr>
<td>HUMAN RESOURCES</td>
</tr>
<tr>
<td>51—Division of Health</td>
</tr>
<tr>
<td>Central Office</td>
</tr>
<tr>
<td>(WV Code Chapter 16)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 0407 FY 1997 Org 0506</td>
</tr>
<tr>
<td>Activity</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0407, activity 099) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding one hundred forty-one thousand six hundred forty-eight dollars to the existing appropriation for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.
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, department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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-seven; 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-seven, to the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by three hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

62—West Virginia State Police

(WV Code Chapter 15)
Account No.

Fund 0453  FY 1997  Org 0612

General Revenue Fund

Activity 753

6a Riverside High Detachment . . . 753 $300,000

Any unexpended balance remaining in the appropriation for Riverside High detachment (fund 0453, activity 753) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding three hundred thousand dollars to the existing appropriation to the aforesaid account for expenditure from a new line item during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

CHAPTER 12

(S. B. 1001—By Senators Tomblin, Mr. President, and Buckalew)

[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of seven hundred seventy-one thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in
the state fund, general revenue, to the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that 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-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of seven hundred seventy-one thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, be expired 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-seven, to the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by seven hundred seventy-one thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 62—West Virginia State Police

6 (WV Code Chapter 15)

7 Account No.

8 Fund 0453 FY 1997 Org 0612
Any unexpended balance remaining in the appropriation for the trooper class (fund 0453, activity 754) is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to expire funds from the public service commission, account no. fund 8623, organization 0926, and to supplement the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding seven hundred seventy-one thousand dollars to a new line item for expenditure during the fiscal year one thousand nine hundred ninety-seven.

CHAPTER 13

(S. B. 1007—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; 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 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-seven, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1997, 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-seven; 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-seven, to
the department of tax and revenue, tax division, account no. fund
0470, fiscal year 1997, organization 0702, be supplemented and
amended by increasing the total appropriation by two million
eight hundred thousand dollars as follows:

<table>
<thead>
<tr>
<th>Title II— Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>69—Tax Division</td>
</tr>
<tr>
<td>(WV Code Chapter 11)</td>
</tr>
<tr>
<td>Account No.</td>
</tr>
<tr>
<td>Fund 0470 FY 1997 Org 0702</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>4a Property Tax Electronic Data Processing System Network Project . . 714</td>
</tr>
<tr>
<td>4b Automation Project (R) . . . . . . . . . . . . 442</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for the property tax electronic data processing system network project (fund 0470, activity 714) and the automation project (fund 0470, activity 442) at the close of the fiscal year 1996-97 are hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding two million eight hundred thousand dollars to the existing appropriation to the aforesaid account for expenditure during the fiscal year one thousand nine hundred ninety-seven from a new line item and an existing line item.
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 1997, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature an executive message, dated the sixteenth day of April, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive message number seven, dated the sixteenth day of April, one thousand nine hundred ninety-seven, there now remains an unappropriated balance in the state fund, general revenue, which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; 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-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by nine thousand eight hundred ninety-one dollars as follows:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

Account No.

Fund 0546 FY 1997 Org 0620

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>$ 9,891</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for unclassified (fund 0546, activity 099) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

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-seven, by adding nine thousand eight hundred ninety-one dollars to the existing appropriation for expenditure during fiscal year one thousand nine hundred ninety-seven.

CHAPTER 15

(H. B. 101—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect July 1, 1997. Approved by the Governor.]
AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a; to amend and reenact sections eighteen-b and nineteen, article five of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact section six, article three of said chapter; to amend and reenact sections nine and thirteen, article one, chapter seventeen-e of said code; to amend and reenact sections one and five, article two, chapter eighteen-a of said code; to amend and reenact section one, article seven, chapter eighteen-b of said code; to amend article one, chapter nineteen of said code by adding thereto a new section, designated section ten; to amend and reenact section seven, article two, chapter twenty-one of said code; to amend and reenact section two, article three-c of said chapter; to amend and reenact section five-c, article five of said chapter; to amend and reenact section seven, article eleven of said chapter; to amend and reenact section one, article nine, chapter twenty-two-a of said code; to amend and reenact section three, article seven, chapter twenty-two-c of said code; to amend and reenact section four, article three-b, chapter twenty-nine of said code; to amend and reenact sections six and thirteen, article one, chapter thirty of said code; to amend and reenact section three, article twelve, chapter thirty-three of said code; to amend and reenact section nine, article fourteen, chapter thirty-seven of said code; to amend and reenact section five, article twelve, chapter forty-seven of said code; to amend and reenact section thirty, article one-a, chapter forty-eight-a of said code; to amend and reenact sections thirty-one, thirty-two, thirty-three and thirty-four, article two of said chapter; to further amend said article by adding thereto a new section, designated section thirty-three-a; to further amend said chapter by adding thereto a new article, designated article five-a; and to amend and reenact sections three and six, article six of said chapter, all relating generally to enacting legislation to comply with mandates of the federal Personal Responsibility and Work Reconciliation Act of 1996 regarding the establishment, modification or enforcement of child support.

Be it enacted by the Legislature of West Virginia:
That article one, 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 eighteen-a; that sections eighteen-b and nineteen, article five of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that section six, article three of said chapter be amended and reenacted; that sections nine and thirteen, article one, chapter seventeen-e of said code be amended and reenacted; that sections one and five, article two, chapter eighteen-a of said code be amended and reenacted; that section one, article seven, chapter eighteen-b of said code be amended and reenacted; that article one, chapter nineteen of said code be amended by adding thereto a new section, designated section ten; that section seven, article two, chapter twenty-one of said code be amended and reenacted; that section two, article three-c of said chapter be amended and reenacted; that section five-c, article five of said chapter be amended and reenacted; that section seven, article eleven of said chapter be amended and reenacted; that section one, article nine, chapter twenty-two-a of said code be amended and reenacted; that section three, article seven, chapter twenty-two-c of said code be amended and reenacted; that section four, article three-b, chapter twenty-nine of said code be amended and reenacted; that sections six and thirteen, article one, chapter thirty of said code be amended and reenacted; that section five, article twelve, chapter thirty-three of said code be amended and reenacted; that section two, article twelve, chapter forty-seven of said code be amended and reenacted; that section one-a, chapter forty-eight-a of said code be amended and reenacted; that sections thirty-one, thirty-two, thirty-three and thirty-four, article two of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new section, designated section thirty-three-a; that said chapter be further amended by adding thereto a new article, designated article five-a; and that sections three and six, article six of said chapter be amended and reenacted, all to read as follows:

Chapter


17B. Motor Vehicle Driver’s Licenses.

17E. Uniform Commercial Driver’s License Act.
ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-18a. Requirement for social security number on applications.

1. The director of health shall require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

ARTICLE 5. VITAL STATISTICS.

§16-5-18b. Limitation on use of social security numbers.

1. A social security account number obtained in accordance with the provisions of this article with respect to the filing of: (1) A certificate of birth; (2) an application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. Such social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar,
county clerk or other issuing authority, if any. Such social security account numbers shall be made available by the state registrar to the child support enforcement division created by chapter forty-eight-a upon the request of the division, to be used solely in connection with the enforcement of child support orders.

§16-5-19. Death registration.

(a) A death certificate for each death which occurs in this state shall be filed with the local registrar of the registration district in which the death occurs within three days after such death, and prior to removal of the body from the state, and shall be registered by such registrar if it has been completed and filed in accordance with this section: Provided, That

(1) If the place of death is unknown, a death certificate shall be filed in the registration district in which a dead body is found within three days after the finding;

(2) If death occurs in a moving conveyance, a death certificate shall be filed in the registration district in which the dead body is first removed from such conveyance; and

(3) If the death occurs in a district other than where the deceased resided, a death certificate shall be filed in the registration district in which the death occurred and in the district in which the deceased resided.

(b) The funeral director or person acting for him who first assumes custody of a dead body shall file the death certificate. He shall obtain the necessary personal data from the next of kin or the best qualified person or source available. The funeral director or person acting for him shall obtain the medical certification of the cause of death from the person responsible for making such certification. The personal data obtained shall include the deceased person's social security number or numbers. The social security account number of an individual who has died shall be placed in the records relating to the death and shall be recorded on the death certificate. A record of the social security number or numbers shall be filed with the local registrar of the district in which the deceased person
32 resided within seven days after the death, and the local
33 registrar shall transmit such number or numbers to the
34 state registrar of vital statistics in the same manner as other
35 personal data is transmitted to the state registrar.
36
37 (c) The medical certification shall be completed and
38 signed within twenty-four hours after death by the physi-
39 cian in charge of the patient’s care for the illness or con-
40 dition which results in death except when inquiry is re-
41 quired pursuant to chapter sixty-one, article twelve or
42 other applicable provisions of this code.
43
44 (d) When death occurs without medical attendance and
45 inquiry is not required pursuant to chapter sixty-one, 
46 article twelve or other applicable provisions of this code, 
47 the local health officer shall investigate the cause of death
48 and complete and sign the medical certification within
49 twenty-four hours after receiving notice of the death. 
50
51 (e) When death occurs in a manner subject to investi-
52 gation, the coroner or other officer or official charged
53 with the legal duty of making such investigation shall
54 investigate the cause of death and shall complete and sign
55 the medical certification within twenty-four hours after
56 making determination of the cause of death.
57
58 (f) In order that each county may have a complete
59 record of the deaths occurring in said county, the local
60 registrar shall transmit each month to the county clerk of
61 his county a copy of the certificates of all deaths occur-
62 ring in said county, and if any person shall die in a county
63 other than that county within the state in which such per-
64 son last resided prior to death, then the state registrar shall,
65 if possible, also furnish a copy of such death certificate to
66 the clerk of the county commission of the county wherein
67 such person last resided, from which copies the clerk shall
68 compile a record of such deaths and shall enter the same
69 in a systematic and orderly way in a well-bound register of
70 deaths for that county, which such register shall be a pub-
71 lic record. The form of said death register shall be pre-
72 scribed by the state registrar of vital statistics.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.
Article
2. Issuance of License, Expiration and Renewal.
3. Cancellation, Suspension or Revocation of Licenses.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.
1. (a) The division upon issuing a driver’s license shall have authority whenever good cause appears to impose restrictions suitable to the licensee’s driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

2. (b) The division shall issue a restricted license to a person who has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court orders restrictions of the person’s license as provided in article five-a, chapter forty-eight-a of this code.

3. (c) The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

4. (d) The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

5. (e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to such person.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.
(a) The division is hereby authorized to suspend the
driver’s license of any person without preliminary hearing
upon a showing by its records or other sufficient evidence
that the licensee:

(1) Has committed an offense for which mandatory
revocation of a driver’s license is required upon convic-
tion;

(2) Has by reckless or unlawful operation of a motor
vehicle, caused or contributed to an accident resulting in
the death or personal injury of another or property dam-
age;

(3) Has been convicted with such frequency of serious
offenses against traffic regulations governing the move-
ment of vehicles as to indicate a disrespect for traffic laws
and a disregard for the safety of other persons on the
highways;

(4) Is an habitually reckless or negligent driver of a
motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has committed an offense in another state which if
committed in this state would be a ground for suspension
or revocation;

(7) Has failed to pay or has defaulted on a plan for the
payment of all costs, fines, forfeitures or penalties imposed
by a magistrate court or municipal court within ninety
days, as required by section two-a, article three, chapter
fifty or section two-a, article ten, chapter eight of this
code;

(8) Has failed to appear or otherwise respond before a
magistrate court or municipal court when charged with a
motor vehicle violation as defined in section three-a of this
article;

(9) Is under the age of eighteen and has withdrawn
either voluntarily or involuntarily from a secondary
school, as provided in section eleven, article eight, chapter
eighteen of this code; or
(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

(b) The driver’s license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made;

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

(3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section, and the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending the driver’s license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his
request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension or, good cause appearing therefor, may extend the suspension of such license or revoke such license. The provisions of this subsection (d) providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.


(a) (1) General. — No person may be issued a commercial driver’s license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. part 383, sub-parts G and H, and has satisfied all other requirements of the Federal Commercial Motor Vehicle Safety Act in addition to other requirements imposed by state law or federal regulations. The tests will be administered by the West Virginia state police according to rules promulgated by the commissioner.

(2) Third party testing. — The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency or instrumentality of local government, to administer the skills test specified by this section: Provi
ed, That (i) the test is the same which would otherwise be administered by the state and (ii) the party has entered into an agreement with the state which complies with the requirements of 49 C.F.R. part 383.75.

(3) Indemnification of driver examiners. — No person who has been officially trained and certified by the state as a driver examiner, who administers any such driving test, and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, may be criminally liable for the administration of such tests, or civilly liable in damages to the person tested or other persons or property unless for gross negligence or willful or wanton injury.

(4) Monitoring of third party testing will be carried out by the West Virginia state police according to rules promulgated by the commissioner.

(b) Waiver of skills test. — The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. part 383.77 and those requirements specified by the commissioner.

(c) Limitations on issuance of license. — A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or canceled in any state; nor may a commercial driver's license be issued by any other state unless the person first surrenders all such licenses to the department, which must be returned to the issuing state(s) for cancellation. The division shall issue a restricted commercial driver's license to a person who has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court orders restrictions of the person's license as provided in article five-a, chapter forty-eight-a of this code.

(d) Commercial driver's instruction permit. — (1) A commercial driver's instruction permit may be issued to
an individual who holds a valid operator or Class "D" driver license who has passed the vision and written tests required for issuance of a commercial driver license. (2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction or testing. (3) A commercial driver's instruction permit may only be issued to an individual who is at least eighteen years of age and has held an operator's or junior operator's license for at least two years. (4) The applicant for a commercial driver's instruction permit must also be otherwise qualified to hold a commercial driver's license.


(a) Disqualification offenses. — Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

(1) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is four hundredths or more;

(3) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commission of any felony as defined in this article: Provided, that the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subsection (d) of this section;

(5) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.
In addition, the conviction of any of the following offenses as an operator of any vehicle is a disqualification offense:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle as defined under the provisions of section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(2) Driving while license is suspended or revoked, as defined under the provisions of section three, article four, chapter seventeen-b of this code;

(3) Perjury or making a false affidavit or statement under oath to the department of motor vehicles, as defined under the provisions of subsection (4), section five, article three, and section two, article four, chapter seventeen-b of this code.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may issue rules establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred
fifteen days if convicted of three serious violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) A person is disqualified from driving a commercial motor vehicle if he or she has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the commercial driver's license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due. A disqualification under this section shall continue until the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(g) After suspending, revoking or canceling a commercial driver's license, the department shall update its records to reflect that action within ten days.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-5. Employment of service personnel; limitation.

§18A-2-1. Employment in general.

The employment of professional personnel shall be made by the board only upon nomination and recommendation of the superintendent. In case the board refuses to employ any or all of the persons nominated, the superintendent shall nominate others and submit the same to the board at such time as the board may direct. All personnel so nominated and recommended for employment and for subsequent assignment shall meet the certification, licensing, training, and other eligibility classifications as may be required by provisions of this chapter and by state board
regulation. In addition to any other information required, the application for any certification or licensing shall include the applicant’s social security number. Professional personnel employed as deputy, associate or assistant superintendents by the board in offices, departments or divisions at locations other than a school and who are directly answerable to the superintendent shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the board. Such professional personnel shall retain seniority rights only in the area or areas in which they hold valid certification or licensure.

§18A-2-5. Employment of service personnel; limitation.

The board is authorized to employ such service personnel, including substitutes, as is deemed necessary for meeting the needs of the county school system: Provided, That the board may not employ a number of such personnel whose minimum monthly salary under section eight-a, article four, of this chapter is specified as pay grade “H”, which number exceeds the number employed by the board on the first day of March, one thousand nine hundred eighty-eight.

Effective the first day of July, one thousand nine hundred eighty-eight, a county board shall not employ for the first time any person who has not obtained a high school diploma or general educational development certificate (GED) or who is not enrolled in an approved adult education course by the date of employment in preparation for obtaining a GED: Provided, That such employment is contingent upon continued enrollment or successful completion of the GED program.

Before entering upon their duties service personnel shall execute with the board a written contract which shall be in the following form:

"COUNTY BOARD OF EDUCATION
SERVICE PERSONNEL CONTRACT
OF EMPLOYMENT"
THIS (Probationary or Continuing) CONTRACT OF
EMPLOYMENT, made and entered into this ________
day of ________________, 19____, by and between THE
BOARD OF EDUCATION OF THE COUNTY OF
____________________, a corporation, hereinafter called the
'Board,' and (Name and Social Security Number of Em-
ployee), of (Mailing Address), hereinafter called the 'Em-
ployee.'

WITNESSETH, that whereas, at a lawful meeting of the
Board of Education of the County of ____________ held
at the offices of said Board, in the City of
____________________, ______________ County,
West Virginia, on the ____________ day of
____________________, 19____, the Employee was duly
hired and appointed for employment as a (Job Classifica-
tion) at (Place of Assignment) for the school year comm-
encing ________ for the employment term and at the
salary and upon the terms hereinafter set out.

NOW, THEREFORE, pursuant to said employment,
Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job
Classification) at (Place of Assignment) for the school
year or remaining part thereof commencing
__________, 19____. The period of employment is
_______ days at an annual salary of $______ at the rate
of $______ per month.

(2) The Board hereby certifies that the Employee's
employment has been duly approved by the Board and
will be a matter of the Board's minute records.

(3) The services to be performed by the Employee
shall be such services as are prescribed for the job classifi-
cation set out above in paragraph (1) and as defined in
Section 8, Article 4, Chapter 18A of the Code of West
Virginia, as amended.

(4) The Employee may be dismissed at any time for
immorality, incompetency, cruelty, insubordination, in-
temperance or willful neglect of duty pursuant to the pro-
visions of Section 8, Article 2, Chapter 18A of the Code of
West Virginia, as amended.
(5) The Superintendent of the ______ County Board of Education, subject to the approval of the Board, may transfer and assign the Employee in the manner provided by Section 7, Article 2, Chapter 18A of the Code of West Virginia, as amended.

(6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

(7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

(8) This contract must be signed and returned to the Board at its address of __________________________ within thirty days after being received by the Employee.

(9) By signing this contract the Employee accepts employment upon the terms herein set out.

WITNESS the following signatures as of the day, month and year first above written:

______________, (President, _____ County Board of Education) ____________, (Secretary, _____ County Board of Education) ____________, (Employee)

The use of this form shall not be interpreted to authorize boards to discontinue any employee's contract status with the board or rescind any rights, privileges or benefits held under contract or otherwise by any employee prior to the effective date of this section.

Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within thirty days after receipt or otherwise he shall forfeit his right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and
trained for teacher-aide classifications, such as monitor aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal and teachers to whom assigned.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section shall be in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year: Provided, That this section shall also apply for one year to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees so laid off, consideration shall be given to an employee’s seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall hereinafter provided.
If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee’s listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee’s name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classification(s) in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require such employee to refuse an offer of reemployment by the institution.

The institution shall be required to notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee. It shall be the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job be a
lateral transfer or a promotion, and applies for same shall be transferred or promoted before a new person is hired unless such hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans with Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee shall be awarded the position. In instances where such classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that state institution of higher education shall be awarded the position. A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply.

(e) In addition to any other information required, any application for personnel governed by the provisions of this section shall include the applicant’s social security number.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-10. Requirement for social security number on applications.

The commissioner shall require every applicant for a license, permit, certificate of registration, or registration under this chapter to place his or her social security number on the application.

CHAPTER 21. LABOR.

Article
2. Employment Agencies.
3C. Elevator Safety.
5. Wage and Payment Collection.

ARTICLE 2. EMPLOYMENT AGENCIES.

§21-2-7. License required; displaying license; annual tax.

No employment agent shall engage in the business for profit or receive any fee, charge commission or other compensation, directly or indirectly, for services as employment agent, without first having obtained a license
therefor from the state tax commissioner. Such license shall not be issued until the commissioner of labor shall have approved in writing the application therefor, and, when issued, such license shall constitute a license from the state to operate as an employment agent for compensation and shall not be transferable. Such license shall at all times be kept posted in a conspicuous place at the place of business of such employment agent. Every employment agent shall pay the annual license tax provided for in article twelve, chapter eleven of this code.

In addition to any other information required, an application for a license under this section shall include the applicant’s social security number.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-2. Inspectors; certificates of competency; application; examination; reexamination.

No person may serve as an elevator inspector unless he or she successfully completes the examination required by this article and holds a certificate of competency for elevator inspections issued by the division.

Application for examination for elevator inspections shall be in writing, accompanied by a fee of ten dollars, upon a form designed and furnished by the division and shall, at a minimum, state the level of education of the applicant, list his or her employers, his or her period of employment and the position held with each. In addition to any other information required, the application shall include the applicant’s social security number. The applicant shall also submit a letter from one or more of his or her previous employers concerning his or her character and experience.

Applications which contain any willfully submitted false or untrue information shall be rejected. After review of the application by the division, the applicant, if deemed appropriate by the division, shall be tested by means of a written examination as prescribed by the division dealing with the construction, installation, operation, maintenance and repair of elevators and their accessories.
The division shall issue a certificate of competency for elevator inspections to any applicant who successfully completes the examination, as determined by standards set in legislative rules promulgated by the division, as authorized by this article. An applicant who fails to successfully complete an initial examination may submit an application for a second examination ninety days or more after the initial examination and upon payment of the ten dollar examination fee. Should an applicant fail to successfully complete the prescribed examination on the second trial, he or she shall not be permitted to submit an application for another examination for a period of one year after the second failure.

Any person hired as an elevator inspector by a county or municipality shall possess a certificate of competency issued by the division.

The division may hire certified inspectors or enter into a contract to hire inspectors who are certified by the division. The division shall hire an inspector supervisor who shall supervise the inspection activities under this article.

ARTICLE 5. WAGE AND PAYMENT COLLECTION.

§21-5-5c. License required for polygraph examiners; qualifications; promulgation of rules governing administration of polygraph tests.

(a) No person, firm or corporation shall administer a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness to an employee or prospective employee without holding a current valid license to do so as issued by the commissioner of labor. No test shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

(b) A person is qualified to receive a license as an examiner if he:

(1) Is at least eighteen years of age;
(2) Is a citizen of the United States;
(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;
CHILD SUPPORT

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the commissioner of labor or under his supervision, to determine his competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the commissioner of labor in his sole discretion which qualifications are to be at least as stringent as those recommended by the American polygraph association.

(c) The commissioner of labor may design and by procedural rule designate and thereafter administer any test he deems appropriate to those persons applying for a license to administer polygraph, lie detector or such similar test to employees or prospective employees. The test designed by the commissioner of labor shall be so designed as to ensure that the applicant is thoroughly familiar with the code of ethics of the American polygraph association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant’s knowledge of and familiarity with all aspects of operating polygraph equipment.

(d) The license to give a polygraph, lie detector or similar test to employees or prospective employees shall be issued for a period of one year. It may be reissued from year to year.

(e) The commissioner of labor shall charge a fee of one hundred dollars for each issuance or reissuance of a license to give a polygraph, lie detector or similar test to employees or prospective employees. Such fee shall be deposited in the general revenue fund of the state. In addition to any other information required, an application for a license shall include the applicant’s social security number.
The commissioner of labor shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a, article three, governing the administration of polygraph, lie detector or such similar test to employees. Such legislative rules shall include:

1. The type and amount of training or schooling necessary for a person before which he may be licensed to give or interpret such polygraph, lie detector or similar test;

2. Standards of accuracy which shall be met by machines or other devices to be used in polygraph, lie detector or similar tests; and

3. The conditions under which a polygraph, lie detector or such similar test may be given.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-7. Application for and issuance of license.

(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing the applicant's social security number and such other information as the board may require, on forms supplied by the board. The applicant shall pay a license fee not to exceed one hundred fifty dollars: Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code, shall pay no more than twenty dollars.

(b) A person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit the requirements of subsection (c), section fifteen hereof, and pay such license fee not to exceed one hundred fifty dollars and shall be issued a contractor's license without further examination.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.
§22A-9-1. Mine inspectors’ examining board.

The mine inspectors’ examining board is continued. It consists of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members so appointed may be removed only for the same causes and in like manner as elective state officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia university. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The director of the office of miners’ health, safety and training is an ex officio member of the board and shall serve as secretary of the board, without additional compensation; but the director has no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor. Members serving on the effective date of this article may continue to serve until their terms expire.

Each member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.
The public member is chair of the board. Members of the board, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

The mine inspectors' examining board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of three members or the director of the office of miners' health, safety and training. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three members is a quorum for the transaction of business.

In addition to other duties expressly set forth elsewhere in this article, the board shall:

1. Establish, and from time to time revise, forms of application for employment as mine inspectors, which shall include the applicant's social security number, and forms for written examinations to test the qualifications of candidates for that position;

2. Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

3. Conduct, after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one or more members of the board or an employee of the office of miners' health, safety and training may be designated to give a candidate the written portion of the examination;

4. Prepare and certify to the director of the office of miners' health, safety and training a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade
appearing at the top of the list. After each meeting of the
board held to examine such candidates, and at least annu-
ally, the board shall prepare and submit to the director of
the office of miners' health, safety and training a revised
and corrected register of qualified eligible candidates for
appointment as mine inspector, deleting from such revised
register all persons (a) who are no longer residents of West
Virginia, (b) who have allowed a calendar year to expire
without, in writing, indicating their continued availability
for such appointment, (c) who have been passed over for
appointment for three years, (d) who have become ineligi-
ble for appointment since the board originally certified
that such person was qualified and eligible for appoint-
ment as mine inspector, or (e) who, in the judgment of at
least four members of the board, should be removed from
the register for good cause;

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

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

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

(8) Hear and determine appeals of mine inspectors
from suspension orders made by the director pursuant to
the provisions of section four, article one of this chapter:
Provided, That an aggrieved inspector, in order to appeal
from any order of suspension, shall file such appeal in
writing with the mine inspectors' examining board not
later than ten days after receipt of notice of suspension.
On such appeal the board shall affirm the act of the direc-
tor unless it be satisfied from a clear preponderance of the
evidence that the director has acted arbitrarily;
(9) Make an annual report to the governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members, two of whom shall be ex officio members and three of whom shall be appointed by the governor, by and with the advice and consent of the Senate. Appointed members may be removed only for the same causes and like manner as elective state officers. One member of the board shall be the representative of the public at large and shall be a person who is knowledgeable about the subject matter of this article and has no direct or indirect financial interest in oil and gas production other than the receipt of royalty payments which do not exceed a five-year average of six hundred dollars per year; one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The chief of the office of oil and gas of the division of environmental protection and the chief of the office of water resources of the division of environmental protection shall be ex officio members.

The appointed members of the board shall be appointed for overlapping terms of six years, except that the original appointments shall be for terms of two, four and six
years, respectively. Any member whose term expires may be reappointed by the governor.

The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

The chief of the office of oil and gas shall serve as chair of the board. The board shall elect a secretary from its members.

Members of the board, before performing any duty, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of two members. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. A majority of members is a quorum for the transaction of business.

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

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

(2) Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;
(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the division of environmental protection may be designated to give to a candidate the written portion of the examination;

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

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

(6) Issue a letter or written notice of qualification to each successful eligible candidate;
(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

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

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

(10) Render such advice and assistance to the director of the division of environmental protection as the director shall from time to time determine necessary or desirable in the performance of such duties.

(c) After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas inspectors' examining board within the division of environmental protection should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the oil and gas inspectors' examining board within the division of environmental protection shall continue to exist until the first day of July, two thousand.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for li-
(a) The following four classes of license may be issued by the state fire marshal: "Master electrician license," "journeyman electrician’s license," "apprentice electrician license" and "temporary electrician license." Additional classes of specialty electrician license may be issued by the state fire marshal.

(b) The state fire marshal shall issue the appropriate class of license to a person, firm or corporation upon a finding that such person, firm or corporation possesses the qualifications for the class of license to be issued.

(c) The qualifications for each class of license to be issued are as follows:

(1) For a "master electrician license" a person must have five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work. Such applicant, or a member of a firm or an officer of a corporation if the applicant be a firm or corporation, must also pass the master electrician examination given by the state fire marshal with a grade of eighty percent correct or better;

(2) For a "journeyman electrician’s license," a person must have at least four years of experience in performing electrical work under the direction or instruction of a master electrician or must have completed a formal apprentice program, or an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education or its successor, providing actual electrical work experience and training conducted by one or more master electricians. Such applicant must also pass the journeyman electrician’s examination given by the state fire marshal with a grade of eighty percent correct or better;
(3) For an “apprentice electrician license,” a person must pass the apprentice electrician’s examination given by the state fire marshal with a grade of eighty percent correct or better or be enrolled in an electrical apprentice program approved by the state fire marshal;

(4) A one time temporary master or journeyman electrician license of ninety-days duration may be issued to an applicant providing the applicant has completed a United States department of labor/bureau of apprenticeship and training registered electrical apprenticeship program, or an electrical vocational education program of at least one thousand eighty hours in length and approved by the state board of education or its successor, and have at least four years of experience in performing electrical work and furnishes the state fire marshal with satisfactory evidence of electrical work;

(5) Other specialty electrician license may be issued by the state fire marshal which limits the work in a limited area of expertise. Such applicant must pass the specialty electrician’s examination given by the state fire marshal with a grade of eighty percent correct or better.

(d) (1) Certificates of license for a master electrician’s license issued by the state fire marshal shall specify the name of the person, firm or corporation so qualifying and the name of the person, who in the case of a firm shall be one of its members and in the case of a corporation shall be one of its officers, passing the master electrician examination.

(2) Licenses issued to electricians shall specify the name of the person who is thereby authorized to perform electrical work or, in the case of apprentice electricians, to work with other classes of electricians to perform electrical work.

(e) No license issued under this article is assignable or transferable.

(f) All licenses issued by the state fire marshal shall expire on the thirtieth day of June following the year of issue or renewal.
(g) (1) Each expiring license may be renewed without need for examination and without limit as to the number of times renewed, for the same class of license previously issued and for the same person, firm or corporation to whom it was originally issued upon payment to the state fire marshal of a renewal fee of fifty dollars if such application for renewal and payment of such fee is made before the date of expiration of the license.

(2) In the case of a failure to renew a license on or before the thirtieth day of June the person named in the license may, upon payment of the renewal fee and an additional fee of fifteen dollars, receive from the state fire marshal a deferred renewal of such license which shall expire on the thirtieth day of June in the ensuing year. No person, firm or corporation may perform electrical work upon expiration of such person's, firm's or corporation's license until a deferred renewal for such license is issued by the state fire marshal even if such person, firm or corporation has applied for the deferred renewal of such license.

(h) To the extent that other jurisdictions provide for the licensing of electricians, the state fire marshal may grant the same or equivalent classification of license without written examination upon satisfactory proof furnished to the state fire marshal that the qualifications of such applicant are equal to the qualifications required by this article and upon payment of the required fee: Provided, That as a condition to reciprocity, the other jurisdictions must extend to licensed electricians of this state, the same or equivalent classification.

(i) In addition to any other information required, the applicant's social security number shall be recorded on any application for a license submitted pursuant to the provisions of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-6. Application for license or registration; examination fee.
§30-1-16. Application for license or registration; examination fee.

(a) Every applicant for license or registration under the provisions of this chapter shall apply for such license or registration in writing to the proper board and shall transmit with his or her application an examination fee which the board is authorized to charge for an examination or investigation into the applicant's qualifications to practice.

(b) Each board referred to in this chapter is authorized to establish by rule a deadline for application for examination which shall be no less than ten nor more than ninety days prior to the date of the examination.

(c) Boards may set by rule fees relating to the licensing or registering of individuals, which shall be sufficient to enable the boards to carry out effectively their responsibilities of licensure or registration and discipline of individuals subject to their authority: Provided, That when any board proposes to promulgate a rule regarding fees for licensing or registration, that board shall notify its membership of the proposed rule by mailing a copy of the proposed rule to the membership at the time that the proposed rule is filed with the secretary of state for publication in the state register in accordance with section five, article three, chapter twenty-nine-a of this code.

(d) In addition to any other information required, the applicant's social security number shall be recorded on the application.

§30-1-13. Roster of licensed or registered practitioners.

The secretary of every such board shall also prepare and maintain a complete roster of the names, social security numbers and office addresses of all persons licensed, or registered, and practicing in this state the profession or occupation to which such board relates, arranged alphabetically by name and also by the counties in which their offices are situated. The board may call for and require a
registration whenever it deems it necessary or expedient to secure an accurate roster.

CHAPTER 33. INSURANCE.

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

§33-12-3. Application.

(a) Application for an agent’s, broker’s or solicitor’s license or renewal thereof shall be made to the commissioner upon a form prescribed by him and shall contain the applicant’s name, social security number and such information and supporting documents as the commissioner may require, and the commissioner may require such application to be made under the applicant’s oath.

(b) If for an agent’s license, the application shall show the kinds of insurance to be transacted, and shall be accompanied by the written appointment of the applicant as agent by at least one licensed insurer for each kind of insurance for which application is made.

(c) If for a solicitor’s license, the application shall be accompanied by written appointment of the applicant as solicitor by a licensed agent.

(d) If for a broker’s license, the application shall be accompanied by a statement upon a form prescribed by the commissioner as to the trustworthiness and competency of the applicant, signed by at least three licensed resident agents of this state.

(e) Willful misrepresentation of any fact in any such application or any documents in support thereof is a violation of this chapter.

CHAPTER 37. REAL PROPERTY.

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.


An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, in such form as the board may pre-
scribe. In addition to any other information required, the applicant's social security number shall be recorded on the application.

To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-5. Applications for licenses.

Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared by the commission which shall contain the applicant's social security number and such other data and information as the commission shall require.

(a) Such application for broker's license shall be accompanied by the recommendation of at least two citizens who are property owners at the time of signing said application and have been property owners for at least twelve months preceding such application, who have known the applicant for two years and are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness, and recommending that a license be granted to the applicant.

(b) Every applicant for a salesperson's license shall apply therefor in writing upon blanks prepared by the commission which shall contain the applicant's social security number and such other data and information as the commission may require. The application shall be accompanied by a sworn statement by the broker in whose employ the applicant desires to enter, certifying that, in his or her opinion, the applicant is honest and trustworthy, and recommending the license be granted to the applicant.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.
Article

1A. Enforcement of Family Obligations.

2. West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.

5A. Enforcement of Support Order Through Action Against License.


ARTICLE 1A. ENFORCEMENT OF FAMILY OBLIGATIONS.


1. "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearage, or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-31. Providing information to consumer reporting agencies.


§48A-2-33a. Nonliability for financial institutions providing financial records to the division of child support enforcement.

§48A-2-34. Employment and income reporting.

§48A-2-31. Providing information to consumer reporting agencies.

1. (a) For purposes of this section, the term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
(b) The commission shall propose and adopt a procedural rule in accordance with the provisions of sections four and eight, article three, chapter twenty-nine-a of this code, establishing procedures whereby information regarding the amount of overdue support owed by an obligor will be reported periodically by the child support enforcement division to any consumer reporting agency, after a request by the consumer reporting agency that it be provided with the periodic reports.

(c) The procedural rule adopted by the commission shall provide that any information with respect to an obligor shall be made available only after notice has been sent to the obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of the information.

(d) The procedural rule adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

(e) The information made available to a consumer reporting agency regarding overdue support may only be made available to an entity that has furnished evidence satisfactory to the division that the entity is a consumer reporting agency as defined in subsection (a) of this section.

(f) The child support enforcement division may impose a fee for furnishing such information, not to exceed the actual cost thereof.


The child support enforcement division shall establish and maintain a central state case registry of child support orders. All orders in cases when any party receives any service provided by the child support enforcement division shall be included in the registry. Any other support order entered or modified in this state on or after the first day of October, one thousand nine hundred ninety-eight, shall be included in the registry. The child support enforcement division, upon receipt of any information regarding a new hire provided pursuant to section three,

In order to obtain financial and medical insurance information pursuant to the establishment, enforcement and modification provisions set forth in this chapter or chapter forty-eight of this code, the child support enforcement division may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor organization or state agency, for an appearance or for production of financial or medical insurance information. In case of disobedience to the subpoena, the child support enforcement division may invoke the aid of any circuit court in requiring the appearance or production of records and financial documents. The child support enforcement division may assess a civil penalty of no more than one hundred dollars for the failure of any person, corporation, financial institution, labor organization or state agency to comply with requirements of this section.

§48A-2-33a. Nonliability for financial institutions providing financial records to the division of child support enforcement.

(a) Notwithstanding any other provision of this code, a financial institution shall not be liable under the law of this state to any person for disclosing any financial record of an individual to the division of child support enforcement in response to a subpoena issued by the division pursuant to section thirty-three of this article.

(b) The division of child support enforcement, after obtaining a financial record of an individual from a financial institution may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation of such individual.

(c) The civil liability of a person who knowingly, or by reason of negligence, discloses a financial record of an
individual in violation of subsection (b) of this section is
governed by the provisions of federal law as set forth in
42 U.S.C. §669A.

(d) For purposes of this section the term “financial
institution” means:

(1) Any bank or savings association;

(2) A person who is an institution-affiliated party, as
that term is defined in the Federal Deposit Insurance Act,
12 U.S.C. §1813(u);

(3) Any federal credit union or state-chartered credit
union, including an institution-affiliated party of a credit
union; and

(4) Any benefit association, insurance company, safe
deposit company, money-market mutual fund, or similar
entity authorized to do business in this state.

(e) For purposes of this section, the term “financial
record” means an original of, a copy of, or information
known to have been derived from, any record held by a
financial institution pertaining to a customer’s relationship
with the financial institution.

§48A-2-34. Employment and income reporting.

(a) Except as provided in subsections (b) and (c) of
this section, all employers doing business in the state of
West Virginia shall report to the child support enforce-
ment division:

(1) The hiring of any person who resides or works in
this state to whom the employer anticipates paying earn-
ings; and

(2) The rehiring or return to work of any employee
who resides or works in this state.

(b) Employers are not required to report the hiring,
rehiring or return to work of any person who:

(1) Is employed for less than one month’s duration;
or
(2) Is employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or

(3) Has gross earnings of less than three hundred dollars per month.

c) The commission may establish additional exemptions to reduce unnecessary or burdensome reporting through promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code.

d) Employers shall report by mailing to the child support enforcement division a copy of the employee’s W-4 form. However, an employer may transmit such information through another means if approved in writing by the child support enforcement division prior to the transmittal.

e) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. The report shall include the employee’s name, address, social security number and date of birth and the employer’s name and address, any different address of the payroll office and the employer’s federal tax identification number.

f) An employer of an obligor shall provide to the child support enforcement division, upon its written request, information regarding the obligor’s employment, wages or salary, medical insurance and location of employment.

g) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than twenty dollars. If the failure to report is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than three hundred fifty dollars.

h) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.
ARTICLE 5A. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

For purposes of this article, the words or terms defined in this section have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Action against a license" means action taken by the child support enforcement division to cause the denial, nonrenewal, suspension or restriction of a license applied for or held by (A) a support obligor owing overdue support, or (B) a person who has failed to comply with subpoenas or warrants relating to paternity or child support proceedings;

(2) "License" means a license, permit, certificate of registration, registration, credential, stamp or other indicia that evidences a personal privilege entitling a person to do an act that he or she would otherwise not be entitled to do, or evidences a special privilege to pursue a profession, trade, occupation, business or vocation.

§48A-5A-2. Licenses subject to action.
The following licenses are subject to an action against a license as provided for in this article:

(1) A permit or license issued under chapter seventeen-b of this code, authorizing a person to drive a motor vehicle;

(2) A commercial driver's license, issued under chapter seventeen-e of this code, authorizing a person to drive a class of commercial vehicle;
(3) A permit, license or stamp issued under article two or two-b, chapter twenty of this code, regulating a person’s activities for wildlife management purposes, authorizing a person to serve as an outfitter or guide, or authorizing a person to hunt or fish;

(4) A license or registration issued under chapter thirty of this code, authorizing a person to practice or engage in a profession or occupation;

(5) A license issued under article twelve, chapter forty-seven of this code, authorizing a person to transact business as a real estate broker or real estate salesperson;

(6) A license or certification issued under article fourteen, chapter thirty-seven of this code, authorizing a person to transact business as a real estate appraiser;

(7) A license issued under article twelve, chapter thirty-three of this code, authorizing a person to transact insurance business as an agent, broker or solicitor;

(8) A registration made under article two, chapter thirty-two of this code, authorizing a person to transact securities business as a broker-dealer, agent or investment advisor;

(9) A license issued under article twenty-two, chapter twenty-nine of this code, authorizing a person to transact business as a lottery sales agent;

(10) A license issued under articles thirty-two or thirty-four, chapter sixteen of this code, authorizing persons to pursue a trade or vocation in asbestos abatement or radon mitigation;

(11) A license issued under article eleven, chapter twenty-one of this code, authorizing a person to act as a contractor;

(12) A license issued under article two-c, chapter nineteen of this code, authorizing a person to act as an auctioneer; and

(13) A license, permit or certificate issued under chapter nineteen of this code, authorizing a person to sell, market or distribute agricultural products or livestock.

§48A-5A-3. Action against license; notice to licensee.
(a) The child support enforcement division shall send a written notice of an action against a license to a person who:

(1) Owes overdue child support, if the child support arrearage equals or exceeds the amount of child support payable for six months;

(2) Has failed for a period of six months to pay medical support ordered under section fifteen-a, article two, chapter forty-eight of this code; or

(3) Has failed, after appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

(b) In the case of overdue child support or noncompliance with a medical support order, notice of an action against a license shall be served only if other statutory enforcement methods to collect the support arrearage have been exhausted or are not available.

(c) The division shall send a notice of action against a license by regular mail and by certified mail, return receipt requested, to the person’s last-known address or place of business or employment. Simultaneous certified and regular mailing of the written notice shall constitute effective service unless the United States Postal Service returns the mail to the child support enforcement division within the thirty-day response period marked “moved, unable to forward,” “addressee not known,” “no such number/street,” “insufficient address,” or “forwarding order expired.” If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the person at his or her place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the person. Acceptance of the certified mail notice signed by the person, the person’s attorney, or a competent member of the person’s household above the age of sixteen shall be deemed effective service.

(d) The notice shall be substantially in the following form:
NOTICE OF ACTION AGAINST LICENSE

<table>
<thead>
<tr>
<th>Name and address:</th>
<th>Date:</th>
<th>Case No:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security No:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit Court of __________ County, West Virginia</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 1.

- The child support enforcement division has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months child support or more. The amount you owe is calculated to be $_______ as of the _____ day of __________, ________.

- The child support enforcement division has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be $_______ as of the _____ day of __________, ________.

- The child support enforcement division has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.

- The child support enforcement division has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.

Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver’s license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Child Support Enforcement Division has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

- I want to pay in full the overdue amount I owe as child support. I am enclosing a check or order in the amount of $_______.

- I want to pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of $_______.

- I am requesting a meeting with a representative of the Child Support Enforcement Division to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.

- I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed X __________________________ Date: __________________________

Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Child Support Enforcement Division before the _____ day of __________, ________.

Otherwise, the Child Support Enforcement Division may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:
(e) The notice shall advise the person that further failure to comply may result in an action against licenses held by the person, and that any pending application for a license may be denied, renewal of a license may be refused, or an existing license may be suspended or restricted unless, within thirty days of the date of the notice, the person pays the full amount of the child support arrearage or the medical support arrearage, makes a request for a meeting with a representative of the child support enforcement division to arrange a payment plan or to otherwise arrange compliance with existing support orders, or makes a request for a court hearing to the child support enforcement division. An action against a license shall be terminated if the person pays the full amount of the child support arrearage or medical support arrearage, or provides proof that health insurance for the child has been obtained as required by a medical support order or enters into a written plan with the child support enforcement division for the payment of current payments and payment on the arrearage.

(f) If the person fails to take one of the actions described in subsection (e) of this section within thirty days of the date of the notice and there is proof that service on the person was effective, the child support enforcement division shall file a certification with the circuit court setting forth the person's noncompliance with the support order or failure to comply with a subpoena or warrant and the person's failure to respond to the written notice of the potential action against his or her license. If the circuit court is satisfied that service of the notice on the person was effective as set forth in this section, it shall without need for further due process or hearing, enter an order suspending or restricting any licenses held by the person. Upon the entry of the order, the child support enforcement division shall forward a copy to the person and to any appropriate agencies responsible for the issuance of a license.

(g) If the person requests a hearing, the child support enforcement division shall file a petition for a judicial hearing before the family law master. The hearing shall
occur within forty-two days of the receipt of the person's request. If, prior to the hearing, the person pays the full amount of the child support arrearage or medical support arrearage or provides health insurance as ordered, the action against a license shall be terminated. No action against a license shall be initiated if the child support enforcement division has received notice that the person has pending a motion to modify the child support order, if that motion was filed prior to the date that the notice of the action against the license was sent by the child support enforcement division. The court shall consider the child support enforcement division's petition to deny, refuse to renew, suspend or restrict a license in accordance with section four of this article.

§48A-5A-4. Hearing on denial, nonrenewal, suspension or restriction of license.

(a) The court shall order a licensing authority to deny, refuse to renew, suspend or restrict a license if it finds that:

(1) All appropriate enforcement methods have been exhausted or are not available;

(2) The person is the holder of a license or has an application pending for a license;

(3) The requisite amount of child support or medical support arrearage exists or health insurance for the child has not been provided as ordered, or the person has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding;

(4) No motion to modify the child support order, filed prior to the date that the notice was sent by the child support enforcement division, is pending before the court; and

(5) There is no equitable reason, such as involuntary unemployment, disability, or compliance with a court-ordered plan for the periodic payment of the child support arrearage amount, for the person's noncompliance with the child support order.

(b) If the court is satisfied that the conditions described in subsection (a) of this section exist, it shall first
consider suspending or restricting a driver's license prior
to professional license. If the person fails to appear at the
hearing after being properly served with notice, the court
shall order the suspension of all licenses held by the per-
son.

(c) If the court finds that a license suspension will
result in a significant hardship to the person, to the per-
son's legal dependents under eighteen years of age living
in the person's household, to the person's employees, or
to persons, businesses or entities to whom the person pro-
vides goods or services, the court may allow the person to
pay a percentage of the past-due child support amount as
an initial payment, and establish a payment schedule to
satisfy the remainder of the arrearage within one year, and
require that the person comply with any current child
support obligation. If the person agrees to this arrange-
ment, no suspension or restriction of any licenses shall be
ordered. Compliance with the payment agreement shall
be monitored by the child support enforcement division.

(d) If a person has good cause for not complying
with the payment agreement within the time permitted, the
person shall immediately file a motion with the court and
the child support enforcement division requesting an ex-
tension of the payment plan. The court may extend the
payment plan if it is satisfied that the person has made a
good faith effort to comply with the plan and is unable to
satisfy the full amount of past-due support within the time
permitted due to circumstances beyond the person's con-
trol. If the person fails to comply with the court-ordered
payment schedule, the court shall, upon receipt of a certif-
ication of noncompliance from the child support enforce-
ment division, and without further hearing, order the im-
mediate suspension or restriction of all licenses held by
the person.


(a) The child support enforcement division shall pro-
vide the licensing authority with a copy of the order re-
quiring the denial, nonrenewal, suspension or restriction of
a license. Upon receipt of an order requiring the suspen-
sion or restriction of a license for nonpayment of child
support, the licensing authority shall immediately notify
the applicant or licensee of the effective date of the denial,
nonrenewal, suspension or limitation, which shall be twen-
ty days after the date of the notice, direct any licensee to
refrain from engaging in the activity associated with the
license, surrender any license as required by law, and in-
form the applicant or licensee that the license shall not be
approved, renewed or reinstated until the court or child
support enforcement division certifies compliance with
court orders for the payment of current child support and
arrearage. The child support enforcement division, in
association with the affected licensing authorities, may
develop electronic or magnetic tape data transfers to noti-
fy licensing authorities of denials, nonrenewals, suspen-
sions and reinstatements. No liability shall be imposed on
a licensing authority for suspending or restricting a license
if the action is in response to a court order issued in accor-
dance with this article. Licensing authorities shall not have
jurisdiction to modify, remand, reverse, vacate or stay a
court order to deny, not renew, suspend or restrict a li-

cense for nonpayment of child support.

(b) The denial, nonrenewal, suspension or restriction
of a license ordered by the court shall continue until the
child support enforcement division files with the licensing
authority either a court order restoring the license or a
child support enforcement division certification attesting
to compliance with court orders for the payment of cur-
rent child support and arrearage.

(c) Each licensing authority shall require license appli-
cants to certify on the license application form, under
penalty of false swearing, that the applicant does not have
a child support obligation, the applicant does have such an
obligation but any arrearage amount does not equal or
exceed the amount of child support payable for six
months, or the applicant is not the subject of a
child-support related subpoena or warrant. A license shall
not be granted to any person who applies for a license if
there is an arrearage equal to or exceeding the amount of
child support payable for six months or if it is determined
that the applicant has failed to comply with a warrant or
subpoena in a paternity or child support proceeding. The application form shall state that making a false statement may subject the license holder to disciplinary action including, but not limited to, immediate revocation or suspension of the license.

(d) The provisions of this article apply to all orders issued before or after the enactment of this article. All child support, medical support and health insurance provisions in existence on or before the effective date of this article shall be included in determining whether a case is eligible for enforcement. This article applies to all child support obligations ordered by any state, territory or district of the United States that are being enforced by the child support enforcement division, that are payable directly to the obligee, or have been registered in this state in accordance with the uniform interstate family support act.

§48A-5A-6. Procedure where license to practice law may be subject to denial, suspension or restriction.

If a person who has been admitted to the practice of law in this state by order of the supreme court of appeals is determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding, such that his or her other licenses are subject to suspension or restriction under this article, the child support enforcement division may send a notice listing the name and social security number or other identification number to the lawyer disciplinary board established by the supreme court of appeals. The Legislature hereby requests the supreme court of appeals to promptly adopt rules pursuant to its constitutional authority to govern the practice of law that would include as attorney misconduct for which an attorney may be disciplined, situations in which a person licensed to practice law in West Virginia has been determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding.
§48A-5A-7. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

The provisions of this article have been enacted to conform to the mandates of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996". If a court of competent jurisdiction should determine, or if it is otherwise determined that the federal government lacked authority to mandate the license denials, nonrenewals, suspensions or restrictions contemplated by this article, then the provisions of this article shall be null and void and of no force and effect.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

(a) Prior to the commencement of an action for the establishment of paternity, the child support enforcement division may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The division may order the tests upon the request of a party, supported by a sworn statement. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility of requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not performed pursuant to an order of the child support enforcement division, the court may, on its own motion, or shall upon the motion of any party, order such tests. A request or motion may be made upon ten days' written notice to the mother and alleged father, without the necessity of filing a complaint. When the tests are ordered, the court or the division shall direct that the inherited characteristics, including, but not limited to, blood types be determined by appropriate testing procedures at a
hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers shall analyze, interpret and report on the results to the court or to the division of child support enforcement. The results shall be considered as follows:

(1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the defendant's paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.

(4) When a party desires to challenge the results of the blood or tissue tests or the expert's analysis of inherited characteristics, he or she shall file a written protest with the family law master or circuit court or with the division of child support enforcement, if appropriate, within thirty days of the filing of such test results, and serve a copy of such protest upon the other party. The written protest shall be filed at least thirty days prior to any hearing involving the test results. The court or the child support enforcement division, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another laboratory within thirty days of the entry of the order, at the expense of the party requesting additional testing. Costs shall be paid in advance of the testing. When the results of the blood or tissue tests or the expert's analysis which show a statistical probability of paternity of more than ninety-eight percent are confirmed
by the additional testing, then the results are admissible
evidence which is clear and convincing evidence of patern-
ity. The admission of the evidence creates a presumption
that the man tested is the father.

(b) Documentation of the chain of custody of the
blood or tissue specimens is competent evidence to estab-
ish the chain of custody. A verified expert's report shall
be admitted at trial unless a challenge to the testing proce-
dures or a challenge to the results of test analysis has been
made before trial. The costs and expenses of making the
tests shall be paid by the parties in proportions and at
times determined by the court.

(c) Except as provided in subsection (d) of this sec-
tion, when a blood test is ordered pursuant to this section,
the moving party shall initially bear all costs associated
with the blood test unless that party is determined by the
court to be financially unable to pay those costs. This
determination shall be made following the filing of an
affidavit pursuant to section one, article two, chapter fifty-
nine of this code. When the court finds that the moving
party is unable to bear that cost, the cost shall be borne by
the state of West Virginia. Following the finding that a
person is the father based on the results of a blood test
ordered pursuant to this section, the court shall order that
the father be ordered to reimburse the moving party for
the costs of the blood tests unless the court determines,
based upon the factors set forth in this section, that the
father is financially unable to pay those costs.

(d) When a blood test is ordered by the child support
enforcement division, the division shall initially bear all
costs subject to recoupment from the alleged father if
paternity is established.

§48A-6-6. Establishing paternity by acknowledgment of natu-
ral father.

(a) A written, notarized acknowledgment by both the
man and woman that the man is the father of the named
child legally establishes the man as the father of the child
for all purposes and child support may be established
under the provisions of this chapter.
(b) The written acknowledgment shall include:

(1) Filing instructions;

(2) The parties’ social security numbers and addresses; and

(3) A statement, given orally and in writing, of the alternatives to, the legal consequences of, and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.

(c) Failure or refusal to include all information required by subsection (b) of this section shall not affect the validity of the written acknowledgment, in the absence of a finding by a court of competent jurisdiction that the acknowledgment was obtained by fraud, duress or material mistake of fact, as provided in subsection (d) of this section.

(d) An acknowledgment executed under the provisions of this section may be rescinded within the earlier of sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party. After the sixty-day period has expired, the acknowledgment may thereafter be challenged only on the basis of fraud, duress or material mistake of fact, upon a finding of clear and convincing evidence by a court of competent jurisdiction. The legal responsibilities, including child support obligations, of a signatory to the acknowledgment may not be suspended during any challenge, except for good cause shown.

(e) The original written acknowledgment should be filed with the state registrar of vital statistics. Upon receipt of any acknowledgment executed pursuant to this section, the registrar shall forward the copy of the acknowledgment to the child support enforcement division and the parents, if the address of the parents is known to the registrar. If a birth certificate for the child has been previously issued which is incorrect or incomplete, a new birth certificate shall be issued.
CH. 16] INSURANCE

CHAPTER 16

(S. B. 1002—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to the board of risk and insurance management; exempting certain entities from payment of premium taxes; and requiring payments by spending units to the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-13. Premium tax liability.

Notwithstanding any other provision of this code to the contrary, the amount of any gross direct premiums attributable to a policy or contract of insurance entered into with the board of risk and insurance management shall be separately reported on the annual financial statement of the insurer. These gross direct premiums so reported may not be subject to the tax imposed on gross direct premiums pursuant to article three, chapter thirty-three of this code. The provisions of this section shall be effective upon passage and shall apply to any amount of premium tax owed and not yet paid upon the effective date of this section. When any spending unit makes payment to the board of risk and insurance management for payment of premiums attributable to a policy or contract of insurance after the effective date of this section, an amount equal to the amount of gross premium tax attributable to the amount of the premium shall be
18 paid to the board: Provided, That these amounts shall be
19 deposited in a special revenue account hereby created
20 known as the “Premium Tax Savings Fund”.
21 Expenditures from the fund shall not be made from
22 collections but shall only be made in accordance with
23 appropriation by the Legislature.

CHAPTER 17

(S. B. 1004—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections forty-three, forty-six-b, forty-six-c, forty-six-g, forty-six-i, forty-six-j and forty-six-k, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two-b of said chapter by adding thereto a new section, designated section ten, all relating to nonresident sportsman fees; and providing for a law-enforcement and sports education stamp.

Be it enacted by the Legislature of West Virginia:

That sections forty-three, forty-six-b, forty-six-c, forty-six-g, forty-six-i, forty-six-j and forty-six-k, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-b of said chapter be amended by adding thereto a new section, designated section ten, all to read as follows:

Article
  2. Wildlife Resources.
  2B. Wildlife Endowment Fund

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.

§20-2-46b. Class N special deer hunting license.

§20-2-46c. Class O resident and nonresident trout fishing license.
§20-2-46g. Class RR special nonresident deer hunting stamp for an additional deer.

§20-2-46i. Class U resident and Class UU nonresident archery deer hunting licenses.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

§20-2-46k. Class W resident and Class WW nonresident turkey hunting licenses.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.

On or after the first day of January, one thousand nine hundred ninety-eight, the licenses in this section shall be required of nonresidents to hunt and fish in West Virginia. A Class E license shall be a nonresident hunting license and shall entitle the licensee to hunt all legal species of wild animals and wild birds in all counties of the state, except when other licenses or permits are required. It shall be issued only to citizens of the United States or Canada and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be one hundred dollars.

A Class EE license shall be a nonresident bear hunting license and shall entitle the licensee to hunt bear in all counties of the state, except when additional licenses or permits are required. It shall be issued only to citizens of the United States or Canada and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be one hundred fifty dollars.

A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish in all counties of the state except when additional licenses or permits are required. It shall be issued only to citizens of the United States or Canada and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be thirty dollars.

Trout fishing is not permitted with a Class F license unless such license has affixed thereto an appropriate trout stamp as prescribed by the division of natural resources.
A Class G license shall be a family fishing license and shall entitle the licensee and members of his family to fish within the territorial limits of state parks and state forests and in the waters of streams bounding same, for a distance of not to exceed one hundred yards from the exterior boundary of any state park or state forest, except when additional licenses or permits are required, for a period not to exceed one week. It may be issued to any adult resident or nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be ten dollars for the head of the family, plus two dollars additional for each member of his family to whom the privileges of such license are extended. Class G licenses may be issued in such manner and under such rules as the director may see fit to prescribe.

Trout fishing is not permitted with a Class G license unless such license has affixed thereto an appropriate trout stamp as prescribed by the division of natural resources. The trout stamp must be affixed to the license of the head of the family only.

A Class H license shall be a nonresident small game hunting license and shall entitle the licensee to hunt small game in all counties of the state, except when additional licenses or permits are required, for a period of six days beginning with the date it is issued. It shall be issued only to citizens of the United States or Canada who are not residents of this state. The fee therefor shall be twenty dollars. As used in this section, "small game" means all game except bear, deer, wild turkey and wild boar.

§20-2-46b. Class N special deer hunting license.

A Class N license is a special deer hunting license for antlerless deer of either sex and entitles the licensee to hunt for and kill antlerless deer of either sex during the Class N license season. The fee for a Class N license is eight dollars.

The Class N license may be issued only for the purpose of removing antlerless deer when the director deems it essential for proper management of wildlife resources. The director shall establish such rules governing the issuance of such Class N licenses as he deems necessary to limit, on a fair and equitable basis, the
number of persons who may hunt for antlerless deer in any county, or any part of a county.

When the director deems it essential that Class N license season be held in a particular county or part of a county, that season shall be set by the natural resources commission as provided for in section seventeen, article one of this chapter.

Bona fide resident landowners or their resident children, bona fide resident tenants of such land, and any bona fide resident stockholder of resident corporations which are formed for the primary purpose of hunting or fishing and which are the fee simple owners of no less than one thousand acres of land upon which such antlerless deer may be hunted are not required to have a Class N license in their possession while hunting antlerless deer on their own land during the Class N license season.

A Class N license may be issued only to a resident of this state who holds a valid Class A, Class A-L, Class AB, Class AB-L, Class X or Class XJ license issued for the current calendar year or a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in section twenty-eight, article two of this chapter, except that this requirement shall not apply to persons under the age of fifteen. The director shall require proof of age before issuing a Class N license, and such license shall contain a space for recording the number of the valid Class A, Class A-L, Class AB, Class AB-L, Class X or Class XJ license. If at any time prior to the Class N deer hunting season the director determines that there is a surplus of Class N licenses after the demand for such licenses by residents of this state has been met, such surplus licenses may be issued to nonresidents who hold a valid Class E hunting license. The fee for a Class N license issued to a nonresident shall be twenty-five dollars.

§20-2-46c. Class O resident and nonresident trout fishing license.

A Class O license shall be a resident and nonresident statewide trout fishing license and shall entitle the licensee to fish for trout in all counties of the state, except as prohibited by rules of the director.
The fee shall be seven dollars and fifty cents: Provided, That on and after the first day of January, one thousand nine hundred ninety-eight, the fee for residents shall be seven dollars and fifty cents and the fee for nonresidents shall be ten dollars. The revenue derived from the sale of this license shall be deposited in the state treasury and credited to the division of natural resources and shall be used and paid out, upon order of the director, for state trout hatchery production.

This license shall be issued in the form of a stamp prescribed by the director, shall be in addition to a Class AB, AB-L, B, B-L, F, G, K, X or XJ license and is valid only when affixed thereto.

§20-2-46g. Class RR special nonresident deer hunting stamp for an additional deer.

The director has the authority to issue a special Class RR nonresident deer stamp when he or she determines it essential for the proper management of the wildlife resources. This stamp will allow the holder to hunt for and kill an additional deer as designated by the director. The fee for a Class RR nonresident deer stamp shall be twenty-five dollars: Provided, That on and after the first day of January, one thousand nine hundred ninety-eight, the fee shall be thirty dollars.

The director shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of the stamp.

§20-2-46i. Class U resident and Class UU nonresident archery deer hunting licenses.

A Class U license shall be a resident statewide archery deer hunting license. A Class UU license shall be a nonresident statewide archery deer hunting license. A Class U or Class UU license shall entitle the licensee to hunt for and kill deer with a bow during the archery deer season in all counties of the state, except as prohibited by the rules of the director or commission. The fee for the Class U archery deer license shall be five dollars. The fee for the Class UU license shall be ten dollars: Provided, That on and after the first day of January, one thousand
NATURAL RESOURCES

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

There shall be a special season of at least three days each year for the taking of deer with muzzle-loading firearms, either rifles or pistols, to be set at such time and to be of a duration determined by the commission. For a minimum of two days during this season, deer of either sex may be taken with muzzle-loading firearms in all counties open for the taking of antlerless deer as provided in section forty-six-b of this article. Antlered deer only may be taken in all other counties open for the taking of deer with firearms.

Only single shot muzzle-loading firearms with iron sights having a bore diameter of no less than thirty-eight one-hundredths inch are legal firearms for the taking of deer during the special season provided herein.

The special season provided herein shall be concurrent with all other seasons designated for the taking of game.

Any person wishing to hunt for and kill deer during the special muzzle-loading season must possess a valid Class V or Class VV license, except that this requirement does not apply to a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in this chapter. A Class V license shall be a resident muzzle-loading deer hunting license. A Class VV license shall be a nonresident muzzle-loading deer hunting license. The licenses shall be issued in a form prescribed by the director, are in addition to a Class A, Class AB or Class E license and are valid only when accompanied thereby. The fee for the Class V license shall be five dollars. The fee for the Class VV license shall be ten dollars: Provided, That on and after the first day of January, one thousand nine hundred ninety-eight, the fee shall be twenty-five dollars.
§20-2-46k. Class W resident and Class WW nonresident
turkey hunting licenses.

A Class W license shall be a resident turkey hunting
license, and a Class WW license shall be a nonresident
turkey hunting license. A Class W or Class WW license
shall entitle the licensee to hunt for and kill turkey during
any turkey hunting season, except as prohibited by the
rules of the director or commission. The fee for the Class
W turkey hunting license shall be five dollars. The fee for
the Class WW license shall be ten dollars: Provided, That
on and after the first day of January, one thousand nine
hundred ninety-eight, the fee shall be twenty-five dollars.

The licenses shall be issued in a form prescribed by
the director, shall be in addition to a Class A, Class AB or
Class E license and are valid only when accompanied
thereby.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-10. Law-enforcement and sports education stamp.

On or after the first day of January, one thousand nine
hundred ninety-eight, any nonresident hunter, angler or
trapper licensed to hunt, fish or trap in this state, in
addition to a hunting, fishing or trapping license of Class
E, EE, F, G, H or K in the case of a nonresident, shall have
a law-enforcement and sports education stamp which shall
be issued by the division of natural resources. The stamp
shall be sold at places where hunting, fishing or trapping
licenses are sold. The fee for the law-enforcement and
sports education stamp is five dollars for a nonresident of
West Virginia.

The revenue derived from the sale of law-enforcement
and sports education stamps shall be deposited in the state
treasury and shall be credited to the division of natural
resources, law-enforcement section. The revenue shall be
used and paid out, upon order of the director, for the law-
enforcement section’s expenses relating to the general
enforcement of state laws pertaining to the conservation of
fish and wildlife and or law-enforcement education
programs for hunters, anglers, trappers and boaters:
Provided, That no expenditures of the revenue derived
from the sale of the law-enforcement and sports education
stamp shall be made for law-enforcement purposes not
directly related to the wildlife resources of the state or for
the aforementioned educational programs. Any
unexpended moneys derived from the sale of law-
enforcement and sports education stamps shall be carried
forward to the next fiscal year and expended for law-
enforcement and educational programs.

CHAPTER 18

(S. B. 1003—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article six,
chapter twelve of the code of West Virginia, one thousand
eighty-three, as amended, relating to increasing
the amount of borrowing authorized from the consolidated
fund by the state building commission for construction of
regional jails and correctional facilities; clarifying
procedures for the loans; and setting priorities for use of the
loan proceeds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT
BOARD.

§12-6-19. Authorization for loans by the board.

(a) The board, 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, or as funds are made available by the budget office of department of administration, 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 investment management board.

(b) The state investment management board 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 one hundred thirty-seven 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 shall be funded from loan proceeds. This certified list cannot thereafter be altered or amended other than by legislative enactment. The state building commission shall borrow money as needed by the regional jail and correctional facility authority. The investment management board shall transfer loan proceeds to the authority for expenditure. 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) The regional jail and correctional facility authority shall expend the loan proceeds received under the provisions of subsection (b) of this section to proceed with
the projects included in the letter submitted to the joint committee on government and finance dated the fifteenth day of January, one thousand nine hundred ninety-seven: Provided, That the letter shall not be construed to prioritize any project or projects which are included in the letter: Provided, however, That the authority may also expend loan proceeds for any expansion to any existing regional jail or any expansion to a regional jail under construction upon the effective date of this section.

(d) 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. The amount transferred for loans under subsection (a) or (b) of this section shall not exceed that amount which the board 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 19

(H. B. 110—By Mr. Speaker, Mr. Kiss, and Delegate Ashley) [By Request of the Executive]

[Passed April 20, 1997; 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-seven, in the amount of one million dollars from the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. 3332, fiscal year 1997, organization 0313, and making a supplementary appropriation to the bureau of environment, solid waste management board, account no. fund 3288, fiscal year 1997, organization 0312, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. fund 3332, fiscal year 1997, organization 0313, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appears from the provisions of this legislation that 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-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. fund 3332, fiscal year 1997, organization 0313, be decreased by expiring the amount one million dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, be supplemented and amended by increasing the total appropriation to the bureau of environment, solid waste management board, account no. fund 3288, fiscal year 1997, organization 0312, by one million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 86A—Solid Waste Management Board

4 (WV Code Chapter 20)

5 Account No.

6 Fund 3288 FY 1997 Org 0312
| General Revenue Fund | Activity 488 Landfill Assistance | $1,000,000 |

Any unexpended balance remaining in the appropriation for Landfill Assistance (fund 3288, activity 488) at the close of the fiscal year 1996-97 is hereby reappropriated for expenditure during the fiscal year 1997-98.

The purpose of this bill is to expire one million dollars to the unappropriated surplus balance in the state fund, general revenue, and to supplement the bureau of environment, solid waste management board, account no. fund 3288, fiscal year 1997, organization 0312, in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by adding one million dollars to the existing appropriation for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven. The appropriation is to be used to make a loan or loans for landfill assistance.
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-seven, in the amount of fifteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, 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-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and
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-seven; 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-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, be decreased by expiring the amount of fifteen 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-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by fifteen million dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

8—Governor's Office—
Civil Contingent Fund
(WV Code Chapter 5A)

Account No.

Fund 0105 FY 1997 Org 0100

Activity General Revenue Fund

1 Civil Contingent Fund-
Surplus (R) ................. 263 $15,000,000

The purpose of this bill is to expire the sum of fifteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and to supplement the governor's office, civil contingent fund,
CHAPTER 2

(H. B. 206—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 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-seven, in the amount of five million dollars from the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, activity 263.

WHEREAS, The Legislature finds that the account balance in the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, line item appropriation for flood recovery and mitigation loans (disaster recovery trust fund), exceeds that which is necessary for the purposes for which the appropriation was enacted; and

WHEREAS, By the terms 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-seven; 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-seven, to the governor’s office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, be amended and decreased by expiring the amount of five 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-seven, to account no. fund 0105, fiscal year 1997, organization 0100, activity 263, be supplemented and amended by increasing the total appropriation by five million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 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 1997 Org 0100

8 Activity General

9 Revenue

10 Fund

11 1 Civil Contingent Fund-
12 Surplus (R) ..................... 263 $5,000,000

13 The purpose of this bill is to expire the sum of five
14 million dollars from the governor’s office, civil contingent
15 fund, account no. fund 0105, fiscal year 1996,
16 organization 0100, activity 289, and to supplement
17 account no. fund 0105, fiscal year 1997, organization
18 0100, activity 263, in the budget act for the fiscal year
19 ending the thirtieth day of June, one thousand nine
20 hundred ninety-seven, by adding five million dollars to
21 the existing appropriation for the civil contingent fund-
22 surplus.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of education, account no. fund 0313, fiscal year 1997, organization 0402, in the amount of one hundred thousand dollars, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor, by executive message, has increased the revenue estimates for the fiscal year one thousand nine hundred ninety-seven; and

WHEREAS, There now remains an unappropriated balance in the state fund, general revenue, which is available for expenditure in the fiscal year one thousand nine hundred ninety-seven; 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-seven, to the state department of education, account no. fund 0313, fiscal year 1997, organization 0402, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars in a new line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Sec. 1. Appropriations from general revenue.
3 DEPARTMENT OF EDUCATION
4 35—State Department of Education
5 (WV Code Chapters 18 and 18A)
1 Account No.  
2 Fund 0313 FY 1997 Org 0402  
3 Act-  
4  
5  
6 34a Foreign Student Education ... 636 $100,000  

The purpose of this supplementary appropriation bill is to create a new line item in the above account for the establishment of educational programs for foreign students and to provide an appropriation from the state fund, general revenue, in the amount of one hundred thousand dollars to fund the program for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

CHAPTER 4  
(H. B. 208—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)  
[By Request of the Executive]  

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]  

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, in the amount of seven million dollars, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.
WHEREAS, The governor, by executive message, has increased the revenue estimates for the fiscal year one thousand nine hundred ninety-seven; and

WHEREAS, There now remains an unappropriated balance in the state fund, general revenue, which is available for expenditure in the fiscal year one thousand nine hundred ninety-seven; 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-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by seven million dollars in the line item as follows:

1  TITLE II—APPROPRIATIONS.
2  Sec. 1. Appropriations from general revenue.
3  DEPARTMENT OF HEALTH AND HUMAN RESOURCES
4  55—Division of Human Services
5  (WV Code Chapters 9,48 and 49)
6  Account No.
7  Fund 0403 FY 1997 Org 0511
8  Activity General Revenue Fund
9  19 Social Services . . . . . . . . . . . . . 195 $7,000,000
10
11
12

The purpose of this supplementary appropriation bill is to provide a supplemental appropriation from the state fund, general revenue, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, in the amount of seven million dollars.
AN ACT supplementing, amending, transferring and reducing the balance of funds from the broker litigation recoveries fund, account no. fund 8564, and authorizing the transfer of these funds to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999.

WHEREAS, The state has received settlements from litigation regarding the losses the state incurred in its investment funds and these funds were deposited in the broker litigation recoveries fund; and

WHEREAS, There is no current appropriation or authorization to expend funds from the broker litigation recoveries fund; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds from the broker litigation recoveries fund, account no. fund 8564, be transferred to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999.

5 The purpose of this supplementary appropriation bill is to provide for the transfer of the balance of funds from the broker litigation recoveries fund, account no. fund 8564, to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999.
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-seven, to a new item of appropriation designated to the division of human services - temporary assistance for needy families (TANF), account no. fund 8816, fiscal year 1997, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

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-seven, 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 six thereof, the following:

1 TITLE II—APPROPRIATIONS.
2 Sec. 6. Appropriations from federal block grants.
3 257a—Division of Human Services—
4 Temporary Assistance for Needy Families (TANF)
5 Account No.
6 Fund 8816 FY 1997 Org 0511
The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of sixty million dollars for temporary assistance for needy families (TANF) program. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 7

(H. B. 202—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]
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 six thereof, the following:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations from federal block grants.

257b—Division of Human Services—

Child Care and Development

Account No.

Fund 8817 FY 1997 Org 0511

<table>
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<th>Federal Funds</th>
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<td>Unclassified—Total</td>
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The purpose of this supplementary appropriation bill is to supplement the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of nine million seven hundred twenty-nine thousand seven hundred fifty-six dollars for the child care and development program. These moneys shall be available for expenditure upon passage of this bill.

CHAPTER 8

(H. B. 209—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 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 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, 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 the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, be amended and reduced in the line item as follows:

| TITLE II—APPROPRIATIONS. |  |
|--------------------------|  |
| Sec. 2. Appropriations from state road fund. |  |
| DEPARTMENT OF TRANSPORTATION |  |
| 90—Division of Highways |  |
| (WV Code Chapters 17 and 17C) |  |
| Account No. |  |
| Fund 9017 FY 1997 Org 0803 |  |
|  |
| |  |
| Activity | State | Road | Fund |
| Other Federal Aid Programs ... 279 | $4,000,000 |  |

And, that the items of the total appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, be amended and increased in the line items as follows:

| TITLE II—APPROPRIATIONS. |  |
|--------------------------|  |
| Sec. 2. Appropriations from state road fund. |  |
| DEPARTMENT OF TRANSPORTATION |  |
| 90—Division of Highways |  |
| (WV Code Chapters 17 and 17C) |  |
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 four million dollars. The item for Interstate Construction is increased by four million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 9

(H. B. 210—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]
That the items of the total appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1997, organization 0803, be amended and reduced in the line item as follows:

1

TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from state road fund.

3 DEPARTMENT OF TRANSPORTATION

4 91—Division of Highways

5 Federal Aid Highway Matching Fund

6 (WV Code Chapters 17 and 17C)

7 Account No.

8 Fund 9018 FY 1997 Org 0803

9

Activity

10 State Road Fund

11

12 3 Other Federal Aid Programs . . . 279 $8,000,000

13 And, that the items of the total appropriations from the
14 state road fund to the department of transportation,
15 division of highways, account no. fund 9018, fiscal year
16 1997, organization 0803, be amended and increased in the
17 line items as follows:

18 TITLE II—APPROPRIATIONS.

19 Sec. 2. Appropriations from state road fund.

20 DEPARTMENT OF TRANSPORTATION

21 91—Division of Highways

22 Federal Aid Highway Matching Fund

23 (WV Code Chapters 17 and 17C)

24 Account No.

25 Fund 9018 FY 1997 Org 0803
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 eight million dollars. The item for Interstate Construction is increased by eight million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 10

(H. B. 203—(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, six and eight, article eleven-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections three-a and eight-a, all relating to the corporation authorized to operate the West Virginia university hospital; authorizing the creation of a parent corporation to be known as the West Virginia health system; setting forth definitions of terms; setting forth legislative findings; amending the method by which the corporation's board is appointed; providing a description of the system and establishing the means by which the West Virginia health system's board of directors is nominated, appointed and
confirmed; providing for interim directors of the system; directing that financial audits be open to the public; prohibiting transfer of the system's membership in the corporation; addressing conflicts of interest; and providing disclaimer of liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST VIRGINIA HEALTH SYSTEM.

§18-11C-1. Definitions.
§18-11C-2. Findings.
§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.
§18-11C-3a. Description to be met by the West Virginia health system.
§18-11C-6. Conflicts of interest; statement; penalties.
§18-11C-8. Not obligation of the state.
§18-11C-8a. Agreements subject to other provisions of law.

§18-11C-1. Definitions.

1 The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

4 (a) “Agreement” means the long-term lease and agreement to be entered into between the board and the corporation pursuant to section four of this article;

7 (b) “Assets” means all assets of the board constituting tangible and intangible personal property credited to the hospital on the financial ledgers and equipment inventories of the university at the transfer date, and as more particularly or additionally identified or supplemented in the agreement, excluding all hospital funds deposited with the state treasurer;
(c) For the purposes of this article, “board” means the West Virginia board of trustees;

(d) “Corporation” means the nonstock, not-for-profit corporation to be established under the general corporation laws of the state, which meets the description prescribed by section three of this article;

(e) “Corporation employees” means employees of the corporation;

(f) “Directors” means the board of directors of the corporation;

(g) “Existing facilities” means the West Virginia university hospital and clinics, other than those used for student health and family practice, presently existing at the West Virginia university medical center in Morgantown and owned and operated by the board;

(h) “Health science schools” means the schools of medicine, dentistry, pharmacy and nursing and any other schools at the university considered by the board to be health sciences;

(i) “Hospital” means the inpatient and outpatient health care services of the board, other than those used for student health services and family practice clinics, operated in connection with the university, consisting of the existing facilities and any other health care service components of the West Virginia university medical center at Morgantown rendering patient care services and more particularly identified by the agreement;

(j) “Liabilities” means all liabilities, except those specifically excluded by section four of this article, credited to the hospital on the financial ledgers of the university at the transfer date and as more particularly or additionally identified, supplemented or limited in the agreement;

(k) “Medical personnel” means both university personnel and corporation employees;
§18-UC-2. Findings.

(a) It is hereby found and determined with regard to the hospital that:

(1) The purposes of the existing facilities are to facilitate the clinical education and research of the health science schools and to provide patient care, including specialized services not widely available elsewhere in West Virginia. The eventual termination of the services in lieu of replacement or modernization would create an unreasonable hardship on patients in the area and throughout the state;

(2) These purposes separately and collectively serve the highest public interest and are essential to the public health and welfare, but must be realized in the most efficient manner and at the lowest cost practicable and consistent with these purposes;
(3) It is unnecessarily costly and administratively cumbersome for the board to finance, manage and carry out the patient care activities of an academic institution within the existing framework of a state agency. The patient care operations are more efficiently served by contemporary legal, management and procedural structures utilized by similarly situated private entities throughout the nation;

(4) It is fiscally desirable that the state separate the business and service functions of the hospital from the educational functions of the health science schools, that the board cease operation of the existing facilities, that the board transfer the operations to the corporation, that the board pay certain existing sums and assign the assets and certain leasehold interests to the corporation in order to acquire the corporation's agreement to provide certain space and services and to assume the liabilities, that the agreement and certain other contractual relationships between the board and the corporation be authorized, and that the existing facilities operated by the corporation, and subsequently the new facilities owned and operated by the corporation, be self-sufficient and serve to remove the tax burden of operating the existing facilities from the state;

(5) A not-for-profit corporate structure with appropriate governance consistent with the delivery of health care to the patient and academic need of the university is the best means of assuring prudent financial management and the future economy of operation under rapidly changing market conditions, regulation and reimbursement; and

(6) The interests of the citizens of the state will be best met by the board's entering into and carrying out the provisions of the agreement as soon as possible, to provide independence and flexibility of management and funding while enabling the state's tertiary health care and health science education needs to be better served.

(b) It is hereby found and determined with regard to the West Virginia health system that:
(1) The interests of the citizens of the state will be best served by ensuring the continued vitality and viability of the West Virginia based health care institutions which are devoted to addressing the state's tertiary health care and health science education needs and which possess the flexibility and resources to effectively and efficiently compete in a rapidly changing health care environment;

(2) The best interests of the state, and the mission and purposes of the corporation created by this article, will best be met by the authorization and creation of a West Virginia health system as a not-for-profit corporate structure to serve as the parent corporation of the corporation created pursuant to this article and other corporations and institutions;

(3) The citizens of the state are best served by requiring representative governance by the board while maintaining flexibility so that the West Virginia health system may, over time, authorize and stimulate the creation of an integrated health care delivery system which may be comprised of one or more affiliated institutions; and

(4) The citizens of the state are best served by the creation of a coordinated, integrated, efficient and effective health science and health care delivery system which is accountable to the citizens of the state, responsive to the health care and health science education needs of the citizens of the state, and responsive to the financial pressures of a dynamic health care environment.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

The board is hereby authorized to enter into the agreement and any other contractual relationships authorized by this article with the corporation, but only if the corporation meets the following description:

(a) The directors of the corporation, all of whom shall be voting, shall consist of the president of the university, who shall serve ex officio as chairman of the directors, the
president of the board or his or her designee, the vice chancellor for health affairs of the board, the vice president for health sciences of the university, the vice president for administration and finance of the university, the chief of the medical staff of the hospital, the dean of the school of medicine of the university, the dean of the school of nursing of the university and the chief executive officer of the corporation, all of whom shall serve as ex officio members of the directors, a representative elected at large by the corporation employees and seven directors to be appointed by the West Virginia health system board. The West Virginia health system board shall select and appoint the seven appointed members in accordance with the provisions of section six-a, article five-b, chapter sixteen of this code: Provided, That the current directors of the corporation shall continue to serve until they resign or their term expires. On and after the effective date of this section, the seven appointed directors shall be appointed by the system board for staggered six-year terms. The system board shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district.

(b) The corporation shall report its audited records publicly and to the joint committee on government and finance at least annually.

(c) Upon liquidation of the corporation, the assets of the corporation shall be transferred to the board for the benefit of the university.

§18-11C-3a. Description to be met by the West Virginia health system.

(a) The West Virginia health system shall be a non-stock, not-for-profit corporation established pursuant to the provisions of article one, chapter thirty-one of this code, known as the “West Virginia Corporation Act”. The system shall have the general powers of a corporation including, but not limited to, the power and authority to affiliate, in any manner, with the corporation and other
health care providers to establish an integrated health care delivery system.

(b) The West Virginia health system shall meet the following description:

(1) The board of directors of the system shall initially consist of eleven voting members, all of whom shall represent the university. As the system affiliates with other health care providers, representatives of those providers may be appointed to the board. The West Virginia health system board shall provide for the manner and appointment of nonuniversity representatives.

The voting members representing the university are hereby designated as "university representatives". The university representatives shall include the following ex officio members: the president of the university, who shall serve as chair of the board of directors; the vice president for health sciences of the university; a member or designee of the board of trustees; and a member of the medical staff of the corporation. For each of the seven remaining university representative positions the directors of the corporation shall submit a list of three nominees to the governor for each open university representative position. If there is more than one open university position at any one time, the directors of the corporation may not nominate any person for more than one of the open university positions. The governor may appoint the board member from the list of nominees submitted or he or she may reject the list of nominees for any open university position and request that the directors of the corporation submit a list of three different nominees for that open university position. The board members appointed by the governor shall be appointed with the advice and consent of the Senate. The directors of the corporation shall select its nominees and the governor shall select all of the appointed members in a manner which assures geographic diversity and assures that at least two members are from each congressional district. The appointed university representatives shall serve six-year
terms: **Provided**, That of the initial members appointed, three members shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years.

(2) The number of members of the West Virginia health system's board may be increased by the majority vote of the existing system board members. The number of university representative positions on the system's board shall be increased, as a matter of law, upon a passing vote by the board to increase the number of nonuniversity representatives so that the total number of university representatives shall at all times constitute a majority of voting members of the system's board. Any additional system board positions which are created shall be created to provide for representation valuable to the board, including, but not limited to, representation of hospitals or health care providers which may, from time to time, become affiliated with the system. Newly created university representative positions shall be filled in accordance with the provisions of subdivision (3) of this subsection. To the extent possible, persons appointed to newly-created university representative positions shall be appointed to staggered terms so that the terms of approximately one third of the appointed university representatives expire every two years.

(3) Any vacancies in the university representative positions shall be filled with qualified university representatives pursuant to the ex officio designation or nomination and appointment procedure set forth in subdivision (1) of this subsection, so as to maintain the university's required majority of voting members of the system's board. To permit the orderly operation of the system, vacant university representative positions may be filled on an interim basis, as follows: (i) If the vacant position is one of the ex officio positions, then the position may be filled by the individual designated by the university to serve in the position on an acting or interim basis, or if no individual has been designated, the position may be filled by a member or designee of the board of
trustees of the university; (ii) if the vacant position is among the appointed university representatives, then the position may be filled by an additional member or designee of the board of trustees of the university until the vacancy can be filled pursuant to the nomination and appointment process set forth in subdivision (1) of this subsection.

(c) The system's board shall make audited records of the system available to the public and provide those records to the joint committee on government and finance at least annually.

(d) The system may not, in any manner, assign, transfer or divest its rights in or to its membership in the corporation.

(e) For purposes of organizing, incorporating and conducting the business of the West Virginia health system or otherwise implementing the provisions of this article, the ex officio members of the system's board are authorized to act on behalf of the system until the remainder of the system's board members can be appointed and confirmed.

§18-11C-6. Conflicts of interest; statement; penalties.

(a) Notwithstanding any other provisions of this code to the contrary, officers and employees of the board and the university may hold appointments to offices of the corporation and the system and be members of the boards of directors, or officers or employees of other entities contracting with the corporation, the system or the board or the university. The board and the directors of the corporation and the system, as the case may be, must be informed of the appointments annually, and either the board or the directors of the corporation or the system may require that an appointment be terminated to avoid an actual or potential conflict of interest as determined by the appropriate board: Provided, That between the first and fifteenth day of January of each year, every member of the board of the corporation and the system shall file a
written statement, which shall be fully available for public
disclosure, with the appropriate chairman of the board,
under oath, setting forth:

(1) The name of every person, firm, corporation,
association, partnership, sole proprietorship or other
business association in which the member, the member's
spouse or the unemancipated minor child or children of
the member, in their own or the member's name, or
beneficially, own at least ten percent of such business
entity, or of which he or they are an officer, director,
agent, attorney, representative, employee, partner or
employer, and which to his actual knowledge is then
furnishing or within the previous calendar year has
furnished to the state, the board of trustees, West Virginia
university or the corporation or system defined in this
article, commodities or printing as those terms are defined
in section one, article one, chapter five-a of this code; and

(2) Any other interest or relationship which might
reasonably be expected to be affected by action taken by
the board of the corporation or the system or which in the
public interest should be disclosed.

Those persons to whom the provisions of subdivisions
(1) and (2) of this subsection are not applicable shall file a
written statement to that effect with the chairman of the
board at the same time the reports specified in
subdivisions (1) and (2) are required to be filed.

(b) Any person who fails or refuses to file a written
statement under oath as required in subsection (a) of this
section shall, by operation of law, be automatically
removed from the board until the statement is filed.

(c) Any person who intentionally files a false
statement under this section is guilty of a misdemeanor
and, upon conviction thereof, shall be confined in jail not
less than six months nor more than one year.

§18-11C-8. Not obligation of the state.
1 Obligations of the corporation and the system shall
2 not constitute debts or obligations of the university, the
3 board or the state.

§18-11C-8a. Agreements subject to other provisions of law.

1 Any agreements entered into between the system and
2 any county hospital, municipal hospital or hospital created
3 by special act of the Legislature shall be subject to the
4 provisions of section three-a, article twenty-three, chapter
5 eight of this code. No agreements entered into by the
6 system shall relieve any hospital of any obligation or
7 responsibility imposed upon it by law, except to the extent
8 that actual and timely performance thereof by the system
9 or any of its members may be offered in satisfaction of
10 the obligation or responsibility.
DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1997

HOUSE BILLS

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First Extraordinary Session, 1997

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First Extraordinary Session, 1997

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